these bodies, however, has produced an enormous backlog of pending cases, for example, 70,000 pending cases currently before the European Court of Human Rights. Professor Shelton correctly notes that repetitive cases form the biggest category of pending applications before the European Court.

Professor Shelton concludes that, despite the fact that human rights violations have not ended or significantly decreased, the proliferation of human rights mechanisms into new regions of the world is an affirmation of the universality of human rights norms and a cause for celebration.

This concise, yet encyclopedic, survey of the development of human rights law and human rights institutions should serve as a useful introduction to non-specialists in the field with an interest in the nature of human rights law and the work of these mechanisms.

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Iris Haenen, *Force and Marriage. The Criminalisation of Forced Marriage in Dutch, English and International Criminal Law* (Intersentia, 2014, xvii + 404 pp, £71.00) ISBN 978 1 78068 252 5 (pb).

Immigration being inextricably bound up with its history, Europe continuously faces the issue of how to deal with the import of new and formerly unknown cultural practices. Social regulation of such cultural practices is being penalized and the cultural practices of minority groups are considered to represent a threat to national identity.[1] The latter being unquestioned, solutions chosen to preserve this identity are often of a legal nature. Moreover, the public authorities are called upon to set clear public standards regarding the harmful nature of such practices and the need to combat them adequately. Frequently, an appeal to human rights law goes hand in hand with a claim for penalization. One of these cultural practices, forced marriage, has been framed in terms of law and gender.

Iris Haenen devoted her thesis to this subject, focusing on the need for criminalization; she defended it successfully in January 2013 at Tilburg University. The research question underlying the dissertation goes as follows: 'Should forced marriage be criminalised under Dutch and international criminal law and, if so, how?' Despite the obvious merits of the work, I have some misgivings about the research question, which in my opinion is too ambitious. Of course ambition should be praised, but I do feel

1 Note: forced (including arranged) marriages occur amongst multiple cultural minorities, the majority being descendants of non-Western immigrants (or, as the Dutch call them, 'allochtonen', the opposite to 'autochtonen', who are the descendants of Western immigrants and will not be addressed here).

that the suggested correlation between the discourse of the national criminal law and the discourse of the international criminal law underlying the research question is problematic. Especially since it also considers another legal comparison, the penalization of forced marriage in Dutch and English national discourse.[2] According to the author, however, such a double comparison 'opens up the possibility of cross-pollination between the two levels: some principles that were uncovered as relevant to criminalisation in national law may also be applicable to international law and vice versa' (p. 185).

This argument, however, does not convince me. Moreover, the author herself is aware of the complexity of the subject covered so that 'the expression "apples and oranges" might come to mind' (p. 303). Notwithstanding the laudable nature of such a self-critical comment, it does not resolve the problem observed. Indeed, Haenen initially down plays the observed incompatibilities, where she states that there is 'considerable divergence between times of peace and conflict as regards the circumstances surrounding forced marriages, the degree of coercion that is used and the possible consequences of the phenomenon', but subsequently concludes that forced marriages 'in essence… concern the same behavior in both situations: coercion used to make a person enter into a marital(-like) association against that person's will' (p. 5). However, even if the latter is true, the need to take into account the nature of the (social and legal) context still stands. To phrase it otherwise: abducting a woman in the context of a civil war, calling her your bush wife, represents a different imagery of 'forced marriage' from the pressure exerted by the family upon a Dutch or an English youngster from a cultural minority, persuading him or her to marry the family's candidate. Indeed, the study itself provides a clear analysis of the complexity of the specific nature of both the legal disputes settled by the tribunals and the conflicts to be tried by the national courts. To compare such divergent cases calls for a common denominator and consistency, which are both, to my opinion, not sufficiently present. As mentioned, the author herself is well aware of the complexity of the (double) comparison pursued, nevertheless, she holds on to it. Notwithstanding that such an effort requires respect, it also puts a heavy weight on the scholar's shoulders since one must provide for clear arguments as to why such a double comparison would be fruitful. Since the arguments presented show, at least to my opinion, some shortcomings, the analysis lacks some cogency.

