

**idn** cadernos

# GENDER VIOLENCE IN ARMED CONFLICTS

# **Gender Violence in Armed Conflicts**

Outubro de 2013

Instituto da Defesa Nacional

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## Foreword

In Bosnia-Herzegovina, Democratic Republic of Congo, Kosovo, Sierra Leone, Somalia, Sudan, Rwanda, Colombia, Uganda, Liberia and many other places, hostilities provided a cover for all species of gender based violence (GBV). Violence based on gender is considered the worst form of cruelty, that seriously inhibits the individual ability to enjoy rights and freedoms and seriously harms the transition from armed conflicts to peace. Moreover, it deeply affects women, girls, but also men and boys across the world, not only during armed conflicts but also long after the cessation of armed hostilities. Therefore, gender based violence undermines the link between security and development. GBV is, indeed, considered the ultimate generational form of violence.

Bearing in mind this type of violence, Portugal's National Defense Institute developed a research project in which the final goal was to gather international experts to address comprehensively key aspects of GBV, especially within the context of armed conflicts.

The National Defense Institute was the very first governmental defense organization belonging to a NATO country, that sought the collaboration of the academia and a comprehensive set of other actors in an effort to understand this phenomena. By the same token, it also sought to develop a proper insight about the "techniques" of GBV, such as rape, torture, mutilation, sexual slavery, forced impregnation and murder, and likewise the measures available to the international community to fight against the horrifying scope and magnitude of such acts in contemporary armed conflicts.

With the institutional support of the Portuguese Ministry of Defense, NATO Public Diplomacy Division, the University of Coimbra, the Portuguese Catholic University, the European Security and Defense College, the Democratic Control of Armed Forces (DCAF), and Banco Português de Investimento (BPI), was possible to convey an international seminar on December 4<sup>th</sup> 2012 in Lisbon, at the National Defense Institute.

It was an entire day of speeches, presentations, debates, discussions, and exchange of points of view in which an international audience of academics, politicians, military officers, students, public officials, and representatives of non-governmental organizations, which led to the publication of this volume. Unfortunately not all presentations are included. Nevertheless, this collection of texts will stand as an effort to contribute to eliminate one on the worst forms of violence in armed conflicts.

Here – as in the conference – we divided the different experiences and contributions in three areas. Firstly we present a mosaic-like picture of GBV, of its diverse roots and brutal forms and expressions all over the world, then we tackle the complex relationship between GBV and International Law and, finally, we point out at expectations that demonstrate very clearly that we do have alternatives to respond and that new paths are possible – if only we gather our will as well as our shared wisdom in one single and assertive voice.

All in all the presentations and the public debates has highlighted us the following key ideas:

- Gender Based Violence is used as a weapon with the intention to demoralize and destabilize. Gender crimes are a result of an organized action and they intend to harm, so consequently, they are, indeed, indignity crimes. Furthermore, rape is a “cheap” and very effective weapon of war, which is used on a daily basis in today’s conflicts;
- Gender Based Violence must be known. Knowledge is a remarkable important factor of prevention. Women are affected in many ways by war and some of them are very specific to them. Their plight does not receive the attention it deserves. The United Nations Security Council Resolution (UNSCR) 1325 on “Women, Peace and Security” recognizes the disproportionate impact that war and conflicts have on women and children and calls for the inclusion of gender perspectives in peace negotiations, humanitarian planning, peacekeeping operations, post-conflict peace building and governance. In this context it is essential the existence of gender advisers to military operations and the practice of a peace oriented journalism;
- Gender Based Violence is a continuum of violence. Men, women, the elderly, young kids, people in public positions of power or merely members of a family, all experience gender-based violence during armed conflicts, in periods of transition from war to peace, and during the post-conflict phase. GBV can thus be understood as a continuum of violence that varies in form and intensity depending on the dynamics of conflict;
- Gender Based Violence is a comprehensive problem that touches all actors directly and indirectly involved an armed conflict, and therefore, initiatives such as the “Montreux Document” on pertinent international legal obligations and good practices for States related to operations of private military and security companies, during armed conflicts is a good step in the right direction. Besides, humanitarian workers, private companies, military forces, police forces, United Nations peacekeepers, and governmental institutions need to develop and implement good practices to deal with this phenomenon.
- Gender Based Violence cannot enjoy impunity; it must be accounted by national and international legal systems, in terms of criminal and disciplinary action. In this domain the following features are paramount: education, and training of armed forces; the existence of reporting mechanisms; and the role of military commanders to prevent the use of GBV as a tool of war.

The UNSCR 1820 (2008) stated the following:

*“Noting that civilians account for the vast majority of those adversely affected by armed conflict; that women and girls are particularly targeted by the use of sexual violence, including as a tactic of war to humiliate, dominate, instill fear in, disperse and/or forcibly relocate civilian members of a community or ethnic group; and that sexual violence perpetrated in this manner may in some instances persist after the cessation of hostilities... Recalling its condemnation in the strongest terms of all sexual and other forms of violence committed against civilians in armed conflict, in particular women and children...”*

*Reiterating deep concern that, despite its repeated condemnation of violence against women and children in situations of armed conflict, including sexual violence in situations of armed conflict, and despite its calls addressed to all parties to armed conflict for the cessation of such acts with immediate effect, such acts continue to occur, and in some situations have become systematic and widespread, reaching appalling levels of brutality... Recalling the inclusion of a range of sexual violence offences in the Rome Statute of the International Criminal Court and the statutes of the ad hoc international criminal tribunals... Reaffirming the important role of women in the prevention and resolution of conflicts and in peace building, and stressing the importance of their equal participation and full involvement in all efforts for the maintenance and promotion of peace and security, and the need to increase their role in decision-making with regard to conflict prevention and resolution... Deeply concerned also about the persistent obstacles and challenges to women's participation and full involvement in the prevention and resolution of conflicts as a result of violence, intimidation and discrimination, which erode women's capacity and legitimacy to participate in post-conflict public life, and acknowledging the negative impact this has on durable peace, security and reconciliation, including post-conflict peace building... Recognizing that States bear primary responsibility to respect and ensure the human rights of their citizens, as well as all individuals within their territory as provided for by relevant international law... Reaffirming that parties to armed conflict bear the primary responsibility to take all feasible steps to ensure the protection of affected civilians..."*

This quote recognizes not only the dimension of the problem posed by GBV, but also the importance of the State's action and the willingness of the armed groups involved. In the same line the International Criminal Court Prosecutor has referred to GBV as "crimes of domination with the aim of shattering any sort of resistance and the leadership ability directed mainly to the civilian population".

Lastly, being aware that producing documents is the stress-free part of the eradicating process, and therefore implementation is the harshest task that all parties face, we hope that this collection of essays at least, give a symbolic contribution to enhance the awareness and the individual will to eradicate these practices everywhere in our world.

Lisbon, September 2013

Seminar's Steering Committee,

Carla Gomes, Ph.D. Candidate (University of Coimbra, Portugal)

Lieutenant-Colonel Francisco Leandro, Ph.D. (National Defense Institute, Portugal)

Mónica Dias, Ph.D. (Catholic University, Portugal)



# Opening Remarks

## **Teresa Morais**

*Is the Portuguese Secretary of State of Parliamentary Affairs and Equality. She holds a PhD, a Master Degree and a BA from the Law School of the University of Lisbon. She was a Lecturer at the Law School of the University of Lisbon and the University Lusíada. She held previously positions: Vice-President of the Parliamentary Group of the Social Democratic Party (PSD) and coordinator in the areas of Justice and Equality (2009-2011); Member of the Committee on Constitutional Affairs, Rights, Freedom and Guarantees; Member of the Committees of Corruption Monitoring; Member of the Constitutional Revision; President of the Subcommittee on Equality and Member of the Council for Supervision of the Information Services.*

Senhor Diretor do Instituto da Defesa Nacional  
Senhoras e Senhores Representantes dos Ramos das Forças Armadas  
Senhoras e Senhores Auditores do Curso de Defesa Nacional  
Senhoras e Senhores Oradores  
Minhas Senhoras e Meus Senhores

Quero agradecer o convite que me foi dirigido pelo Senhor Diretor do IDN para estar presente na sessão de encerramento deste seminário que aborda o tema da *Violência de Género nos Conflitos Armados*, matéria de enorme relevância que verdadeiramente toca numa das maiores fragilidades e insuficiências do sistema de proteção dos direitos humanos.

Num dia em que se ouviram diversos especialistas que abordaram diferentes perspetivas de análise do tema, seria tarefa difícil e delicada, se não mesmo impossível, pretender trazer, também eu, aqui, uma perspetiva técnica desta questão.

Não tenciono fazê-lo, convicta, aliás, de que também não será isso o que se espera desta minha breve participação.

Na verdade, o tópico que gostaria de aqui explorar é genérico mas explica, a meu ver, muito do que de específico se pode dele desentranhar e não é outro senão o da desigualdade entre mulheres e homens que caracteriza ainda o nosso mundo e, com mágoa se reconhece, marca também a sociedade portuguesa, desigualdade que é verdadeiramente a fonte de muitos dos males de que sofre a Humanidade.

Vivemos num mundo que desvaloriza e desperdiça as capacidades e as competências de metade da Humanidade, em muitos países, aliás, a sua metade mais qualificada, e quando assim é não se pode esperar outra coisa que não seja desequilíbrio e injustiça.

Apesar das lutas seculares das mulheres pelo reconhecimento da igualdade de direitos em todos os domínios e das enormes conquistas que essa luta foi obtendo ao longo

dos anos, pelo menos no plano jurídico-formal, a verdade é que a desigualdade persiste e manifesta-se de formas muito diversas, tanto nos efeitos nocivos imediatos que dela decorrem para a Humanidade, como em relação a tudo aquilo de que essa Humanidade resulta privada e prejudicada pela falta de aproveitamento útil de tudo o que as mulheres poderiam dar, para além do que efetivamente já dão, ao desenvolvimento e à criação de um mundo mais justo.

Esta desigualdade enraizada e perseverante explica, insisto, muito e manifesta-se das mais perversas formas e a todos os níveis. Explica que sejam ainda tão poucas as mulheres nas Forças Armadas em todo o mundo (e também em Portugal) e que apesar de todo o tipo de proclamações, de planos e de programas diversos que pretendem promover uma maior participação das mulheres, a sua representação nessas forças seja, na maior parte dos países, residual, panorama que se agrava substancialmente se atendermos ao número de mulheres em postos de chefia.

A utilização sistemática de um grande número de mulheres em funções de apoio e de natureza administrativa mostra bem como a velha e bafienta doutrina de que *“o homem se fez para a guerra e a mulher para dar paz ao guerreiro”* tem, na prática, modalidades suaves de derrogação.

A desigualdade continua quando verificamos a composição dos contingentes de militares dos mais diversos países que integram as missões internacionais. A minoria de mulheres de que gostamos de nos orgulhar e de sublinhar pela novidade que encerra é bem reveladora do caráter assistemático e, mais uma vez residual, da sua presença.

Digo isto sem ignorar e sem pretender desvalorizar os esforços feitos para impulsionar a presença de mulheres nessas missões e reconhecendo com agrado alguns avanços recentes.

Julgo aliás que, em 2010, o reconhecimento do valor da participação das mulheres em contextos específicos levou à formação de equipas exclusivamente constituídas por mulheres, conhecidas por FET (*female-only teams*), que julgo terem sido implementadas pela primeira vez pelos Estados Unidos na missão no Afeganistão, no âmbito da ISAF (*International Security Assistance Force*). Sem pretender defender que a formação de equipas exclusivamente por mulheres deva ser o princípio, (tanto quanto parece não ser de acolher o princípio de constituição de equipas exclusivamente por homens), no caso concreto parece ter havido razões para a utilização das FET, dadas as características socioculturais daquela comunidade e a particular dificuldade de estabelecimento de contactos entre os militares homens e as mulheres afegãs, com prejuízo para todas as partes envolvidas.

Mas a desigualdade é também o que explica, a meu ver, o tópico central do debate que aqui se desenvolveu: a violência de género nos conflitos armados.

Tem-se repetido em vão que as populações civis, particularmente as mulheres e as crianças, são a grande maioria da população afetada pelos conflitos armados, incluindo os refugiados e desalojados. A necessidade de medidas específicas de proteção das mulheres e raparigas contra a violência de género, em especial a violação e todas as formas de abuso sexual, está consagrada há décadas nos mais relevantes instrumentos internacionais e,

no entanto, a violência sobrevive a todas as proclamações, a todas as intenções, a todas as sensibilizações.

Não querendo repetir aquilo que hoje seguramente aqui foi dito e analisado com detalhe, lembro apenas que vai a caminho dos seus quarenta anos a *Declaração da Assembleia Geral das Nações Unidas sobre a Proteção de Mulheres e Crianças em Situações de Emergência e de Conflito Armado* onde se recordavam as disposições contidas nos instrumentos de direito internacional humanitário relativas à proteção das mulheres e crianças em tempo de guerra e de paz e se declarava a proibição e a condenação dos ataques sobre a população civil, “*infligindo incalculável sofrimento, especialmente às mulheres e crianças*”.

Tem doze anos feitos a célebre e tão citada Resolução 1325 do Conselho de Segurança das Nações Unidas, que tanto sublinhou o imperativo de proteção das mulheres e das meninas contra a violência de género em todas as suas formas e enfatizou a necessidade de considerar as carências especiais das mulheres e raparigas na repatriação e realojamento, em cenários de pós-conflito, Resolução que clama ainda por uma efetiva aplicação<sup>1</sup>.

Depois disso, por diversas vezes e por diversas formas, a União Europeia reiterou as mesmas prioridades. Gostaria de referenciar especialmente a Resolução do Parlamento Europeu sobre a situação das mulheres nos conflitos armados e o seu papel na reconstrução e no processo democrático nos países em situação de pós-conflito. Nesta Resolução:

- Enfatiza-se a importância dos serviços de saúde reprodutiva nas situações de conflito e nos campos de refugiados, situações em que “*disparam as taxas de mortalidade materna e infantil, ao mesmo tempo que se propagam doenças sexualmente transmissíveis*”;
- Sublinha-se a responsabilidade dos Estados no fim da impunidade e na instauração de procedimentos judiciais contra os responsáveis de, entre muitas outras barbaridades, a violência sexual, a gravidez e a esterilização forçadas e a exploração sexual de mulheres e crianças.

Por outro lado, realça-se também o que muitos outros documentos relevantes têm sublinhado: o papel fundamental das mulheres e das suas organizações na resolução dos conflitos, na reconstrução pós-conflito e na construção e manutenção da Paz.

Por outro lado ainda, cumpre sublinhar os esforços desenvolvidos pela NATO na implementação da Resolução 1325 e o compromisso por diversas vezes reiterado da necessidade da sua aplicação, em 2007 com a aprovação da Política Global<sup>2</sup> e em 2008 com a divulgação de boas práticas por parte de Estados aliados, bem como através da nomeação de conselheiros de género em comandos estratégicos, no Afeganistão e no Kosovo, matérias de que já hoje aqui se falou seguramente com um desenvolvimento muito superior àquele que esta minha intervenção justifica.

O que se observa do trabalho destas organizações, a que no mínimo deveríamos acrescentar a OSCE e o Conselho da Europa, igualmente empenhadas nesta matéria e

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1 Portugal foi um dos países que aprovou um Plano de Ação para a Implementação desta Resolução que está a ser executado com a participação de um grupo de trabalho com representantes de diversos ministérios, tendo sido produzido um relatório intercalar de execução, apresentado em Maio de 2011 à Assembleia da República.