But first let me proceed with the structure of the book. First, the study is very well-structured. Sometimes perhaps a bit too structured, causing some repetition. Nevertheless, the study is well written, showing the author's expertise and ability to grasp the nuances of the theme such as the need to distinguish between arranged and forced marriages (pp. 51 and 63) and the finding that men can also become victims of forced marriage (p. 101). Moreover, she stresses the need to acknowledge that forced marriages represent a continuous offence (pp. 231 and 324–5). Having a

2 Note the Dutch debate is extending so as to make a distinction between different situations relating to force and marriage, the archetype being forced marriage. One can observe the rising incidence of abandoned women who were forced to marry, as well as interest in the state of marriage itself, the marital captivity: see van Waesberghe (ed.), *Zo zijn we niet getrouwd [That's not conform our marital vows]* (2014) (my translation).

keen eye for the complexity of the phenomenon analysed, the author starts with a general introduction providing an outline and the methodology of the study. Subsequently, the author pursues a valid definition of forced marriage and a 'legal sociological' perspective is applied in Chapter 1. Marriage is defined as: 'Any union between two or more people which, in a specific society is legally, culturally and/or religiously sanctioned, which is binding, and which, within the particular context of that society, establishes certain rights and obligations between those people and is seen as marital or marital-like' (p. 18). The point of departure with regard to (the criminalization) of forced marriage, therefore, lies in the absence of consent underlying a legally sanctioned (semi-) judicial association.

The next chapter explores the national discourse on (the penalization of) forced marriages in The Netherlands and England (Chapter 2). A similar exercise is executed with regard to the conflict situations tried by the international tribunals (Chapter 3). Applications of force and marriage within the context of the civil wars afflicting the African continent are analysed and the author focuses on the case law of the Sierra Leone Tribunal. By way of contrast, an analysis of the case law of the Cambodia Tribunal is also provided, analysing the use of force and marriage in the context of the Khmer Rouge's population policy. These, along with some other cases, are presented as the background to the provisions in the Statute of Rome, especially Article 22 which advocates a restrained use of criminalization. As I am not an expert in international criminal law, I may not be in the best position to judge, but the analysis of the international tribunals' jurisprudence provides an adequate overview. Indeed, putting together an analysis of such a complex phenomenon is no small task and the author deserves credit for this. Nevertheless, since the information presented comprises a broad range of cases, I cannot help wondering whether the analysis pays tribute to the distinct nature of the conflicts involved.

The comparison between the Dutch and English discourse provided in Chapter 2, is of a different, perhaps less complicated nature. Indeed, both national discourses represent a Western perspective on force and marriage, being ruled by the communal 'European rules', based upon a human rights perspective. I would have preferred a more in-depth analysis of the human rights framework as mentioned in Chapter 1, paragraph 3. Since both the national and the international criminal law start from a human rights perspective, this should serve as a bridge between the two distinct parts of the research question, as the author presumably intended. Indeed, being eager to find such a correlation, my initial thought was that the common denominator binding the double comparison would be the argument that forced marriages represent a violation of the 'opinion of the common people'. An argument that has been recently used by the Dutch government to legitimate the extension of jurisdiction to prosecute and try forced marriages executed abroad (Article 5(a) Dutch Penal Code). The author addresses this argument where she refers to the criteria on criminalization applied within international criminal law, mentioning the criterion espoused by Bassiouni that crimes of this denomination must violate 'the commonly shared values of the community' (p. 142). The argument is, however, not extensively elaborated upon, leaving the correlation between the national criminal law and the international law suggested in the research question unresolved.

Moreover, I would have preferred the analysis of the national discourses provided in Chapter 2 (England versus the Netherlands) to be of a more in-depth nature, paying full tribute to the topical social and political debate with regard to the criminalization of forced marriages in both countries, touching upon the issue of how to deal with the consequences of globalization and immigration. One might object to my comment, arguing that Haenen sticks to her trade: being a legal scholar she keeps to her promises providing a legal analysis. So what is the merit of my comment that an extended 'legal-sociological' perspective should be applied? Notwithstanding that there is some truth in the objection, it is my sincere opinion that scholars who invest in the study of cultural offences should show a clear interest in socio-legal issues and cross the borders of the legal domain. This is especially true when one opts for a comparative analysis. In the first part of the book, Haenen appears to be willing to make such a cross-over, starting with a socio-legal analysis of force and marriage. However, the author does not pursue this course to a sufficient degree in my opinion.