2 Revista em 2011.

com um percurso assinalável, é que todas elas, com as suas especificidades e diferentes missões se encontram empenhadas nesta luta contra as violações dos direitos de todas as pessoas mas particularmente das mulheres e crianças.

Porém, o estágio deste processo em que, de facto, nos encontramos mostra bem a insuficiência dos resultados alcançados, em todos os domínios, mantendo-se resiliente a causa explicativa de muitos destes problemas: a desigualdade perseverante entre mulheres e homens.

Num dos documentos acessíveis nos *briefings* da NATO, vi recentemente transcrita uma pergunta lançada, numa intervenção sobre o tema, pelo Secretário-Geral da NATO. A questão era exatamente: *Seria um mundo onde as mulheres gozassem de direitos iguais aos dos homens mais seguro e mais estável?*

Quanto à resposta o Secretário-Geral considerou-a difícil de dizer, mas acrescentou: *“mas em última análise uma paz duradoura em muitas das zonas mais problemáticas do mundo depende desta resposta”*.

Compreendo que a resposta seja difícil mas confesso-me, apesar de tudo, menos cética quanto a uma resposta positiva. E ainda que, chegados a essa situação de igualdade efetiva de direitos, chegássemos à conclusão de que o mundo nada tinha ganho em segurança e em estabilidade, situação sobre a qual só podemos verdadeiramente especular porque realmente essa igualdade não existe, sempre poderíamos dizer que pelo menos teríamos iguais responsabilidades pela situação em que o mundo se encontra, o que neste tempo de desigualdades se não pode dizer.

A responsabilidade surge na sequência de atos decisórios sobre a paz e sobre a guerra de onde as mulheres estão de facto, largamente, para não dizer completamente, afastadas.

A sub-representação das mulheres em lugares de decisão política e em postos relevantes nas chefias militares permite sem esforço e sem distorção, em meu entender, a conclusão de que quem afasta as mulheres dessa decisão ou simplesmente nada faz para as integrar por forma a terem uma participação equilibrada e paritária nos mecanismos de decisão política, mas também económica e seguramente militar, assume com quem escolheu para seus parceiros, a responsabilidade pelo falhanço das políticas e pelos erros de cálculo que elas sempre comportam.

As mulheres são vítimas de discriminações múltiplas e diversas violações de direitos, qualquer que seja a posição em que se encontrem: são vítimas no pior dos cenários de vitimização quando se encontram entre os afetados pela guerra, (de que aliás já eram as vítimas mais vulneráveis por razões de desigualdade crónica a que estavam sujeitas em muitos casos); são vítimas ainda quando, em situação de pós-conflito, lhes falta o essencial à reconstrução das suas vidas; são vítimas também quando lhes negam uma participação igual na construção da paz e na reconstrução das nações, mas são ainda vítimas quando lhes negam, de forma expressa ou subliminar, o acesso a lugares onde, a par com os homens, deveriam participar na decisão de tudo o que é relevante para a vida das nações e dos povos.

Na realidade, a situação geral das mulheres no mundo, sendo muito diversificada, é certo, de acordo com as regiões ou os ordenamentos jurídicos e as realidades fácticas

que tomemos em consideração, é ainda amplamente marcada pela menorização da sua participação nestes processos de decisão. Este estado de coisas, na verdade, não melhora, quando aguardadas Primaveras são afinal Invernos de desilusão para os direitos das mulheres.

Suponho que por esta altura atravessará algumas mentes aquela linha de pensamento supostamente sensata e seguramente aconselhável às posturas de Estado formais, segundo a qual o caminho se está a fazer, com moderação e cautelas, até porque estas coisas requerem tempo, que estamos aliás muito melhor do que há cinquenta anos atrás... etc., etc.

Pois bem, quanto a isso direi apenas, com todo o respeito por quem assim pensa, que o tempo para a sensibilização para os direitos, para o despertar das consciências, para a aprendizagem paciente do respeito pelos direitos alheios, na minha mente e, garantidamente, na de muitas e muitos dos presentes se esgotou.

Estamos, definitivamente, numa fase em que se exige a efetivação da igualdade de direitos, com a impaciência de quem não tem tempo para esperar mais umas décadas para ver concretizada na vida, a igualdade, há décadas, inscrita nas leis.

Pela minha parte lembrarei isso todos os dias, como é meu dever e meu gosto.

Muito obrigada pela vossa atenção.

# Opening Remarks

**Vítor Rodrigues Viana**

*Major-General, Director of the National Defense Institute*

Senhor Ministro da Defesa Nacional, Excelência,

Começo por agradecer a sua disponibilidade para presidir à sessão de abertura deste seminário, uma presença que muito nos honra e que constitui uma motivação acrescida para a promoção de um debate estimulante sobre um tema, sem dúvida, importante para a Defesa Nacional.

Excelentíssima Senhora Dra. Charlotte Isaksoon, em representação da Organização do Tratado do Atlântico Norte.

Excelentíssimo Senhor Diretor Executivo do Centro de Direitos Humanos da Universidade de Coimbra, Professor Doutor Jónatas Machado.

Excelentíssima Senhora Professora Doutora Elizabete Azevedo-Harman, em representação do Diretor do Instituto de Estudos Políticos da Universidade Católica Portuguesa.

Caros Convidados,

Senhoras e Senhores Auditores do Curso de Defesa Nacional,

Mínhas Senhoras e Meus Senhores,

Constitui motivo da maior honra para o Diretor do Instituto da Defesa Nacional poder testemunhar a abertura de um Seminário Internacional subordinado ao tema “A violência de género em conflitos armados”. Trata-se do primeiro seminário organizado em Portugal sobre um tema que é da maior importância e atualidade e que, muito justamente, está no centro da agenda das organizações de segurança e cooperação internacional.

Ao longo deste seminário, teremos connosco personalidades nacionais e internacionais, académicos, militares, empresários, investigadores e a comunidade de pessoas interessadas nas dinâmicas da paz. Vamos refletir em conjunto sobre uma das formas de violência mais devastadora, cujos efeitos, se prolongam muito para lá do silenciar das armas, com consequências bastante negativas nos esforços de transição para a paz e em particular nos processos de Reforma do Setor de Segurança.

A organização de um Seminário deste alcance não poderia ser obra de uma só entidade. Ele é o resultado da convergência de esforços de três instituições – o Instituto da Defesa Nacional, o Instituto de Estudos Políticos da Universidade Católica Portuguesa e o Centro de Direitos Humanos da Universidade de Coimbra – às quais foi possível associar cofinanciadores, sendo de destacar neste domínio o contributo da Divisão de Diplomacia Pública da NATO.

Quero, antes de mais, saudar e felicitar os nossos parceiros e dirigir-lhes um agradecimento muito especial. E quero sublinhar o seu qualificado envolvimento, não apenas na organização deste Seminário, mas também na produção de um livro que estará disponível na primavera de 2013 e que incluirá os contributos escritos de todos os participantes.

Desejo também saudar todos os participantes, moderadores e conferencistas neste seminário, e aqueles que mesmo não podendo estar presentes, contribuem de forma escrita com o seu pensamento. E permitam-me também que assinalo o simbolismo da presença da Senhora Doutora Angela Charlotte Isaksoon.

Uma palavra também de estímulo e apreço para a Comissão Tripartida organizadora deste evento, que trabalha desde Outubro de 2011, na preparação do dia de hoje.

Minhas Senhoras e Meus Senhores,

Embora a violência de género em conflitos armados seja um tema pouco trabalhado em termos de divulgação pública, não se pode dizer que seja estranho às atividades de investigação e de formação avançada do IDN. No fundo, estamos hoje a dar visibilidade a uma linha de investigação associada à Reforma do Setor de Segurança, que o Instituto da Defesa Nacional vem desenvolvendo em articulação com o Colégio Europeu de Segurança e Defesa da União Europeia e a Fundação Internacional sediada na Suíça, denominada Democratic Control of Armed Forces.

Esta temática enquadra-se, de resto, na linha de investigação do IDN, intitulada “*política e segurança internacional*”, que tem por objetivo analisar o estado atual e a evolução previsível das políticas e estratégias de segurança e defesa, bem como o quadro de relacionamento externo que decorre de iniciativas de cooperação regional ou internacional.

Nesse contexto, temos analisado também a dimensão normativa da segurança global no que respeita à intervenção humanitária, responsabilidade de proteger, segurança humana, direitos humanos e interdependência securitária.

Quando falamos de violência de género em conflitos armados, falamos da violência que explora relações, atividades e preconceitos sociais. Por exemplo, através da utilização de menores, de indivíduos do sexo feminino, de indivíduos em posições de visibilidade pública ou fragilizadas, de modo a produzir um dano psicologicamente replicável a uma escala exponencial, capaz de exercer o domínio de um grupo, ou produzir um efeito relevante no contexto do conflito armado.

A violência de género tende a ser uma violência generalizada, organizada, capaz de infligir um enorme nível de sofrimento e, em simultâneo, produzir a degradação psicológica, o terror e a rutura moral das populações não combatentes, de forma persistente e prolongada.

As formas e os objetivos deste tipo de violência ultrapassam em muito aquilo que seria tolerável no padrão do sofrimento humano num contexto de conflito armado.

Falamos de crianças associadas a grupos armados, de violência sexual, de condicionamento dos direitos reprodutivos, bem como de muitas formas de humilhação sexual. Falamos, numa palavra, do inaceitável.

Os três painéis temáticos que constituem o corpo deste evento abrangem as causas, os instrumentos e os processos de um combate urgente contra a impunidade e a favor da

criação de condições para erradicação desta forma de violência brutal, contra a dignidade dos indivíduos.

A este propósito, gostaria ainda de evocar duas referências, que espelham bem a relevância deste tema para a comunidade internacional a que estamos vinculados.

A primeira vai para a Resolução 1820 (2008) do Conselho de Segurança das Nações Unidas. Ela condena expressamente toda e qualquer forma de violência dirigida a mulheres e crianças no contexto dos conflitos armados, em especial aquelas formas que utilizam a violência sexual. Nessa resolução, reconhece-se o impacto negativo deste tipo de violência num projeto de paz sustentável, na segurança e reconciliação, incluindo o pós-conflito numa perspectiva de construção da paz.

A segunda referência é uma reflexão muito interessante do Senhor Procurador do Tribunal Penal Internacional que, no momento da pronúncia da acusação no caso Jean-Pierre Bemba, resumiu ao coletivo de juízes o grave problema com que estamos confrontados: “Os crimes de género são a arma mais barata que dispõe das munições mais fáceis de obter, e em maior quantidade (por utilizarem simplesmente as pessoas)... os crimes de género são crimes que visam obter o domínio de outros indivíduos... são crimes perpetrados com a finalidade de esmagar qualquer resistência... e toda a capacidade de liderança...”

Em ambos os casos, reconhece-se a necessidade de combater a impunidade dos autores de tais crimes, cuja gravidade vem sendo cada vez mais reconhecida pela comunidade internacional. Reconhece-se, no fundo, que tocam o centro da dignidade dos indivíduos e que, por isso mesmo, tornam os esforços de paz tarefas verdadeiramente complexas e desafiantes.

Desejo sinceramente que os trabalhos deste seminário e a publicação da obra que se lhe seguirá, permitam compreender melhor as causas deste fenómeno e desenhar caminhos para a sua erradicação. Desejo que constituam um contributo determinado a favor do reforço de uma consciência de paz e segurança a desenvolver em torno de cada indivíduo, desenhando limites inultrapassáveis, mesmo no contexto do uso da violência armada.

Os crimes de género têm sido apelidados de crimes “da indignidade”. Nessa perspectiva, este seminário é, efetivamente, um contributo para a promoção da dignidade da pessoa, mesmo no contexto de um conflito armado.

Muito obrigado.



# Sexual Violence in Armed Conflicts: A Global Overview

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## **Introduction**

During the past decade, the issue of sexual based violence in armed conflicts has received increasing social and political visibility. This growing attention derives, on the one hand, from the brutal empirical evidence regarding the scope and magnitude of the problem and the knowledge that has been disseminated about it: for instance, the way how, in conflict zones, women (not only, but mainly) are the victims of devastating forms of sexual violence used to reach political and military goals. On the other hand, such visibility results from the promotion, by states and international organizations alike, of a strong political agenda targeting gender issues in general and gender based violence during armed conflicts in particular. Following the unanimous approval by the UN Security Council of Resolution 1325 on *Women, Peace and Security*, in 2000, a new gender regime in international security has developed around the production of a variety of documents and specific policies aiming at the implementation of the resolution. In addition, a third factor has contributed to enhanced visibility: the fact that sexual violence during armed conflicts and international operations has also been produced or facilitated by members of military and security forces themselves.

This paper addresses the question of sexual violence in armed conflicts as an extreme expression of gender based violence, aiming at a general description of its scope, and characteristics, as well as of the answers that have been proposed in its regard. The paper starts by identifying the diversity of expressions of sexual based violence, the actors involved and patterns of development. Secondly, it centers on the causes and consequences of sexual violence as they have been described and analyzed in current

scholarship and field reports. Finally, a third section focuses on policies that have been designed by international security organizations and examine their implementation.

### **Sexual Violence in Armed Conflicts: the Scope and Magnitude of the Problem**

Sexual violence is a complex phenomenon and a contested concept that has been defined in different ways. In general, however, it is often conceived as one of the most extreme forms of gender-based violence understood as “any harm that is perpetrated against a person’s will, and that results from power inequities that are based on gender roles”<sup>1</sup>. Among the various definitions of sexual violence, it seems useful to stick to the one proposed by the *Inter-Agency Standing Committee, Task force on Gender and Humanitarian Assistance*, that defines sexual based violence as “Any sexual act, attempt to obtain a sexual act, unwanted sexual comments or advances, or acts to traffic a person’s sexuality, using coercion, threats of harm or physical force, by any person regardless of relationship to the victim, in any setting, included, but not limited to home and work.”<sup>2</sup>

Sexual violence in armed conflict includes such diverse expressions as rape, mass rape, sexual abuse and exploitation, forced prostitution, sexual mutilation, sexual slavery, forced pregnancy or sterilization, or traffic with objectives of sexual exploitation. It occurs in a variety of contexts, during and after conflicts, including houses, fields, detention places, military sites, safe-heavens as clinics and hospitals, sacred places such as churches, synagogues or mosques, refugee camps or during the displacement of populations.

One very clear pattern of sexual violence in armed conflicts is that the victims are mostly women and the perpetrators are mostly men. These may be members of militias, of regular armed forces and security forces, paramilitary groups, non-state armed groups, humanitarian and peacekeeping personnel, and civilians (Bastick, Grimm and Kunz, 2007). While statistical estimates of sexual violence in conflict present many problems of both under and over estimation (Peterman and Palermo, 2011), reports from the field are overwhelming. In the Democratic Republic of Congo, for instance, a country that has been named ‘the world capital of rape’ (Palermo and Paterman, 2011: 925) and the worst place on earth to be a woman, “the fighting has been increasingly associated with high rates of sexual violence that, at times, have been referred to as a ‘plague’ or of epidemic proportions” (Addario and Egan, 2008). Some reports mention around 400,000 women victims of rape during the conflict presently living in this country; another study found that 1,152 women are raped every day – a rate equal to 48 per hour, much higher than the previous estimate of 16,000 rapes reported in one year by the United Nations<sup>3</sup>.

However, it is also important to note that in the roles of victims, survivors or perpetrators there are men, women and children. There is a tendency to hide sexual violence over men due to the social stigma it involves. Men and boys are particularly vulnerable

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1 Reproductive Health Response in Conflict Consortium (2003) Gender-based Violence Tools Manual, 9.

2 IASC, Inter-Agency Standing Committee (2005). Task force on Gender and Humanitarian Assistance,

3 <http://www.guardian.co.uk/world/2011/may/12/48-women-raped-hour-congo>

when in detention or forcibly recruited by armed groups and do not often report the crimes committed against them for fear of being stigmatized (Bastick, Grimm and Kunz, 2007). Types of male sexual violence that have been reported include: total/ partial castration, mutilation of the genitals, sexual humiliation, sexual enslavement, forced incest, and rape (Russell, 2007, Zawati, 2007, Onyango and Hampanda, 2011). Moreover, although male sexual violence has been reported in many armed conflicts in recent years, “communities and organizations are not prepared to deal with male survivors of sexual violence because it undermines the ideals of social constructions of masculinity. Compared with females, male survivors lack access to reproductive health programs and are generally ignored in gender-based violence discourse” (Onyango and Hampanda, 2011).

On the other hand, a similar tendency to silence exists with regard to women perpetrators: for instance, the role of Hindu fundamentalist women in encouraging sexual violence against Muslim women in India in 2003 and similarly by Hutu women against Tutsi women in Rwanda in 1994 (Gangoli, 2006).

Another important characteristic of sexual violence is its persistence throughout history. The mass rapes in Bosnia-Herzegovina between 1991 e 1995 were a dramatic recall of a historically rooted phenomenon, which also involved regular armies during the whole XX century (Battistelli, 1999; Seifert, 1994; Stiglmeier, 1994, Hayden, 2000; Beverly, 1996; Sharratt and Kaschak, 1999). Occasions where sexual violence has been widely reported include the Armenian genocide by Ottoman Turkey in 1915, the Japanese attack on the Chinese in Nanking during the II World War, the Chinese civil war, the partition of India and creation of Pakistan and the liberation war in Bangladesh in 1971. But also during and after the Cold War, in the Crimean war, the Vietnam war and Cambodia, the conflicts in Latin America and Haiti, and in many countries in Africa (Angola, Djibouti, Liberia, Mozambique, Ruanda, Sierra Leone, Somalia, Sudan or the Democratic Republic of Congo) and Asia (East Timor, Sri Lanka, Burma, Kashmir (India) or Papua New Guinea); and also in wars and conflicts in central Europe and Eurasia, including Afghanistan, Turkey, Kuwait, Georgia, Bosnia and Kosovo (Leatherman, 2011: 2; Bastick, Grimm and Kunz, 2007). No part of the world is left out of this black list.

### **The Causes and Consequences of Sexual Violence in Armed Conflicts**

There are a variety of causes for sexual violence during conflicts. One rather common explanation is that it is frequently used as a cheap ‘weapon of war’ to advance strategically or military motivated objectives, such as clearing of a civilian population from a certain area. In this case it “is committed to instill terror in a population and to incite flight from a given territory” (Bastick, Grimm and Kunz: 14); other times it has been part of genocide, contributing to the destruction of a particular ethnic group. Likewise, since women in developing countries are frequently in charge of basic economic support activities, essential to the daily lives of their families, violence against them is used as a weapon of social disruption.

A second explanation, closely connected to the former, relates sexual violence with the objectives of punishing or humiliating an enemy group. Susan Brownmiller has mas-

terly described this in her famous book *Against our Will: Men, Women and Rape*. “Men of a conquered nation traditionally view the rape of “their women” as the ultimate humiliation, a sexual coup de grace. Rape is considered by the people of a defeated nation to be part of the enemy’s conscious effort to destroy them (...). The body of a raped woman becomes a ceremonial battlefield, a parade ground for the victor’s trooping of the colors. The act that is played out upon her is a message passed between men – vivid proof of victory for one and loss and defeat for the other’ (Brownmiller, 1993: 38). When used against women and girls, this form of humiliation is also aimed at their families and communities, shamed for failing to protect them.

Some authors have also called attention to the fact that sexual violence can be motivated by cultural beliefs, for instance, the belief that the rape of a virgin conveys magical powers or invincibility. Other times, it has been identified as a way to express aggression and brutality of armed groups, encouraged or tolerated as a ‘morale booster’ or a “reward for bravery” (Bastick, Grimm and Kunz: 15). This observation resonates on Collins’ comment on violence in general, when he notes that “The key to an understanding of violence (...) is above all the structure of solidary groups and the moralities that reflect their emotional ties. The moral boundaries may set some persons beyond the pale of moral obligation, but they may also organize confrontations that make violence not just morally indifferent but morally motivated.” (Collins, 2004: 419).

All these explanations focus on sexual violence as a primarily expression of domination, related to particular understandings of masculinity and femininity. In the words of Seifert “rape is not an en aggressive expression of sexuality, but a sexual expression of aggression” (Seifert, 1992:1). However, it is also useful to bring into the analysis some recent conceptualizations of violence where it is seen as the result of an excess or a deficit of sense. As noted by Wieviorka “[we should ]approach what is the more mysterious, the core of violence: not the frustrations it eventually reveals, not the more or less rational calculations of those who appeal to this resource in case of need, not the culture from where it arises. It is out of the idea of loss and overabundance of sense that violence is built, the excess and lack it involves; it is the twisted, perverted, or sometimes perverse subjectivity, what makes it possible” (Wieviorka, 2006:266/267).

If we follow this perspective, understanding the causes of sexual violence in conflicts would require that different types and forms of violence be acknowledged (Baaz and Stern, 2009). They might be a result of overabundance of sense, as in the case of violence resting upon a strong ideology or being used as a ‘weapon of war’, but also situations of loss of sense, when violence seems to result from a lack of organization and discipline or is linked to a general breakdown of law and order.

In any case, the dramatic and devastating personal and social consequences of sexual violence during and after conflicts are much clearer than its causes. Among the personal consequences there are the grave health implications at both physical and psychological levels, with survivors experiencing extremely serious physical injuries, trauma and depression. These aspects have a huge socio-economic impact since being a victim of sexual violence often leads to stigmatization and family rejection. Even if it is important not to

look at victims as always helpless and unable of agency (that is why some prefer to speak of survivors), those who are raped, usually suffer severe social ostracization, and women and girls, in particular, may even be the victims of 'honor killings'. Many times, war-time violence continues after conflicts, fostering social disruption and the de-structuration of entire communities.

In the face of the above descriptions, it is not difficult to understand why sexual violence in armed conflict has come to be understood as one major source of instability and insecurity. The brutal evidence of its disproportionate degree (IRIN, 2007; Seifert, 1992; Skjelsbaek, 2001; Bastick, Grimm and Kunz, 2007), as well as of peacekeepers' sexual misconduct and involvement in human trafficking and exploration (Allred, 2006), were at the basis of what some have called a new gender regime in international security (Carey, 2001), framing the answers to the problem on the part of international security organizations.

### **The Answers from States and International Organizations**

Although public and international attention to the problem of sexual violence in conflicts has been limited in the past, it has hardly been an 'invisible' problem, since as some have noted, it has always been capitalized by the parties in conflict. However, "It is true to say that the international community has, for a long time, failed to demonstrate a clear desire to do something about the problem of sexual violence during armed conflict. The turning point came in the early 1990s as a result of sexual atrocities committed during the conflict in the former Yugoslavia, and it seems that, finally, the issue has emerged as a serious agenda item of the international community" (UN Women, 2000) .

The need for gender mainstreaming into international peace support operations emerged during the last decade as a major requirement in the political agenda of international defense and security organizations. Following years of strengthening of international law and politics of implementing gender sensitivity norms in peacekeeping, a new international regime of 'gender mainstreaming in peace missions' has been identified as an important juncture in world history, with new norms and institutions emerging rapidly after the unanimous approval of the United Nations Security Council (UNSC) resolution 1325 in 2000. This was the first UNSC resolution to specifically address the impact of armed conflict on women, and women's contributions to conflict resolution and sustainable peace. UNSCR 1325 stresses the importance of women's equal and full participation as active agents in the prevention and resolution of conflicts, peace negotiations, peace building, peacekeeping, humanitarian response and post-conflict reconstruction. It calls on member states to ensure women's equal participation and full involvement in all efforts for the maintenance and promotion of peace and security. It urges all actors to increase the participation of women and incorporate gender perspectives in all United Nations peace and security efforts, including demobilization, disarmament and reintegration (DDR) and security sector reform (SSR).

After the approval of the resolution, not only UN member states but also other international organizations concerned with security issues, European Union (EU), the

North-Atlantic Treaty Organization (NATO) and the Organization for Security and Cooperation in Europe (OSCE), have started to design and develop policies aiming at implementing the resolution and monitoring its progress.

During the following decade, the UN developed policy initiatives and approved various other resolutions that together can be seen as forming a consistent international political agenda on the gender dimension of conflicts and security. In March 2007, the *United Nations Action Against Sexual Violence in Conflict* body was launched to coordinate efforts across 13 United Nations entities and increase efforts to end sexual violence during and in the wake of armed conflict.

In 2008, UNSC Resolution 1820 was the first Security Council resolution to recognize conflict-related sexual violence as a matter of international peace and security. It called for armed actors to end the practice of using sexual violence against civilians to achieve political or military ends, and for all parties to conflict to counter impunity for sexual violence and provide effective protection for civilians. In 2009, two other resolutions were approved: UNSC 1888 strengthening the implementation of SCR 1820 through assigning leadership and establishing effective support mechanisms, and Resolution 1889 addressing obstacles to women's participation in peace processes and peacebuilding, as prescribed in SCR 1325. It called for the UN Secretary-General to submit to the Security Council a set of indicators for use at the global level to track implementation of SCR 1325. One year later, in 2010, UNSC 1960 provides an accountability system for addressing conflict related sexual violence. In January 2010, United Nations Secretary-General, Ban Kimoon, appointed Margot Wallström as his Special Representative on sexual violence in conflict, later replaced by Zainab Hawa Bangura in June 2012.

OSCE, whose *Code of conduct on Political-Military Aspects of Security*, namely the section on democratic control and the use of armed forces, was long considered unique in the security landscape, (Hhébali, 2003, Eulriet, 2009), issued in 2006 an *Implementation Plan on Gender Mainstreaming*. This document stressed the empowerment of women as essential for comprehensive security and called for changes in the *Code of Conduct*, including improvements on the number and role of women in the armed forces.

The European Union was also fertile ground for policy initiatives in this field. While gender mainstreaming has long been an objective of the EU, its adoption as a strategy for European Security and Defense Policy (ESDP<sup>4</sup>) operations has known a major impetus following the adoption of UNSC 1325 (Valenius, 2007; Eulriet, 2009). A variety of documents have been issued, including a generic document on standards of behavior for personnel in ESDP missions and an operational paper setting out measures to implement UNSC 1325, both in 2005, a check list to facilitate the inclusion of a gender perspective from the outset of the planning and conduct of operations (2006), providing for the appointment of a gender advisor in missions, and a document outlining a *Comprehensive approach to the EU Implementation of the UNSCRs*

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4 Later renamed Common European Security and Defense Policy (CESDP).

*1325 and 1820 on Women, Peace and Security*. In 2006 the first gender advisor to a mission was appointed, and since then various other gender advisors have been appointed to ESDP missions.

With some delay, NATO has also started to design initiatives and policies aimed at implementing UN Resolutions. From 2007, the Euro-Atlantic partnership council designed a policy tasking member countries to develop practical proposals for the implementation of the resolution and developed a conduct code for military personnel in operations; in 2009 a first gender advisor was deployed to the ISAF headquarter in Afghanistan and, as part of this process, a study was commissioned to eight specialists from four countries to identify best practices and lessons learned from the implementation of UNSC Resolution 1325 in NATO's Provincial Reconstruction Teams (PRT) in Afghanistan. In 2009, an important directive was issued aiming at integrating UNSCR 1325 and Gender Perspectives in the NATO Command Structure Including Measures for Protection during Armed Conflict (Bi-SC Directive 40-1, September 2009), which summarizes the alliance's policy in this matter. The previously existent *Committee on Women on the NATO Forces*, later renamed *Committee on Gender Perspectives*, was mandated to support the implementation of the various resolutions and an office on gender perspectives was established. In addition, Heads of State and Government approved in November 2010 a concrete NATO action plan on mainstreaming UNSCR 1325 into NATO-led operations and missions, subject to review every two years. NATO's Secretary-General issues a year report on progress in implementation of UNSR 1325 and related resolutions<sup>5</sup> and in August 2012 the first *NATO Secretary General's Special Representative for Women, Peace and Security* was appointed.

Considering such a large set of policy initiatives, one question must be asked: to what extent have these political agendas been implemented?

Against initial expectations, enthusiasm with UNSC 1325 has progressively been replaced by cautious statements and skeptical analyses, in the face of what was identified as a gap between rhetoric and practice. While recognizing the groundbreaking character of this UN agenda and its potential for awareness raising, both scholarly and policy assessments have pointed to the limited results achieved if compared to initial ambitions (Carey, 2001). Reasons for this have been attributed to the vagueness of implementation principles, due to the regime's large aspirational scope, short track record and lack of compliance on the part of states that find it easy to support unobjectionable principles if lack of commitment will be perceived as justifiable. Carey stressed this fundamental problem of how in a context of scarce resources states and international actors alike may choose to prioritize competing needs, calling attention to the fact that 'UN bodies and states are unlikely, except perhaps in countries that observe *Sharia* law, to oppose gender mainstreaming on principle, but they may ignore them under the exigencies of the moment or the budgetary constraints of the day' (Carey, 2001:63).

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5 The 2011 report can be found at: [http://www.nato.int/cps/en/natolive/official\\_texts\\_81007.htm?selectedLocale=en](http://www.nato.int/cps/en/natolive/official_texts_81007.htm?selectedLocale=en)

In NATO, the first study commissioned to evaluate the impact of Resolution 1325 in NATO PRT's in Afghanistan concluded that awareness of the resolution and of the different security situation and needs of men and women varied across work areas and three actions were proposed to fully integrate the resolution into NATO operations: use of a comprehensive strategy, hold commanders accountable for progress and establishment of expert functions to enhance integration (Olsson and Teijpar, 2009).

In the case of the EU, notwithstanding the long list of documents and policy initiatives, a number of important shortcomings questioning its effectiveness have also been identified. Referring to the lack of compliance with existing regulations, Eulriet noted that, on the one hand, due to the intergovernmental mechanisms of the EU, the Council is not in a position to force compliance if member states are reluctant to oblige when they are invited to implement the measures they have otherwise approved regarding gender mainstreaming (Eulriet, 2009). On the other hand, at the level of the Community legal order, despite the existence of a framework that provides a grid against which policies can be evaluated, a great margin of appreciation is left to the member states. As a result, "The policy tools that have been designed within ESPD, while aiming to address all personnel and forces, have so far only affected a minority of troops" (Eulriet, 2009: 752)

Notwithstanding these evaluations, there is the hope that the extent of recognition and awareness raising, as well as the high level of international pressure will have some practical effects in the future, conditioning national policies and orientations with regard to gender sensitivity in the planning and conduct of international operations.