As the study primarily addresses the normative issue of whether forced marriage *should* be criminalized, criminalization being the product of social and political debate, I would have expected and preferred a more in-depth analysis of the underlying context, especially since the English authorities have a longer history of handling forced marriages than the Dutch. Indeed, the English authorities recently opted for a change of policy. Having opted for a model of social assistance, combined with applications of civil and administrative law, the Anti-Social Behaviour, Crime and Policing Act 2014 was introduced representing a political choice for the use of the criminal law. In contrast, the criminalization of forced marriage raises no serious dispute in the Netherlands. Indeed, although the Dutch also acknowledge the need for a mixed policy (social assistance combined with legal intervention), the criminalization of forced marriage has not been extensively debated within the Netherlands. Moreover, in contrast to the Dutch, the UK legislature opted for a specific offence, which is the issue addressed in the second part of the research question (the *how*). Since the Dutch criminal law features a preference for general provisions, such an option was rejected. Being mindful of these and other relevant differences, a more detailed analysis of the Dutch and English discourses would have been preferable to relate legal arguments to the social debate on the criminalization on cultural offences.

Since the study does identify relevant features within the national debates, one might object to my comment as an expression of mere preference. Indeed, the author does identify specific characteristics present in the national discourses, for instance, where she mentions that 'equity' is present within the English discourse. The English debate relates to a specific approach of 'private ownership' of the offence, giving room to take into account the victim's individual interest regarding the settlement of the conflict (pp. 231–234). One can see this approach reflected in the two-step settlement of forced marriage applied within the English legal discourse: in order to prevent forced marriage a restraining order (or another civil law remedy) is applied, the contravention of such an order is an offence, not because of the harm brought upon the victim, but because of 'contempt of court'. With regard to the Dutch discourse, there is no comparable notion of 'equity'. Although Dutch criminal law has

provisions for restraining orders, the application of these is typically related to a conviction, accompanying some kind of punishment. The author is clearly aware from this example of the relevance of an adequate analysis of the socio-political discourse underlying the issue of criminalization with regard to allegedly cultural offences. Indeed, there are passages that are relevant to the social debate (example pp. 247 and 253 with regard to the English debate on multiculturalism). Moreover, the author's determination to provide a full analysis also shows in the efforts undertaken to address related legal issues, specifically the civil law and the administrative law dimensions of the theme. Indeed, one can understand why the English legislature, due to the presence of equity, leans heavily on the civil and administrative law, whereas the Dutch do not. I do feel, however, there is more to it than just a difference of preference, there is too much that remains unmentioned.

The complexity of the task of pursuing the 'double' comparison also shows in the analysis of the criteria of criminalization presented in Chapters 4–6. Haenen argues that these criteria are universal: 'all 'national' criteria are also, to some extent, present at the international level' (p. 191). And of course, to some extent they are. Indeed, as mentioned by Haenen, notwithstanding the nature of its performance, 'harm, wrong, internal subsidiarity and legality'—and a dominant standard within today's criminal policy: 'effectivity'—are consistent benchmarks within the (national and international) criminal law. Nevertheless, since the nature of the context and the interests to be evaluated differ, the interpretations differ, resulting in different outcomes. Indeed, as mentioned by the author, with regard to the presence of group-related offences tried by the tribunals, a higher standard of 'harm and wrong' is required since these offences aim to protect 'a strong interest of the international community and in some cases even humanity as a whole' (p. 186). Moreover, in support of the conclusion that the criteria of criminalization applied in the national and international criminal law are not fully interchangeable (p. 185), she correctly points towards the absence of 'any form of systematisation or method' with regard to the international criminal law (pp. 140 and 146). Indeed, this does not necessarily contradict the previous argument of universal applicability, but it does put the comparability of the criteria addressed into perspective. Such (minor) inconsistencies are present throughout the study. However, they are understandable as they show the author's struggle to deal with a complex research question and her academic endeavour to solve the inherent tension underlying the double comparison pursued.