## **Conclusion**

This chapter has outlined central features of sexual violence in armed conflicts. It started by highlighting the scope and magnitude of the problem, stressing the variety of expressions of sexual violence which are characteristic of armed conflict situations, the diversity of agents involved, both as victims, survivors and perpetrators, its historical persistence and its present impact. Secondly, it provided a short revision of the causes and consequences of sexual violence as they have been listed and analyzed in the existing literature. Finally, it examined the answers to this problem formulated by international security organizations, including the UN, NATO, the EU and OSCE.

The analysis showed that a new and vigorous agenda of gender related initiatives and policies has been developing during the past decade, strengthening what some have called a new gender regime in international security. But it also pointed to the deficit of implementation of many of the proposed policies. In any case, and regardless the doubts about the contribute of these formal initiatives to real change, the mere existence of this new and ambitious political agenda shows that there is a fundamental change in perspective with regard to gender violence and sexual violence in particular: it is no longer considered to be a side-effect of insecurity; it is increasingly seen as a source of insecurity in itself. This is a crucial change towards conceptualizing sexual violence as not only a human rights emergency but as political, strategic and military problem.



This new perspective leads to the recognition that it is impossible to promote peace and provide security at a global scale – whatever the phase of the conflict – without facing and trying to stop this persistent and devastating form of insecurity.

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# Children Associated with Armed Groups and Forces When the War is Over: Transitional Justice and Juvenile Justice

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*"The rebels came to our village in Kivu and said that we would get both food and money if we became soldiers and helped them defeat Kabila's army. They said that it would be easy to defeat Kabila and that we didn't need to be afraid because the enemy escaped as soon as it saw the rebels. Several of the rebels were boys my age and they had nice uniforms and new guns. I and three other boys from my village went with them and fought in both Katanga and Kindu. Many died during the fighting, I was scared but my commander said that I was a good soldier. When we took Kindu we first had to cross the Congo river, by boat. The enemy shot at us the whole time but I was more afraid of drowning because I cannot swim. It has been over two years since I was home and saw my mother and brothers and sisters. If there is peace I will go home and try to get a job."*<sup>1</sup>

## Introduction

Due to several circumstances, children and juveniles can find themselves in a situation in which they are in conflict with the law. Especially during armed conflicts, they are particularly exposed to recruitment in order to take part in the hostilities, becoming then potential perpetrators. They are regarded as "ideal" soldiers and girls, in particular, are seen also as ideal war sexual slaves. So, what expects these recruited children is a nest of horror, in which, defenceless, they fall directly into the conflict and, afterwards, they may

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<sup>1</sup> 14-year-old Jean-Pierre is a member of the RCD rebel movement in the Democratic Republic of Congo. In Save the Children, Sweden, available at [http://www.rb.se/chilwar/ett\\_01/media.htm](http://www.rb.se/chilwar/ett_01/media.htm)

also fall into the corridors of justice. Many times, they also have to face the anger of an entire population who accuses them of the most hideous crimes and atrocities.

The main purposes of this presentation are to call the attention to the case of children associated with armed groups and forces, to point out, along the text, some specificities of the girl-soldier and, mainly, to debate what happens to these children and juveniles when the war is over and they have to face the law. It is not my purpose here to discuss whether these children committed those crimes or not, or even to classify or to deny the hideousness of these crimes as I believe that, in the end, children and juveniles are what adults turned them into. Although quite relevant, another problematic that I will not analyse here is the age of criminal responsibility, due to time constraints.

One of my most important purposes here, today, is to focus on how the justice system deals with those different children and juveniles who have taken a direct part in the conflict. Many children are denied due process and they are detained under inhuman conditions. More often than could be expected, children are brought to trial and sentenced in ways that violate their rights. Quite often, they face a trial without legal representation and without being provided with the very basic criminal procedures, like, for instance, fair hearings. They are sentenced to confinement too easily and against the international principle according to which deprivation of liberty should be a measure of last resort and for the shortest appropriate period of time.<sup>2</sup>

Once imprisoned, they are often subject to degrading conditions and all sorts of torture, cruel, inhuman or degrading treatment. Often they share cells with adults, exposing them to physical and sexual abuse. Detained children are easy targets to violence at the hands of guards and other detainees. They are frequently denied adequate food, medical and mental health care, education, and access to basic sanitary facilities. When these children and juveniles eventually return to society, their chances of becoming a balanced adult are minimal. Not rehabilitated, the probability of falling into crime is high.<sup>3</sup>

I will begin by analysing the conceptual framework underlying this text, which includes the concepts of child associated to armed groups and forces (child soldier), juvenile justice and transitional justice. In the next section, I will discuss, albeit perfunctory, the contextualisation of the problem of children associated with armed groups and forces. This will be followed by the issue of juvenile justice, given the umbilical relationship between the two. I will then briefly touch on aspects concerning transitional justice. In the subsequent section, I will attempt to establish the relationship between transitional justice and juvenile justice.

### **Conceptual Framework**

Underlying the topic under discussion is the recent evolution of international law that tends to generalise international individual criminal responsibility. According to clas-

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2 For more information, see <http://www.child-soldiers.org/index.php>

3 For more information see Briggs, Jimmie, "Meninos-Soldados – quando as crianças vão à guerra".

sical doctrine, individuals are not considered a subject of public international law<sup>4</sup>. In fact, international crimes committed by individuals would ultimately be punished by the States, a solution that clearly respects a Westphalian conception. However, the extremely rapid metamorphosis made international individual criminal responsibility inarguable, possible due to the dawning of international criminal law.<sup>5</sup> This applies to the perpetrators of acts that the international community qualifies as international crimes. This trend has been consolidated through the creation of numerous *ad hoc* international tribunals, with the unequivocal high point being the creation of the International Criminal Court<sup>6</sup>.

Whereas in many theatres of war a considerable percentage of crimes may have been committed by children, it is imperative to introduce the concept of child associated with armed groups or forces, commonly known as child soldier. Although the term “child soldier” is the most well known, it is slowly falling into disuse as it is a contradiction of concepts that the words “child” and “soldier” can form a single compound word. It is argued that the words “child” and “soldier” should never go together, with the preferred version being “children associated to armed groups and forces”, which I support. The intention is that this expression be used to describe the same reality as the concept of “child soldier”. In any case, in view of the absence of a legal definition of both “child soldier” and “child associated with armed groups or forces”, I prefer that contained in the Cape Town Principles<sup>7</sup>, according to which this concept applies to *“any person under 18 years of age who is part of any kind of regular or irregular armed force or armed group in any capacity, including but not limited to cooks, porters, messengers, and anyone accompanying such groups, other than family members. The definition includes girls recruited for sexual purposes and forced marriage.”* While accepted in many forums, the definition I chose is sometimes criticised for being too broad. However, I assume the risk of having chosen it, as it is in keeping with my own personal conception of the protection that should be afforded to children associated with armed groups or forces and which I believe should be as broad as possible<sup>8</sup>.

It is important to introduce the concept of juvenile justice, precisely because children associated with armed groups or forces, having perpetrated acts objectively qualified as a crime, may be subject to it. Juvenile justice in general is the set of legal, substantive and procedural rules that apply to “children in conflict with the law”, which, according

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4 “The definition and prosecution of international crimes, under current international law, still fall under the States and the standards of international law that contemplate them do not project directly onto the sphere of legal influence of individuals” (Gonçalves Pereira, 2000: 385) (free translation).

5 “The advent of international criminal law (...) aims to take yet another decisive step towards the international protection of human rights. Moreover, it seeks to consolidate individual responsibility at the legal-international level (...) it represents the affirmation of the international legal personality of individuals and confirms its understanding as a primary unit and subject par excellence of this branch of law.” (Machado, 2004:350) (free translation). In the same sense see Brownlie (1997: 585)

6 “The International Criminal Court brings a new paradigm of international criminal law, in the integration of international law and internal legal orders” (Miranda, 2006:337) (free translation).

7 The Cape Town Principles are the result of a symposium that took place in this city in April 1997. This symposium sought to bring together experts and partners committed to preventing the recruitment of children, demobilising and reintegrating those already recruited.

8 Similarly, the definition advocated during the preparatory work of the International Criminal Court.

to UNICEF, refers to “anyone under 18 who comes into contact with the justice system as a result of being suspected or accused of committing an offence.”<sup>9</sup> It may be true that juvenile justice applicable in the context of post-conflict may face challenges and specificities that do not exist during peacetime. However, both converge towards a common goal, which is to grant fair and legal treatment to children and youth in conflict with the law, in a more favourable manner from that granted to adults in the same situation. I shall dwell on some of the specifics of juvenile justice within the scope of transitional justice.

The concept of transitional justice is also fundamental for this essay. Working with transitional justice involves dealing with the past, with atrocities committed and suffered during armed conflict. Therefore, I understand that transitional justice “*is the set of judicial and non-judicial mechanisms, which intend to respond to human rights violations committed during an armed conflict, seeking the accountability of the perpetrators of those acts, as well as compensation for the victims, with a view to, inter alia, individual and collective reconciliation, and peace*” (Marcelino Gomes, 2011).

### **Children Associated with Armed Groups and Forces: Contextualisation**

Armed conflicts are fertile ground for the recruitment of children and youth, with a view to using them, either directly (fighters) or indirectly (cooks, messengers, sexual slaves, etc.) in war hostilities. Recruitment can be forced (rape, cheating, drugs, etc.) or voluntary. Underlying voluntary recruitment are factors such as poverty, lack of educational or employment alternatives, the need to avenge the death of loved ones and orphanhood, among others. Regardless of whether recruitment is voluntary or forced, it should be noted that it is already imbued with a tragic past that transforms these children into victims. I stress this point as it will prove to be critical if we are faced with the inevitability of judging children who, in a theatre of war, committed acts qualified as crimes. In other words, when we judge them as alleged perpetrators, it is important to remind ourselves of the reasons that led them to join these groups and commit such acts. When the conflict ends, these children face the legal, psychological, social, etc. consequences resulting from their participation in armed conflict.

The time of demobilisation also implies a double vulnerability for girls, for they are both girls and “soldiers”.<sup>10</sup> Girl-soldiers are frequently identified with “sexual slaves” so, their return and acceptance to the community is often imperilled as they are considered no longer “pure” and, therefore, it becomes too difficult for these girls to enrol on Disarmament, Demobilisation and Rehabilitation (DDR) programmes as this enrolment will be the recognition of their past as girls-soldiers.

We can find principles forbidding child recruitment in 1977 by the Additional Protocols to the Geneva Conventions of 1949, and later by the Convention on the Rights of the Child (CRC) of 1989, which established 15 years as the minimum age for recruitment and participation in hostilities. As a result of massive campaigns to raise that age, the

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9 Available at [http://www.unicef.org/chinese/protection/files/Conflict\\_with\\_the\\_Law.pdf](http://www.unicef.org/chinese/protection/files/Conflict_with_the_Law.pdf), consulted in February 2013.

10 For more information, see Girl Child-soldiers face new battles in civilian life, in <http://www.irinnews.org/Report/97463/Girl-child-soldiers-face-new-battles-in-civilian-life>, consulted in February 2013.

Additional Protocol to the CRC on the Involvement of Children in Armed Conflicts<sup>11</sup> (hereinafter Protocol) was adopted and recommends increasing the minimum age for direct participation in conflict from 15 to 18<sup>12</sup>. The Protocol also urges the prohibition of conscription, by States Parties, of anyone under the age of 18<sup>13</sup>. The voluntary recruitment of anyone under the age of 18, albeit discouraged, is permitted, provided it fulfils the conditions prescribed in Article 3 of the Protocol<sup>14</sup>. The regime applicable to “armed groups that are distinct from the armed forces of a State”<sup>15</sup>, in turn, is significantly more rigid, prohibiting the recruitment, whether voluntary or compulsory, as can be seen by reading Article 4 of the Protocol: “*Armed groups distinct from the armed forces of a State should not, under any circumstances, recruit or use people under the age of 18 in hostilities*”. The entry into force of the Protocol represents an indisputable legal advance, despite the fact that the number of ratifications is considerably lower<sup>16</sup> than those of the CRC<sup>17</sup>.

The Constituent Treaty of the International Criminal Court (ICC), in turn, also contributed significantly to what I consider to be a civilizational leap, i.e. it recognises the atrocity of the involvement of children in armed conflict. Article 8-2b, xxvi) qualifies as a war crime “*conscripting or enlisting children under the age of fifteen years into the national armed forces or using them to participate actively in hostilities*”. Furthermore, even in the case of armed conflicts that are not of an international nature, the statute also qualifies as a war crime “*conscripting or enlisting children under the age of fifteen years into armed forces or groups or using them to participate actively in hostilities*”(art8-2e,vii)<sup>18</sup>.

Despite international bans on the recruitment of children, it is well known that children are used in armed conflicts. In this context, children are viewed as “ideal” soldiers from the outset, because their small size makes them unsuspecting. However, if this reasoning continues, in future all children will be suspect, as the all parties know that children are used in conflict.

## Juvenile Justice

An issue that seems shrouded in deep complexity is the legal treatment to be given to cases of children associated with armed forces and groups. There is consensus within

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11 Entry into force on 12 February 2002.

12 However, see the fragility of Art. 1 of the Protocol “State Parties shall take all feasible measures to ensure that the members of their armed forces who have not reached the age of 18 do not participate directly in hostilities.”

13 See Art. 2 of the Protocol: “State Parties shall ensure that persons who have not reached the age of 18 are not subject to compulsory recruitment into their armed forces.”

14 Cf. Art. 38 of the CRC.

15 V. art. 4<sup>o</sup>-1 of the Protocol.

16 151, on 29/03/2013, in [http://treaties.un.org/Pages/ViewDetails.aspx?mtmsg\\_no=IV-11-b&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?mtmsg_no=IV-11-b&chapter=4&lang=en)

17 193, on 29/03/2013, in [http://treaties.un.org/pages/viewdetails.aspx?src=treaty&mtmsg\\_no=iv-11&chapter=4&lang=en](http://treaties.un.org/pages/viewdetails.aspx?src=treaty&mtmsg_no=iv-11&chapter=4&lang=en)

18 The Statute of the International Court of Sierra Leone (2002) also describes as a “serious violation of international humanitarian law” in the light of international law “conscripting or enlisting children under the age of 15 years into armed forces or groups or using them to participate actively in hostilities” (Art. 4).

public international law<sup>19</sup> and within much national legislation, that justice to be applied to children and youth in conflict with the law must be substantially different from that applied to adults. However, how do you meet the needs of appeasement of a society that suffered atrocities at the hands of armed children and simultaneously give these children an opportunity to rebuild their life? This is precisely the crux of the matter: how to convince the community that laid at the hands of these children that deep down, they were victims and must be received and integrated in the same community? How do you reconcile the call for justice, by the community, and the removal of child-soldiers from the corridors of the judicial system? According to Graça Machel (1996), “...*the dilemma of dealing with children who are accused of committing acts of genocide illustrates the complexity of balancing culpability, community’s sense of justice and the best interest of the child. The severity of the crime involved, however, provides no justification to suspend or to abridge the fundamental rights and legal safeguards accorded to children under the Convention on the Rights of the Child.*”

International law, in general, protects and gives orientations for the issue of juvenile justice. It is admissible that these orientations were created for common cases of children who are in conflict with the law but I believe that the essence of them should also be applicable in the case of children associated with armed groups and forces who have participated in armed conflicts. Below, I will make a summary of the most relevant orientations.

The International Covenant on Civil and Political Rights, 1966<sup>20</sup>, imposes in article 6, par. 5 that “*sentence of death shall not be imposed for crimes committed by persons below 18 years of age...*”. In Article 14, par. 4, of the same legal instrument it is said: “*in the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation*”. So, it entails that special considerations shall be taken in order to treat juveniles in a special way and, above all, promote their re-socialisation.

The Convention on the Rights of the Child (CRC), 1989<sup>21</sup>, in its Article 37 forbids children to be treated in a cruel, inhuman or degrading way. Capital punishment and life imprisonment are forbidden as well as unlawfully and arbitrary detentions. Confinement shall be in conformity with the law, for the shortest period of time and as a last resort. When confined, her/his inherent dignity shall be respected and particular attention shall be given to her/his age. Except in special cases, which are in the best interest of the child, he/she shall be separated from adults. A special case would be the detainment of a whole family due to violation of immigration laws. Here, it is recommended that the child stays with the rest of the family. Once deprived of liberty, the child shall be allowed to keep in contact with his/her relatives. Above all, the child shall have “*prompt access to legal and other*

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19 See the International Pact on Civil and Political Rights, Art. 6, par. 5, Art. 14, par. 4; Convention on the Rights of the Child, Arts. 37 and 40; “Beijing Rules”, UN Standard Minimum Rules for the Protection of Juveniles Deprived of their Liberty; “Tokyo Rules”, “Riyadh Guidelines”.

20 Adopted and opened for signature, ratification and accession by General Assembly resolution 2200 A (XXI) of 16 December 1966. Entry into force: 23 March 1976.

21 Adopted and opened for signature, ratification and accession by General Assembly Resolution 44/25 of 20 November 1989. Entry into force: 2 September 1990.



*appropriate assistance*". Article 40 of the same Convention appeals for the child "to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others." To achieve this, par. 2 gives some guidelines, such as the principles of *nullum crimen sine lege* and presumption of innocence. The whole process shall be fast and clear and the child shall have information on its situation and assistance to prepare its defence. The minimum age of criminal responsibility must be determined, she/he shall not be compelled to give testimony or confess and his/her privacy must be respected.

The United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules") were adopted by General Assembly resolution 40/33, of 29 November 1985. They cover juvenile justice overall, including it in a comprehensive social policy, whose main objective would be to prevent juvenile crime and delinquency. Should it be necessary for juvenile justice to intervene, "The Beijing Rules" aim to reduce the harmful impact of this intervention.

The United Nations Rules for the Protection of Juveniles Deprived of Their Liberty were adopted by the General Assembly resolution 45/113, of 14 December 1990. Mainly, it defends imprisonment as a last resort, for the minimum necessary period and to be applied in exceptional cases. Once applied, the Rules promote the protection of the rights, safety, physical and mental well-being of those juveniles caught by the corridors of law. These rules are considered as minimum standards and aim at reducing the detrimental effects of confinement. Conscientious on the juvenile's return to society, they promote rehabilitation.

The United Nations Standard Minimum Rules for Non-custodial Measures ("The Tokyo Rules") were adopted by General Assembly resolution 45/110, of 14 December 1990. In consistency with the previous analysed legal document, this one promotes the use of alternative sanctions to imprisonment and establishes safeguards to persons subject to them. They intend to promote a greater involvement between the community and offenders as a way to rehabilitation. These Rules can play a very important role when trying to avoid juveniles to come into contact with the malefic essence of prisons.

The United Nations Guidelines for the Prevention of Juvenile Delinquency ("The Riyadh Guidelines") were adopted and proclaimed by General Assembly resolution 45/112, of 14 December 1990. Prevention of juvenile delinquency is seen as fundamental in society. These guidelines call for the entire society to help and participate in the well-being and balanced development of adolescents as a way of avoiding their future deviant behaviours. On the other hand, it also calls for the participation of young people in the development of society by playing an active role in it. The Guidelines call for the non-criminalisation of acts considered deviant, but which neither cause much damage to the development of the child nor are too harmful for the society. According to the guidelines, it is important the non-stigmatisation of the juvenile involved.

A growing number of countries have modified their juvenile justice laws in order to guarantee children the rights reached in the above mentioned international instruments. In other countries, reforms are under consideration but have not yet been enacted into

law. Where they have taken place, legislative reforms are positive steps towards greater recognition of the human rights of children and juveniles who happen to be on the wrong side of the law. Even so, the gaps between law and practice are still too frequent and too vast.

### **Transitional Justice**

After the end of an armed conflict, one of the most pressing issues that arises is precisely deciding which legal treatment should be given to the people who perpetrated acts legally qualified as a crime and how to compensate victims, a process that is called the Administration of Transitional Justice. Apart from the definition proposed in the conceptual framework, I also propose the following one, adopted by the International Center for Transitional Justice according to which “*Transitional Justice refers to a field of activity and inquiry focused on how societies address legacies of past human rights abuses, mass atrocity, or other forms of severe social trauma, including genocide or civil war, in order to build a more democratic, just, or peaceful future.*”<sup>22</sup>

It is incumbent on those who run the country/territory in the post-war to decide which path to take in order to pacify the community. We will therefore start with a brief explanation of the various possibilities offered in terms of dealing with past abuses and violations of international law on human rights and the international humanitarian law. There are two paths: the judicial and the non-judicial. The former implies the use of courts (national, international or mixed), responsible for the prosecution of perpetrators. The latter deals mainly with aspects of truth and forgiveness, especially through the use of truth commissions, in which victims and their compensation take on a leading role. Still in relation to the latter, can be included aspects such as institutional reform (e.g. the removal of perpetrators from power centres) and the promotion of reconciliation, particularly through traditional and symbolic practices (e.g. the construction of memorials) with the intention of rebuilding the social fabric.

With Jónatas Machado, I would say that, regardless of the path chosen, “*at stake is the need to find a reasonable balance between justice, truth and peace, while we analyse the problems from a systemic and historical perspective, and not based on isolated cases*” (2004:381).<sup>23</sup> In situations of post-conflict transition, the realisation of justice takes on a particularly structural character in the replacement of state sovereignty, the return to institutional normalcy and social peace.

Transitional justice is seen as an important step towards reconciliation which, according to Short (2005:268), “*involves the creation of a ‘social space’ where truth, justice, mercy and forgiveness are validated and joined together, rather than being forced into a confrontation where one must win out over the other*”. Thus, a suitable model of transitional justice may be crucial in a reconciliation process. According to Ramsbotham *et alia*, reconciliation is

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22 Apud The Encyclopedia of Genocide and Crimes Against Humanity (Macmillan Reference USA, 2004), vol. 3, pp. 1045-1047.

23 Free translation.

a process of “restoring broken relationships and learning to live non-violently with radical differences” (Ramsbotham *et al.*, 2006: 231). It is through reconciliation that we can aspire to lasting and sustained peace.

It should also be highlighted the particular role that women can play in reconciliation processes although, often, they are left outside those processes. When it comes to girl-soldiers it is even less common that their voice is heard in reconciliation processes. So, once again, girl-soldiers end up being discriminated for they are girls, they are children and they have been soldiers and a reconciliation process which leaves them behind is an incomplete process, to say the least.

The Security Council Resolution 1325 (31/10/2000) on Women, Peace and Security calls precisely for the need of mainstreaming a gender perspective in every moment and dimensions of the prevention, management and resolution of the conflict. In this document, there is a perception of the woman, not only as victim but also as a key player in the processes of transformation of the conflict. Women and girls should not only be seen as objects of protection but also as active players in the peace process. The Security Council Resolution 1820 (2008) puts the emphasis on the protection against sexual violence during and after the conflicts and Security Council Resolution 1888 (30/09/2009) reinforces the idea of the importance of women’s participation in the mediation and decision-making, by introducing new measures and protection mechanisms against sexual violence during and after the conflict (*e.g.* the creation of a Special Representative of the Secretary General on Sexual Violence in Conflict). Security Council Resolution 1889 (05/10/2009) calls also for a greater participation of women in all phases of the process and underlines the importance of systematization regarding the gathering of specific data on women and girls, namely, their specific needs and priorities, and the introduction of indicators to check the effectiveness of the measures adopted. All the principles contained in these resolutions should also be applicable to the particular case of girls associated with armed groups and forces<sup>24</sup>.

### **Juvenile Justice and Transitional Justice: *Quid Juris?***

Once caught in the web of Justice, it is essential to achieve a balance between the right of participation of children in matters that concern them, and their own right to be protected. It is necessary that the participation of children in transitional justice processes follow procedures, in particular proceedings, which are favourable to them. And this applies to any of the models that may have been followed, namely the use of Truth and Reconciliation Commissions or formal mechanisms of justice.

It is urgent to safeguard the possibility that the national judicial system may have been weakened or even destroyed, which hinders the treatment to be given to children associated with armed groups or forces, particularly with regard to the detention conditions (*e.g.* joint incarceration of adults and children/young people), to the often non-existent mechanisms of rehabilitation/diversion of the corridors of justice and therefore conducive to long

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24 For more information, v. Moura, Tatiana (2005).

periods of detention. Another recurring problem is determining the age of the child, as, in some cases, the children/youths were never registered, while in others their personal and official documentation may have been lost due to the vicissitudes of war.

According to a UNICEF report (2005), in the absence of international mechanisms of accountability, it is necessary to rethink the role of national judicial systems, with regard to the administration of juvenile justice in post-conflict situations. In this regard, it issues several recommendations, notably respect for international standards concerning the rights of the child and the adoption of restorative justice measures, even through the use of traditional practices, as long as they respect the human rights of children and young people. However, this same report admits that while the use of traditional justice mechanisms can facilitate the reconciliation process, these methods barely meet the needs of accountability for the crime committed, in light of international law.

Transversal to this whole issue is another: the implementation of DDR programmes. Often the implementation of such programmes involves negotiations that are likely to have consequences on the administration of transitional justice. In fact, it is common for the combatants, including children associated with armed groups and forces, to be offered an amnesty in exchange for delivering weapons and demobilisation. But this deal may not solve the community needs of justice and hence the fact that the return of the child-soldier to a society that has not forgiven him/her can be extremely dangerous for the child. Even returning home, the problems of the former child associated with armed groups and forces may not be over because the collective memory is there, ready to show up.

Therefore, I think it is necessary to offer a hybrid solution that combines aspects of transitional justice, of juvenile justice and that takes into account concepts such as peace and justice. Peace and justice are two fundamental pieces, sometimes representing tense moments in the midst of peace negotiations and subsequently the reconstruction of peace. Sometimes they appear inconsistent, as in the case we just stated above (end of the conflict, in exchange for amnesty), but according to Ramsbotham (2006: 236), peace and justice are not necessarily mutually exclusive alternatives. I share this assumption. Another assumption underpinning my proposal is the idea that, before they were transformed into perpetrators, child-soldiers were victims, which will of course be transversal to all of the reasoning that follows.

Whilst the CRC itself and the Tokyo Rules admit that child perpetrators are subject to mechanisms of accountability for their actions, it is also true that they defend alternative measures to normal lawsuits, in particular the use of restorative justice, the promotion of reintegration and the return to a pro-active role in society (Art. 40 of the CRC) and rehabilitation (Article 14, paragraph 4 of the International Covenant on Civil and Political Rights and Article 39 of the CRC). But throughout this process, it is necessary that the child/youth becomes aware of his/her nefarious conduct, so the idea of respecting the rights of others should be strengthened (Art. 40 of the CRC).

Having sided with UNICEF (2005), which pinpoints defects in the treatment of juvenile justice within transitional justice, I raise the following inevitable questions: Should children associated with armed groups and forces be treated by law as perpetrators or as vic-

tims? How should the law treat the issue, taking into account the three main concepts under consideration in this matter: guilt, the sense of justice claimed by society and the best interest of the child? What special care should the law give the girl-child associated with armed groups and forces, assuming their triple victimisation, for being a girl, a child and a soldier?

In order to conclude this point, I think it is necessary that transitional justice applicable to children associated with armed groups and forces should take into consideration the specificities of juvenile justice. I therefore defend a transitional justice adapted to the specificities of children associated with armed groups and forces and particularly that of girl-soldiers.

### **Challenges Ahead**

Following the trend of international legal standards, a juvenile justice system must cover the rights of all children and juveniles accused of or recognised as having infringed the penal law. It covers treatment from the moment an allegation is made, through investigation, arrest, charge, pre-trial period, trial and sentence. The standards require States to promote a distinctive justice for juveniles with specific rehabilitating aims, rather than punitive ones. Sometimes, what we notice is a focus on criminalisation of juvenile offenders, on violence by children rather than on violence against them, on lowering the age of criminal responsibility and on giving prominence to the interest of the community rather than taking into account the best interests of the child as required by the CRC. Due to the gravity of the crimes committed this is even more the tendency in post-conflict situations. Lost in a scenario of misery, extreme poverty, disastrous economic and social environment and political instability, chances are that children end up involved in situations of criminality as a way of survival, during and after the war.

There are many challenges to be dealt with when dealing with child-soldiers in conflict with the law, after the war, as exemplified below:

- Children forgotten in prison: one of the worst problems occurs when children and juveniles remain in prison, after the war, without trial, accused of having committed the worst atrocities, including torture, the most cruel homicides and even genocide. These children cannot be forgotten within the judicial system.
- Indirect participation: children/juveniles who participated indirectly, like cooks or carriers, sexual slaves, messengers, carriers, etc should be given even a more favourable treatment.
- DDR programmes: Following the international children's rights standards, when dealing with child-soldiers priority should be given to their demobilisation, disarmament and reintegration. They must be given encouragement to leave the armed groups and forces and for that they must be offered real alternatives. DDR programmes must take into consideration these children's psychological recovery as well as give them professional tools that can be used when leaving the programme. If, when leaving those groups they know that punishment, bad treatment and hunger are expecting them, it is expectable that they prefer staying where they are.

- **Rehabilitation:** it is an essential part of the whole process. At this point, it is highly recommended that restorative justice and diversion measures be adopted in order to avoid contact with the conventional and strict justice system (art. 40 CRC). Restorative justice gives prevalence to avoid detention of juveniles, and gives preference to the use of juvenile justice professionals. According to this method, the child/juvenile should still be made aware of the seriousness of what he/she has done and should be held responsible for that, having to face some consequences. At this point, there should be a call for her/his right to participation and the child/juvenile should be involved in the decision on sanctions and compensation (Beijing rule 11.3). Family and the community play a very important role in the child's rehabilitation and should also be involved (Beijing rule 11.4). Public opinion and justice professionals should be sensitised to the problem. If and when recommendable, there can be contact between victim and offender and the former should try to compensate the latter. Above all, the purpose of the process is not to marginalise or to stigmatise but to reintegrate.
- **Reintegration:** for the purpose of reintegration, diversion programmes (Beijing Rule 18.1) should be drawn up. This solution is highly recommendable as it avoids the contact of the child/juvenile with the system and it involves a large number of professionals, family and civil society, which somehow create protecting veils around the youngster. For this system to be applied, the child has to confess the offence and accept a non-judicial hearing. The problem is that the child might admit the offence just to avoid the formal procedure. Child/juvenile should never be pressed to confess or to accept diversion measures. The offender always has the right to a court hearing or judicial review. Only less serious offences are covered by the system, as it never allows deprivation of liberty. If no acceptable solution is reached with this method, the case should be referred to a regular court. As a safety clause, it should be said that also here human rights safeguards should be fully respected.
- **Work with the children's family and community:** It is predictable that it would be extremely difficult to convince an entire population not to somehow "punish" these children and juveniles, who were seen to be committing the most hideous crimes. Just to let these children go freely would certainly create a situation of revolt in the community and this would not help children at all in their reintegration. So, there should be a parallel work on children/juveniles and on the population. We should call the attention of the population to the fact that most of these children were themselves abducted, recruited by force, abused, treated like slaves and trained to kill, quite often under the effect of drugs. We have to stress that many times they did not have any other choice but to do what they were ordered to do. Other times, they did not really understand the gravity of what they were doing. So, there should be a case-by-case treatment. Furthermore, awareness should be raised to the fact that, despite their more or less condemnable acts, these children have themselves been victims of war. Punishing them severely would just make

them victims again. If during the war, society did not give them a chance to have a proper life, at least after the war, it is the adults' responsibility to give these children/juveniles a second chance of having a normal life.