Leaving aside these differences, the author adheres to a minimalist approach towards penalization (for example, pp. 127 and 316). Forced marriage being closely related to family life, the criminal law may be too blunt an instrument to settle the problem. Indeed, other (non) legal measures 'may take precedence over criminal law' and provide a better solution. According to Haenen, this is not true with regard to forced marriages: the harms and wrongs caused by forced marriages are of *such* a nature that they require the condemnatory response of the criminal law (p. 318). Hence, the first part of the research question, addressing the question whether forced marriages should be criminalized, is answered in the affirmative for both the national and international criminal law. Based upon the arguments presented, there is sufficient support for such a conclusion. Nevertheless, one might have some doubts as to what

constitutes a forced marriage in the national context and whether such forced marriage falls within the ambit of the category of cultural offences. However, the latter is not a question raised by Haenen. The argument that 'a forced marriage comprises a severe violation of personal autonomy—a type of harm that is not suitable for compensation' (p. 318), also warrants some discussion. It is common practice to compensate victims for serious violations of human rights norms, although—and this is the argument addressed by Haenen—there is also a need for adequate criminalization.

As regards the second part of the research question, how to criminalize forced marriage, the author is of the view that one should not introduce a specific offence under national and international criminal law. This is admittedly a hesitant conclusion and for good reason (p. 320). As the author states, there is no hard evidence that the introduction of a special offence would prevent forced marriage or otherwise would provide positive results (p. 326; also pp. 321–322 with regard to the effectiveness). In the author's opinion, the solution chosen by the Dutch legislature to opt for a general provision as provided by Articles 284 and 285a of the Dutch Criminal Code, in conjunction with some other general provisions is sufficient. With regard to the international criminal law, she comes to a similar conclusion, referring to Article 22 of the Rome Statute, which introduces strict criteria for criminalization and declines to criminalize forced marriage as a 'crime against humanity' or 'other inhumane act'. Moreover, these types of forced marriages are, according to Haenen, subsumed within the existing provisions, amongst others the crime of 'sexual slavery' (pp. 349–51). Indeed, this is in line with the supranational basis of the Tribunals' jurisdiction.

Has the author answered the question of what is the best solution to deal with the issue of forced marriages, which is raised at the beginning of the study (p. 8)? Given my preference for a less complicated research question in conjunction with an in-depth analysis of the national discourses in particular, I do have some reservations. I believe the question: what constitutes 'the best solution?' remains unanswered. Given the lack of discussion of the effectiveness of introducing a special offence referred to by Haenen, clear answers cannot be provided.[3] Moreover, the answer will depend, among other things, on the socio-legal features of the system involved and the way in which the national and international community is willing to deal with this allegedly cultural offence, assuming that forced marriage constitutes a cultural offence, which in itself is a subject for debate. Bearing in mind the specific nature of the Dutch (having a systemic preference for general offences, leaving but marginal room for the introduction of specific offences) and English criminal law—(a system that is based on custom law/case law, using the introduction of statutory law to relate to specific offences)—it becomes clear that both authorities have opted for the solution which suits their legal system.

Notwithstanding the comments made, or if one prefers, the difference in preferences expressed, I would like to express my sincere appreciation of the study executed by Haenen. Indeed, those who are interested in the complex theme of force and marriage should read the book. Moreover, the study provides two perspectives, leaving the reader room to choose: those who are (primarily) interested in the issue of criminalization in the national context can leave aside the chapters relating to the

3 Cf for the Dutch discourse: see van Waesberghe, ibid.

international criminal law, and vice versa. All in all, the author has written a recommendable book, the content of which will echo in the topical debate on the penalization of forced marriages in the distinct context of (inter)national criminal law.

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4 To exercise due caution I refer to the review of this book published in the Delikt and Delinkwent (2015, forthcoming).