- Punishment of recruiters: those most responsible should be accused and this would lead us mainly to the ones who recruited, trained and commanded them. Recruiting children should be a crime also at national level as perhaps this way perpetrators would feel discouraged to use child-soldiers in the future.
- Imprisoned children: if despite all said, the child/juvenile is imprisoned, then some considerations should be highlighted. With some exceptions, as mentioned above, the juvenile offender should be separated from adults, including as far as sight and hearing are concerned (art.37, CRC; JDLs Rule 29). Every effort should be made to end with harmful detention conditions, like the lack of information related with the rules in force and rights of detainees, insufficient space, inadequate food and clothes, poor hygienic facilities, poor or non-existing educational or training assistance, deprivation of contact with the outside and lack of monitoring by qualified and motivated staff.
- Young female detainees: special attention should be paid (Beijing Rule 26.4) to the specific needs of girls, like hygiene and the consequences of reiterated sexual abuse. They are more easily put in cells with other women under the justification that it is positive for them but there is no evidence of that. The trend for girls to be more deprived of educational opportunities should be avoided.
- Disciplinary measures: measures like solitary confinement and reduction of diet should be strictly avoided and cruel, inhuman or degrading treatment should be strictly forbidden (JDLs Rule 67). Even when deprived of liberty, rehabilitation and reintegration should always be the main guidelines.
- Death penalty: this sanction should be stopped immediately and countries should amend their legislation accordingly, so this sanction would never ever be applicable to a child.
- No re-victimization: it is important that a juvenile system does not victimise children again. The perfect juvenile justice system would be one which would help Jean-Pierre and others like him to feel the war is over when it is over, and that would help him to go home and go to school or find a job, according to his age, as he wishes.

In view of the above, and in general, respect for the following principles should always be taken into consideration:

- Strict respect of the level reached in terms of children's rights at international level;
- Participation of the child in the process and respect for her/his own protection;
- Possibility of designing an integrated solution involving judicial and non-judicial mechanisms, as long as they respect children's rights;
- Complementarity between the legal and the social process of treating "wounds";
- Parallel work with the family and the community in order to ease the child's reintegration in the community.

## Conclusion

It is true that children take part in the conflict, either directly or indirectly, as we said, but in either case they are exposed to deeply traumatising events. They may have entered the conflict willingly or unwillingly, but they should always be considered as victims of a History that did not spare them. So, when the war is over, former children associated with armed groups and forces should not be treated as former adult soldiers, they have to be regarded and treated in a manner consistent with the vulnerability and specificities of their age. For that purpose, it is essential that the professionals responsible for them have the adequate training and sensitivity in order to treat differently what is different. I think the best solution, albeit utopian in some circumstances, would be the use of restorative justice solutions involving psychosocial work, parallel to the justice system, with the child, as well as with her family and community. It is imperative that, when the war is over, children associated with armed groups and forces do not become for a second time victims of fate, of History, of the “grown-ups”...

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# Women and Private Military and Security Companies: One More Piece for the Puzzle

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## Introduction

I was asked to present the topic “Women and non-state actors” in this seminar. It is a broad topic that raises more questions than answers. Many of them will be dealt by the other guest speakers.

Given the fact that I have been studying the phenomenon of Private Military and Security Companies (hereafter PMSC) for the last six years now, I will address the topic in this perspective, changing the title to “Women and Private Military and Security Companies”.

The topic of PMSC has called the attention of researchers, and it has known several stages of development. However, the issue of gender-based violence and PMSC has been quite absent from the literature. I had not included it in my research as well, so I would like to thank this opportunity to enrich the work I have done with the gender lens on the PMSC analysis.

This paper will be divided in three parts. The first one will introduce the phenomenon of PMSC, to clearly understand what are we talking about when we pronounce the acronym PMSC. The second part will address two main questions: the relationship that has been observed between PMSC employees and civilian women, on one hand; and between PMSC and women as their workers, on the other. The third part will sum up the regulation attempts and clarify the role that gender has played on them.

As conclusion, I will defend that the time has come to take into consideration the gender perspective. Actually, I would go further and defend that the time has come to take gender seriously when we talk about armed conflicts, in general, and PMSC in particular.

## Brief Introduction to the Topic of PMSC<sup>1</sup>

Although it was not the very first time<sup>2</sup>, the big happening that made possible the boom of private corporations performing military functions was the end of the Cold War. The collapse of a two-headed international order, where relations between partisans from each side can be described as a imminent state of quasi-aggression, provoked what Peter Singer calls “security gap”.<sup>3</sup> As states did not manage to deal in a timely manner with the aftermath of the Fall of Berlin Wall, market saw an opportunity and took it.

In addition, the end of the Cold War made a shift in war supply and demand. Now, there was an immense surplus not only of weaponry, but also of high-skilled human resources.

States started to cut the Defense budget. Along with this trend, the idea that only intrinsic military functions should remain within the exclusivity of public powers, and many others could be outsourced, made possible the growth of a powerful privatized military industry.

The trade-offs were good for these new companies: they could find high-ranking officials available to work for those companies, with all the knowhow at a low cost. In addition, the costs for training and formation had already been supported by states. Private military companies would only have to benefit from their expertise.

Furthermore, it was not only because of a human capital pool that the end of the Cold War gave fertile ground to private military companies.

During the Cold War, both USSR and USA stocked a great amount of weaponry that became available with the end of the tension between them. Now, an immense supply of all kinds of weapons, from light fire guns to missiles and tanks were ready to be released in the market.<sup>4</sup> Private actors, including private military companies, as well as international criminal organizations and terrorist groups, started a true race to obtain the best deals.

In addition, human resources and provision of weapons would be meaningless if there was no context to use them. In fact, the end of the Cold War played a significant role.<sup>5</sup> The permanent tension between the two blocks suppressed some imminent conflicts in several areas of the world, namely in the African continent. The withdrawal of political and military support of the superpowers left a vacuum, which also explains

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1 This section was previously written for the essay “The use of Private Military/Security Companies and State Responsibility Disclaimer”, as contribution to the seminar Just & Unjust Wars seminar, taught by Professor Moshe Halbertal, at NYU School of Law, Fall 2011.

2 Mini, Ltg. ITA ret Fabio (2010). *An Analysis of Private Military and Security Companies*. EUI Working Papers AEL 2010/07 – Academy of European Law, PRIV-WAR project. Florence, Italy: European University Institute, pp. 2-3.

3 P. W. Singer (2004). *Corporate Warriors: The Rise of the Privatized Military Industry*. Ithaca, New York: Cornell University Press, p. 49.

4 Idem, pp. 53-55.

5 See also C. Prata (2009). *The Role of Martens Clause in the Legal Framework of Private Military Companies Acting in International Armed Conflicts* (Master’s Dissertation). Lisbon: New University of Lisbon School of Law, pp. 29-30.

some of the bloodsheds after the end of the Cold War.<sup>6</sup> In those countries, once the respective potency had left, what was shown was a failed state, with an inexistent or minimal military apparatus and the absence of governance structure. The clusters of power, major ethnic groups within the society, or a minority with access to natural resources to finance armed power, launched true *coups* to overthrow weak governments.

The armies were a mirror reflection of the state machinery, or lack of it. They were underfunded, underequipped, undermanned and undertrained. Several times, they were used against their own people, which goes against two of the main ideas of the Just War theory: the idea that a war is justified when it is waged to protect the people or when it has the fully support from it.

Private military companies saw in these scenarios two options to make profit: on one side, they offered their services to set up or replace national armies, in order to prepare them to fight internal insurgents. On the other hand, private military companies, more openly in the first years of their boom, had no problem providing military training and weaponry to rebel and terrorist groups.

Alongside the above conditions that made possible the multiplying effect of private military companies, another important factor reshaped the private and public spheres in military affairs.

The end of the Cold War started a new world order, where the public opinion began to have a more powerful voice.

Constituencies demanded justifications about the use of their youth in wars not related to their home affairs, and politicians always had some difficulty explaining why their sons were fighting in a distant country for a cause that was not theirs.

The cuts in the military budget required a more selective choice of battlefields, and the more powerful and capacitated armies, like the US army, started to choose to intervene in conflicts where it could gain an economic or strategic advantage. In the first, the interventions in the Middle East serve as a good example, for the latter the interventions in several countries in Latin America.

These two aspects of the new *realpolitik* opened a bracket that private military companies did not hesitate to fulfill. The economic gains made it worth it.

Peter Singer also refers another aspect for the development of privatization of war: the UN inability.<sup>7</sup> This can be understood as the disappointment that the UN system turned out to be regarding armed conflicts. Back in 1945, the founding fathers of the UN hoped that all conflicts between states would be resolved and dealt with by peaceful means (Article 1, section 1 of the Charter of the United Nations). In the cases where peaceful means would not be sufficient to end disputes, a supranational organ – the Security Council – would have the power to determine enforcement measures and the use of force as last resort (see Chapter VII of the UN Charter). The idea was to set up a

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6 The internal conflicts in Angola, Somalia or the Balkans are some good examples of this type of consequence of the end of the Cold War.

7 P. Singer (2004). *Corporate Warriors*, pp. 59-60.

UN army, under the command of the Military Staff Committee. This would be proven more of an inspiration than a reality and countries tended to take situations on their own hands, in accordance to their interests.

In the end of the Cold War, the conviction that the UN would replace the stabilizing role from the two superpowers renewed the original conviction regarding the role of that international institution.

However, great failures in crucial interventions, like the ones that happened in Bosnia and Rwanda, torn that belief apart, and in the corridors of the UN the possibility to contract private contractor begun to gather some support.<sup>8</sup>

To conclude, the end of the Cold War weakened states in their capacity to intervene militarily, showed the inability of UN to act as international ruler and of Security Council to act as the international commander-in-chief, and put to daylight the potential of the industry of privatized military affairs.

Notwithstanding, the end of Cold War alone does not explain this phenomenon. The development of warfare technology required the kind of specialization that it was hard to find in the military. Also, this expertise became available not only to states, through civilians technicians working for defense departments, but also to wealthy armed groups which fought low-intensity conflicts, where national armies, normally from quasi-failed states, were not at the same level.

This phenomenon of civilianization of warfare, explained by the need to higher expertise to manage the new methods and by the civilian nature of some of the new actors on armed conflicts, is another cause for the expansion of private military companies.

In the conflicts of the end of XX and beginning of XXI centuries, the presence of private contractors was, and still is, an increasing reality.

### **Labeling and Typifying the Private Security Industry**

One of the first topics being discussed about the privatization of military affairs was the labeling of the legal entities operating on it. The discussion ran around three main labels: private military companies, private security companies and private military and security companies.<sup>9</sup> Although in the most recent literature, authors continue to use different terminologies, the expression “private military and security companies” gained a general acceptance, not only among scholars, but also among institutions.

The ICRC launched in 2006 the *Montreux* initiative from which resulted *The Montreux Document on pertinent international legal obligations and good practices for States related to operations of private military and security companies during armed conflict* in 2008.<sup>10</sup>

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8 This contrasts with the official position, one of abolitionism of private military companies. In 1998, the UN Secretary-General Kofi Annan stated: “(...) the world may not be ready to privatize Peace”. UN Doc. SG/SM/6613, June 26 1998.

9 For a comprehensive assessment of the literature regarding this issue, see C. Prata (2009). *The Role of Martens Clause...*, pp. 33-43.

10 Available on [http://www.icrc.org/eng/assets/files/other/icrc\\_002\\_0996.pdf](http://www.icrc.org/eng/assets/files/other/icrc_002_0996.pdf).

The *Montreux Document* takes the “humanitarian approach”, in line with IHL, and disregarding the issue of legitimacy.<sup>11</sup> In line with this, it “avoids any strict delimitation (...) and uses the inclusive term *private military and security companies* (PMSCs) to encompass all companies (...)”.<sup>12</sup> The reason to adopt this inclusive terminology is also explained: “There is no standard definition of what is a “military” company and what is a “security” company. (...) in reality many companies provide a wide range of services (...). Moreover, from the humanitarian point of view, the relevant question is not how a company is labeled but what specific services it provides in a particular stance.”<sup>13</sup>

Thus, in paragraph 9 (a) of the Preface, PMSC are defined as “private business entities that provide military and/or security services, irrespective of how they describe themselves. Military and security services include, in particular, armed guarding and protection of persons and objects, such as convoys, buildings and other places; maintenance and operation of weapons systems; prisoner detention; and advice to or training of local forces and security personnel.”<sup>14</sup>

Although it acknowledges the importance of defining the specific activities, the *Montreux Document* does not go as far as to draw a typology of PMSC, merely setting the general definition.

Parallel to the *Montreux* initiative, the United Nations started to pay attention to the phenomenon of PMSC in 2005, leaving behind the official position to treat it as another form of mercenary activity.<sup>14</sup>

In July 2010, the UN Working Group submitted its report to the Fifteenth session of HRC, with an important Annex – a *Draft of a possible Convention on Private Military and Security Companies (PMSCs) for consideration and action by the Human Rights Council*.<sup>15</sup>

On its article 2 – Definitions – these companies are dealt together as “(a) *Private military and/or Security Company (PMSC)*” and defined as “(...) a corporate entity which provides on a compensatory basis military and/or security services by physical persons and/ or legal entities.” The following sections – (b) and (c) – of article 2 define what *military services* and *security services* are. The former are “specialized services related to military action including strategic planning, intelligence, investigation, land, sea or air reconnaissance, flight operations of any type, manned or unmanned, satellite surveillance, any kind of knowledge transfer with military applications, material and technical support to armed forces and other related activities.” The latter are described as “armed guarding or protection of buildings, installations, property and people, any kind of knowledge transfer with security and po-

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11 Montreux Document, Explanatory Comments, pp. 39 and 41.

12 Idem, p. 38.

13 Idem.

14 In 2005, the former UN Commission on Human Rights, now Human Rights Council, replaced the Special Rapporteur on the use of mercenaries and established the UN Working Group on the use of mercenaries as a mean of impeding the exercise of the rights of people to self-determination. Despite the naming, the mandate of the working group is to study PMSC and propose legal solutions – HRC Res. 2005/2, of 7 April 2005, E/CN.4/2005/RES/2005/2.

15 Resolution A/HRC/15/25, 2 July 2010, available at <http://www2.ohchr.org/english/issues/mercenaries/docs/A.HRC.15.25.pdf>, henceforth Draft Convention.



licing applications, development and implementation of international security measures and other related activities.”

Although the problems with these definitions are discussed in another work from the author<sup>16</sup>, for the present paper the importance is to reach a label for the industry, falling the choice on the term private military/security companies (PMSC). Nevertheless, the general definition does not help understanding the reason why the framework of IHL has been so poorly adapted to this new actor on the battlefield. As referred above, these companies provide a large range of services, from food supply to actual fighting. No overall answer can be given, and it is necessary to typify the industry.

It was not easy to come up with a well-established distinction because of the different criteria used on that exercise, but mostly because scholars reached the conclusion that the same company provided services from different natures, which made it difficult to include it in one group.

Peter Singer drew the taxonomy more widely accepted among scholars. Using the metaphor of a spear, Singer makes the specific distinction between three types of private military companies, in accordance to the proximity of the battlefield.<sup>17</sup> He distinguishes between *military provider firms*, *military consultant firms* and *military support firms*, being the first type the closest to the battle.

Singer justifies this classification by conduct it to the basics: the industry is guided by economic and military fundamentals, thus any typology must take this into consideration. Singer tries to mirror the private military industry with the organization of national armies. The armed force of a State is divided in three type of units: the one that operates within the general theater; the ones operating in the theater of war and those operating in the area of operation, meaning the tactical battlefield.

Using this geographical metaphor, Singer does not take into due consideration the features of the new armed conflicts, namely the management of weaponry from long distance.

Some scholars departed from this typology to develop more comprehensive classifications.<sup>18</sup>

More recently, and departing from a functional criterion, according to which what must be reflected is the nature of the activity contracted and not the general nature of the company itself, Tonkin divides PMSC activities into four categories: (1) offensive combat; (2) military and security expertise; (3) armed security; and (4) military support.<sup>19</sup> The first category refers to those who are contractually authorized to perform offensive

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16 See the author's work for the International Legal Sciences thesis program “Legal Formalism meets Reality: a Proposal to Rethink the Notion of “Combatant” in Light of the Existence of PMSC, chapter three.

17 P. Singer (2004). *Corporate Warriors*, pp. 91-92.

18 See, for instance, the wrap-up that it is made in the collective book by B. Sheehy, J. Maogot and V. Newell (2009). *Legal Control of the Private Military Corporation*. New York: Palgrave Macmillan, pp.17-26. Also see C. Prata (2009). *The Role of Martens Clause...*, pp. 33-38.

19 H. Tonkin (2011). *State Control over Private Military and Security Companies in Armed Conflict*. Cambridge, UK: Cambridge University Press, p. 40.

attacks. Those include not only ground troops, but also those who use technological weapon systems and those who are distant from the frontline.<sup>20</sup> These kinds of contracts fell in disuse by the end of the 90's when public opinion worldwide showed a deep distaste for "private offensive warfare"<sup>21</sup>. However, this type of mission continues to be contracted as *covert operations*.<sup>22</sup>

Military and security expertise is probably the more lucrative and demanded type of contract in the current situation. These contracts involve the provision of high-level technical or strategic capabilities such as maintenance of weaponry systems, gathering intelligence and the provision of military/security advice and training, interrogation of detainees and mine clearance.<sup>23</sup>

The third category – armed security – is as much as popular as the second. These contracts are signed to provide physical protection of persons and properties in areas of armed conflict.<sup>24</sup> The employees performing these activities are allowed to carry specified weapons and to use them in case of self-defense or defense of the objects of the contract or to defend civilian population. Notwithstanding, when operating in the battlefield there is a very thin line between self-defense and combat-like situations.

Lastly, the fourth category is military support. This category is not exclusive of military environment. Generally, they are contracts to provide general logistics, such transport, food, laundry, repatriation of bodies and settling and dismantle of bases and camps. This category is not associated with the use of force, but they do contribute to the success of military operations.<sup>25</sup>

In sum, if one were to mirror Singer's taxonomy with Tonkin's, one would have the categories of offensive combat and armed security in the military provider firms; the military and security expertise in the military consultant firms and the military support in the military support firms.

### **PMSC and Civilian Women**

Despite the scarce data on the subject, some scandals involving PMSC employees have come to light regarding forced prostitution, human trafficking or sexual assault.

The most known is the scandal involving the employees from DynCorp Aerospace Technology UK Ltd in illegal prostitution and human trafficking in Bosnia.<sup>26</sup> A former employee from DynCorp, who was fired afterwards, brought the case to daylight. The

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20 Idem.

21 H. Tonkin, H. (2011). *State Control over...*, p. 41.

22 Tonkin refers some cases reported in the press mainly related to the wars in Afghanistan and Iraq, involving US Government.

23 See also H. Tonkin (2011). *State Control over...*, p. 45-47.

24 Tonkin includes also in this category armed border and immigration control, as well as private police. However, these fall outside of IHL scope.

25 See also H. Tonkin (2011). *Op. Cit.*, p. 51.

26 See C. de la Vega and A. Beck (2006). *The Role of Military Demand in Trafficking and Sexual Exploitation* – Commission on the Status of Women 50th Session, Human Rights Advocates. Available at <http://www.humanrightsvocates.org/advocacy-at-the-un/>, pp. 10-13.

publicity resulted in a lawsuit and in the dismissal of the employees involved. However, the contractors were not operating alone, and there were uniformed peacekeepers in the set also.<sup>27</sup>

Not surprisingly, a US Department of Defense Office of Inspector General report clearly stated “With regard to DoD contractors, we found that contract employees, while considered members of the SFOR and KFOR community, are not subject to the same restrictions that are placed on U.S. Service members. For example, contractor employees are sometimes permitted to live outside U.S.-controlled military installations and, with few restrictions, to circulate in host country communities. Additionally, we determined that DoD contractors also employ many host country nationals, all of whom live in local communities and whose behavior is neither restricted nor monitored by DoD authorities. As members of SFOR and KFOR, contractor employees are forbidden from patronizing establishments designated by the United Nations or the European Union Police Mission as off-limits because of illegal prostitution and human trafficking concerns. However, we found that while some contractors make an effort to monitor their employees’ activities and address employee misconduct, contractor behavior in this regard is not uniform. Not surprisingly, anecdotal evidence suggested some level of DoD contractor employee involvement in activities related to human trafficking in Bosnia-Herzegovina and Kosovo.”<sup>28</sup>

The commission of Human Rights violations by PMSC employees against civilian women does not deserve a radically different approach than the one that is made if we are talking about regular armed forces, insurgent groups or peacekeepers.

The particular feature about PMSC is the lack of political commitment and the pressure of lobbyist groups not to address the issue of accountability properly.<sup>29</sup>

The reasons for this shy dialogue between International Human Rights Law or International Humanitarian Law and PMSC are due to the lack of clarity of the legal framework that guides the activities of the latter on the field and in the context of conflict. This is not the same as to say that PMSC are not bound by Human Rights or Humanitarian Law; what it means is that in the decade that is now gone after the boom of this industry, PMSC still have no binding regulation that create for them the same kind of reins that, for instance, armed forces have.<sup>30</sup>

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27 The problem with GBV and peacekeepers is not the topic of the present paper, and it will be dealt in depth in another intervention of the conference. However, it must be referred that it has been studied and researched comprehensively. A vast literature can be found on the topic.

28 Excerpt from the report, available on [http://www.contractormisconduct.org/ass/contractors/59/cases/688/768/veritas-capital-dyncorp-in-bosnia\\_dod-ig-report.pdf](http://www.contractormisconduct.org/ass/contractors/59/cases/688/768/veritas-capital-dyncorp-in-bosnia_dod-ig-report.pdf).

29 Also C. de la Vega and A. Beck (2006). *The Role of Military Demand...*, pp. 12-13. Another author sharing the same perspective on the subject is A. F. Vrdoljak (2011). *Women and Private Military and Security Companies in War by Contract: Human Rights, Humanitarian Law and Private Contractors*. Edited by Francesco Francioni and Natalino Ronzitti, Oxford University Press, pp. 280-298.

30 The fact that armed forces have strict rules of engagement and are subject to International Humanitarian Law does not hinder the commission of gross Human Rights violations, known to the general public and to the experts.

As Gumedze perfectly summed up, regarding the necessity for special measures within the military industry for sexual exploitation and abuse, “(...) before the problem of sexual exploitation and sexual abuse of women and children is addressed, there is a need to understand the dynamics of the private security/military industry (...)”<sup>31</sup>

Data have shown that women and children experience high levels of physical and mental violence during armed conflicts, and it is a given that they compose the higher mortality rate amongst civilians.<sup>32</sup> It is also a given that, if civilians are the highest number of casualties in an armed conflict, among these, women and children also take the top.

This has not been changed by the appearance of PMSC on the battlefield. If something has changed, it was for worse. Civilian casualties caused by actions from PMSC have been well documented and spread on the news.

Scholars are still debating whether and how PMSC and contractors fall under IHL.<sup>33</sup> However, while there is not a legal framework specifically designed for PMSC and their employees, general rules apply to them regarding protection of women’s rights and compliance with rules of International Humanitarian Law (IHL).

Security Council Resolution 1325 (2000)<sup>34</sup> called upon “all parties to armed conflict to fully respect international law applicable to rights and protection of women and girls, especially as civilians, in particular the obligations applicable to them under the Geneva Conventions of 1949 and the Additional Protocols of 1977, the Refugee Convention of 1951 and the Protocol thereto of 1967, the Convention on the Elimination of All Forms of Discrimination against Women of 1979 and the Optional Protocol thereto of 1999 and the United Nations Convention on the Rights of the Child of 1989 and the two relevant Optional Protocols thereto of 25 May 2000, and to bear in mind the relevant provisions of the Rome Statute of the International Criminal Court”<sup>35</sup>

To sum up this topic, PMSC do not bring a new set of considerations regarding the civilian women as victims in armed conflicts. They suffer the same violations whether committed by a member of regular armed forces or by an employee from a PMSC. Actually, they often act together when committing those atrocities.

The novelty is the lack of clarity of the applicable Law beyond general rules, the secrecy surrounding their activities and the non-existence of the so awaited mechanisms of accountability that would end, once for all, the suspicious of impunity that is linked with the industry.

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31 S. Gumedze (2007). *Sexual Exploitation and Sexual Abuse: the Need for Special Measures within the Private Security/Military Industry*. Institute for Security Studies. Available at <http://www.issafrica.org/pgcontent.php?UID=14854>.

32 See also A. F. Vrdoljak (2011). *Women and Private...*, p. 282.

33 For a general discussion see the LL.M Thesis presented to complete the International Legal Sciences thesis program from NYU School of Law, from the author C. Prata (2012). *Legal Formalism...*

34 Available at [http://www.un.org/events/res\\_1325e.pdf](http://www.un.org/events/res_1325e.pdf).

35 SC Res. 1325 (2000). para. 9. For a detailed description of the several provisions on the mentioned treaties, please see A. F. Vrdoljak (2011). *Women and Private...*, pp. 288-290.

## PMSC and Female Employees

The considerations to draw on the present topic relate to the dynamics between PMSC and the women they hire, or not.

It would be dishonest to say that the discourse and the mental images one has when talking about PMSC are gender neutral. The military universe continues to have a strong masculine aura, which grounds strongly the macho subcultures within, including the private military industry.<sup>36</sup>

Macho subcultures are found in the military. It is almost a necessary conclusion to draw to say that that same environment is reproduced in PMSC. Not only because their employees are in its majority former male armed forces members, but also because these companies do not distinguish themselves, in human relations, from the regular armed forces. The scenario is the same; the functions are the same; the uniforms; weaponry, in sum, the experience of being a PMSC employee resembles too much to that of being a member of the armed forces. Other thing in common is that they do not provide a friendly environment for women. One study showed that men test their masculinity against each other, and one of the methods is to objectify, to sexualize or to diminish women. Usually, men make considerations of this nature relating to the women close to the other man's circle: his wife, mother, sister.<sup>37</sup> When these men have females as colleagues the masculinity test turns to them. Then, it takes form of sexual harassment. Despite the obvious effects of sexual harassment within a team of workers that usually have to spend 24/7 together, a study has shown that high incidence of sexual harassment strongly affects combat readiness and leadership.<sup>38</sup> As accountability is concerned, the conclusion to draw is the same as the aspects related to PMSC: absence of accountability and high levels of impunity, which lead to lack of credibility to the public opinion.

This remains as true as the problems it brings. Data show that gender-based violence happens also between co-workers from the same PMSC. The US Department of Defense (DoD) opened an inquiry at request of the Congress to evaluate how the DoD was processing the complaints of sexual assault involving DoD contractors. This came in sequence of the complaint from a former contractor female employee. In 2005, a former Kellogg, Brown, and Root Services, Inc. (KBR) contractor employee alleged that she was sexually assaulted by other KBR employees while working on a contract at Camp Hope, Baghdad. Subsequently, the former KBR employee filed a complaint arguing that KBR had improperly managed the company's investigation into the sexual assault allegations.<sup>39</sup>

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36 On the topic of PMSC masculinities, see the working paper by P. Higate (2012). *Aversions to Masculine Excess in the Private Military and Security Company and their Effects: Don't Be a "Billy Big Bollocks" and beware the "Ninja!"*. Working Paper No. 08-12 – School of Sociology, Politics and International Studies – University of Bristol, available at <http://www.bristol.ac.uk/spais/research/workingpapers/wpspaisfiles/higate-08-12.pdf>.

37 See also, S. Schulz and C. Yeung (2008). *Private Military and Security Companies and Gender: Gender and Security Sector Reform Toolkit*. Geneva: DCAF, OSCE/ODIHR, UN-INSTRAW. Available at <http://www.dcaf.ch/Publications/Private-Military-and-Security-Companies-and-Gender-Tool-10> (henceforth Toolkit), p. 4.

38 Idem.

39 See US Department of Defense (DoD), Office of Inspector General (2010) *Efforts to prevent sexual assault/*

The plaintiff claimed that she encountered a sexually-charged, alcohol-fuelled atmosphere. Moreover, women were consistently demeaned and solicited for sex, despite the reports of harassment to their superiors.<sup>40</sup> In the declarations the plaintiff made, one can read, “This attack never would have occurred but for the ‘boys will be boys’ attitude that permeated the environment that the defendants first created, then failed to warn (the women) about – an environment that was excused, if not encouraged, and of which the defendants had ample prior notice.”<sup>41</sup>

The problems with women working to PMSC are not only related to improper sexual conduct. Gender trends in this sector follow the ones in general labor market. The value that skilled women could have to the success of PMSC mandates is dangerously undermined. Women usually enter to PMSC with uneven status as men, and they often are relegated to secondary functions, viewed as suitable for their gender.

Altogether, these trends decrease effectiveness and increases friction both within the company and in the operating environment. To reduce gender discrimination and harassment would reduce existing macho occupational cultures. This would make employment in the private military industry more appealing to women, thus bringing benefits for both parties: the company itself and the community where they operate in.<sup>42</sup>

#### Gender Perspective on the Attempts of Regulation of PMSC

It is important to understand how gender is perceived in PMSC to address the attempts to regulate the industry. At a first glance, the perspectives are not encouraging. Gender is absent in the most important initiatives so far, at a regulative level, of PMSC. Albeit they are non-legally binding instruments, they are the best proof of what States and stakeholders are willing to compromise.

These documents are a reflex of international practice. It is important to include them in the present work to demonstrate the trends from practitioners, and how superficially they are dealing with essential questions, like the one in discussion here: gender-based violence towards civilian women and towards female colleagues.

The PMSC phenomenon has been a difficult matter to the international community. On one hand, the privatization of military and security affairs is a fact and it is a steadily growing reality. On the other hand, the fluid nature of this industry is such that the stability that Law requires does not always give the best feedback.<sup>43</sup>

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*harassment involving DoD contractors during contingency operations*, Report No. D-2010-052 (10 April, 2010), p. 1. The Report is available at <http://www.dodig.mil/audit/reports/fy10/10-052.pdf>.

40 See also Schulz, S. and Yeung, C. (2008). *Private Military...*, p. 13.

41 *Idem*.

42 *Idem*. The solution on how this could work in practice will be dealt in the last part of the present paper.

43 See also J. Hansen (2011). “Rethinking the Regulation of Private Military and Security Companies under International Humanitarian Law.” *Fordham International Law Journal*, Volume 35. Available at <http://fordhamilj.org/articles/rethinking-the-regulation-of-private-military-and-security-companies-under-international-humanitarian-law/>.

## The Montreux Document

The first international approach is known as the *Montreux process*, from which resulted the *Montreux Document*.<sup>44</sup> The *Montreux Document* does not aspire to become hard law.<sup>45</sup> It is an international effort, under the authoritative umbrella of ICRC, to remind States their obligations once they have taken the decision to put in private hands what is considered one of the distinctive features of national sovereignty: military affairs.<sup>46</sup>

In its two parts – Pertinent International Legal Obligations and Good Practices relating to PMSC – the gender-based violence or the special problematic of women in armed conflicts are absent, and are referred in very general terms among other sensitive issues, like religion and cultural relativism. On legal obligations relating to contracting parties, for instance, it is acknowledged simply that these states *have an obligation (...) to ensure respect for international humanitarian law by PMSC they contract*.<sup>47</sup> It is also recognized the due diligence obligation to all other states. Once again, this obligation is not specific to gender and sexual violence, but in general terms of IHL.<sup>48</sup> As for PMSC and their personnel is concerned, the obligation to comply with IHL and International Human Rights Law is again put in very broad terms. Although one can argue that women are also covered by these general mention to those branches of Law, it is not difficult to understand why there is a need to deal with women's right separately, within the framework of IHL and Human Rights. The authors of the *Montreux Document* were well aware of this reality, and chose to not go deep into specific international legal obligations.

Only in Part Two – Good practices – references to gender and sexual violence begin to be expressed. As an introductory note, Part Two disclaims *“good practices are intended, inter alia, to assist States to implement their obligations under international humanitarian law and human rights law.”*<sup>49</sup> In this sense, contracting states, when analyzing the activities of a PMSC they are planning to hire, they must look to past records, both of the company and its personnel. Moreover, contracting states must confirm that the PMSC has *no reliably attested record of involvement in serious crimes (including (...) sexual offences (...))*.<sup>50</sup> The *Montreux Document* also recommends to contracting states to PMSC be sufficiently trained to respect relevant national and international law, and could include specific training to prepare personnel for performance under the specific contract and in specific environment, such as *religious, gender, and cultural issues, and respect for the local population*.<sup>51</sup> Finally, *Montreux Document* acknowledges as good practice to consider how PMSC manages labor issues, like *preventing unlawful discrimination employment*.<sup>52</sup>

The *Montreux Document* makes identical considerations for territorial states, and the criteria they should consider for granting authorization for a PMSC to operate in their

44 See supra Note 10.

45 Montreux Document, Preface (3) and (4).

46 Montreux Document, Preface (1) and (2).

47 Montreux Document, Part One, A – 3.

48 Montreux Document, Part One, D.

49 Montreux Document, Part Two, Introduction.

50 Montreux Document, Part Two, A – III 6a..

51 Montreux Document, Part. Two, A – III 10c..

52 Montreux Document, Part. Two, A – III 1e..

territory<sup>53</sup>; and for home states when considering to grant authorization for PMSC to operate at all.<sup>54</sup>

### **The International Code of Conduct for Private Security Service Providers**

The *Montreux process* led to the development of a code of conduct within the industry. In 2010, 58 PMSC signed up to the International Code of Conduct for Private Security Service Providers (ICoC)<sup>55</sup>, a project sponsored by the Swiss government. The ICoC derives from the *Montreux Document*, but it takes upon the “Protect, Respect and Remedy” framework.<sup>56</sup>

However, the ICoC is much more detailed on gender and sexual violence. On the Preamble, the signatory PMSC declare “*The Signatory Companies affirm that they have a responsibility to respect the human rights of, and fulfill humanitarian responsibilities towards, all those affected by their business activities, including Personnel, Clients, suppliers, shareholders, and the population of the area in which services are provided. The Signatory Companies also recognize the importance of respecting the various cultures encountered in their work, as well as the individuals they come into contact with as a result of those activities.*”<sup>57</sup> As a *General Commitment*, signatory PMSC agree not to contract with, support or service any government, person, or entity in a manner that would be contrary to United Nations Security Council sanctions. *Signatory Companies will not, and will require that their Personnel do not, participate in, encourage, or seek to benefit from any national or international crimes including but not limited to (...) sexual or gender-based violence, human trafficking, (...).*<sup>58</sup>

These general considerations take a sharper form in the set of specific principles regarding the conduct of personnel. It is interesting to notice that the same working environment that surrounded the *Montreux process* and the ICoC drafting led to such different taken on the gender-based and sexual violence issues.

Notwithstanding the silence in the *Montreux Document* about those issues, the ICoC has three sections that deal specifically with gender-based and sexual violence, right below a specific principle on general conduct that provide the commitment to “*require [themselves and] their Personnel to, treat all persons humanely and with respect for their dignity and privacy and will report any breach of this Code.*”<sup>59</sup>

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53 Montreux Document, Part Two, B – IV 32a. and 35c..

54 Montreux Document, Part Two, C – IV 60a and 63c..

55 Text available at [http://www.icoc-isp.org/uploads/INTERNATIONAL\\_CODE\\_OF\\_CONDUCT\\_Final\\_without\\_Company\\_Names.pdf](http://www.icoc-isp.org/uploads/INTERNATIONAL_CODE_OF_CONDUCT_Final_without_Company_Names.pdf).

56 See section 2 of the Preamble and N. D. White (2012). “Regulatory Initiatives at the International Level” in C. Bakker and M. Sossai (eds), *Multilevel Regulation of Military and Security Contractors – The Interplay between International, European and Domestic Norms*. Oxford and Portland, Oregon: Hart Publishing, pp. 13-14.

57 ICoC, Preamble, section 4.

58 ICoC, General Commitments, section 22. On section 24, signatory PMSC agree on “report, and (...) require their personnel to report, known or reasonable suspicion of the commission of any of the acts identified in paragraph 22 of this Code to the client and (...) the competent authorities (...)”.

59 ICoC, Specific principles regarding the conduct of personnel, General Conduct – section 28.



In that regard, the ICoC, on its section 38<sup>60</sup>, makes the statement that they “*will not benefit from, nor allow their personnel to engage in or benefit from, sexual exploitation (including, for these purposes, prostitution) and abuse or gender-based violence or crimes, either within the Company or externally, including rape, sexual harassment, or any other form of sexual abuse or violence. Signatory Companies will, and will require their Personnel to, remain vigilant for all instances of sexual or gender-based violence and, where discovered, report such instances to competent authorities.*” This was a clear response from the industry to the cases that undermined (even more) the credibility of PMSC in the awakening of so many scandals, including the one in Bosnia with DynCorp.<sup>61</sup>

Section 39 on human trafficking is broader but it is designed having in mind women and children trafficking, although human trafficking in its whole shall not be disregarded. It states that PMSC and their personnel will not engage in trafficking in persons. They assume the obligation to *remain vigilant for all instances of trafficking in persons and, where discovered, report such instances to Competent Authorities.* It also clarifies that, “[F]or the purposes of this Code, human trafficking is the recruitment, harbouring, transportation, provision, or obtaining of a person for (1) a commercial sex act induced by force, fraud, or coercion, or in which the person induced to perform such an act has not attained 18 years of age; or (2) labour or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, debt bondage, or slavery.”<sup>62</sup>

Lastly, the ICoC has a non-discrimination clause, typical in Human Rights Law instruments. The non-discrimination clause is included here but it is turned to inside, meaning that it rules how the industry shall act when hiring. It states PMSC and their personnel will “*not discriminate on grounds of (...) sex, (...) or sexual orientation when hiring Personnel and will select Personnel on the basis of the inherent requirements of the contract.*”<sup>63</sup>

### **The UN Draft Convention on PMSC<sup>64</sup>**

The previous attempts for regulation are examples of soft law, while the project currently under construction in Human Rights Council represents a classical move to use hard law, in this case treaty law, to address the topic.<sup>65</sup>

The purpose of the draft convention “*is not the outright banning of PMSCs but to establish minimum international standards for States parties to regulate the activities of PMSCs and their personnel*”.<sup>66</sup> One of the principles that guide the Draft Convention is that it is “*the State*

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60 ICoC, Specific principles regarding the conduct of personnel, Sexual exploitation and abuse or gender-based violence – section 38.

61 Cfr. supra Part II, I PMSC and civilian women.

62 ICoC, Specific principles regarding the conduct of personnel, Human Trafficking – section 39.

63 ICoC, Specific principles regarding the conduct of personnel, Discrimination – section 42.

64 See supra Note 15.

65 See also N. D. White (2012). “Regulatory Initiatives at the International Level” in C. Bakker and M. Sossai (eds). *Multilevel Regulation of Military and Security Contractors – The Interplay between International, European and Domestic Norms.* Oxford and Portland, Oregon: Hart Publishing, p. 16.

66 See para. 39 of the Report of the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination, Resolution A/HRC/15/25, 2 July 2010 (supra Note 64).

*party's obligation to prohibit PMSCs from directly participating in hostilities (...)*<sup>67</sup>. However, the outcome molded in the Draft Convention can be anecdotally summarized as “the denial of reality” both of the political and economic dynamics that are at stake, and of what PMSC are actually doing.<sup>68</sup>

Two of the biggest concerns for the drafters of the convention were the erosion of the monopoly of force by States and the lack of accountability for violations of human rights and international humanitarian law.<sup>69</sup> The answer they provided was, on the former, to prohibit that certain activities could be contracted to PMSC, using the concept of “inherently governmental functions”.<sup>70</sup> Regarding the latter, they focused on national-based regulatory model, accompanied with an international oversight mechanism, similar to the ones existing in the UN Human Rights Law treaty-based bodies.<sup>71</sup>

This promising beginning to a UN draft convention on PMSC soon gave space to disappointment. In the entire text of the draft convention there is not even the word *gender* or the expressions *gender-based violence*, *sexual violence* or others related to the topic. It is not surprising that there is no reference to conduct of PMSC towards their employees, once the scope of application are states and not PMSC themselves.

In fact, para. 14 of the Preamble emphasizes “*the responsibility to protect all persons affected by the activities of PMSCs, whether civilians or military personnel, including the employees of these companies, from abuses of their human rights by the actions or omissions of non-State actors including PMSCs*”. As it was interpreted for the *Montreux Document*, one can draw a whole framework of legal protection for women, once they are human beings and Women’s Rights Law is a specialized branch of Human Rights Law.<sup>72</sup>

On the following paragraph, the draft convention includes *trafficking in persons* as one example of violations of IHL and Human Rights, that if committed by the personnel of PMSC, there is an obligation to provide the victim’s right to a comprehensive and effective remedy *in accordance with international law, including the United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation for Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*.<sup>73</sup>

Also, in the dispositive part of the Draft Convention, the Part II – General Principles, article 7 (Respect and protection of international human rights and humanitarian

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67 Para. 53 of the Report of the Working Group.

68 Other authors are critical of the Draft Convention. See, for instance, N. D. White (2012). “Regulatory Initiatives...”, pp. 17-20; from the same author (2011). “The Privatisation of Military and Security Functions and Human Rights: Comments on the UN Working Group’s Draft Convention”. *Human Rights Law Review*, n.º 1, pp. 133-151. A more general critic regarding the notion of “inherently governmental functions” can be found on the Report of the Working Group itself, on para. 82: “A number of experts and States stressed that there is no agreed definition in international law on what constitutes inherently governmental functions and considered that defining such functions could prove difficult.”

69 See paragraphs 9, 21 and 22 of the Draft Convention.

70 See article 1, 1a) and b) of the Draft Convention.

71 See Part III and Part V of the Draft Convention.

72 See supra subpart II in the current Part.

73 See Draft Convention, Preamble – Para. 15.

law) only refers that states have the responsibility to take the *measures as may be necessary to ensure that PMSCs and their personnel are held accountable in accordance with this Convention and to ensure respect for and protection of international human rights and humanitarian law*. In that regard, the Convention acknowledges international criminal responsibility of PMSC, as well as state responsibility under the rules of International Law Commission Draft Articles on State Responsibility (DASR).<sup>74</sup>

The viability of this draft convention to ever see daylight as a treaty is currently compromised, due to lack of political will to address in a operative manner the big issues around PMSC, not to speak the topic in question. It is not that gender-based violence or sexual violence are not fundamental to PMSC and their regulation, but until the proper legal existence of this PMSC is fixed in clear terms, it will be fruitless to deal with more specific problems.<sup>75</sup>

### **The Gender and SSR Toolkit: Private Military and Security Companies and Gender**<sup>76</sup>

This is the most comprehensive non-binding document regarding the topic on gender and PMSC.

This tool on PMSC and gender is part of the *Gender and SSR Toolkit* is not an initiative to regulate the industry, but it is designed to provide practical information on gender issues for practitioners and policy-makers that have the function of framing it. Given this, one can say that it has not pretension to provide any legal guidelines or to propose any legal regulation framework. Instead, the aim of the toolkit is *to integrate gender aspects into all operations and to explain why gender is important (...) and can be developed and implemented in operations involving PSCs and PMCs (...)*.<sup>77</sup> The toolkit addresses the issue on three different perspectives: men and women as contractors within the private security industry; men and women as stakeholders in SSR processes; and men and women as victims of gender-based violence.<sup>78</sup>

Regarding regulation of PMSC, section 5 of the Toolkit gives a fine overview of the achievements and shortfalls of how gender is being integrated in both national and international regulatory initiatives. The conclusion that one must make upon reading this section is that it is necessary to draw attention to this type of toolkits to strengthen with a real chance to become binding International Law, the national and international initiatives that are currently under the table.

Section 3 explains why gender is important to PMSC, and it gives four reasons: to improve effectiveness; to improve staffing procedures and employment standards; to create an institutional culture that prevents misconduct and human rights violations; and to improve coordination among agencies in peace support operations.

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<sup>74</sup> Available at [http://untreaty.un.org/ilc/texts/instruments/english/draft%20articles/9\\_6\\_2001.pdf](http://untreaty.un.org/ilc/texts/instruments/english/draft%20articles/9_6_2001.pdf).

<sup>75</sup> See *supra* Note 31.

<sup>76</sup> See *supra* Note 37.

<sup>77</sup> See Toolkit, 1. Introduction, p. 1.

<sup>78</sup> *Idem*.

Regarding the first reason, to integrate gender, PMSC could benefit because men and women have different experiences, needs and understandings.<sup>79</sup> To have and to provide gender training would adjust them to the host community, and would prevent the growth and/or to diminish the macho subcultures.<sup>80</sup> The Toolkit also presents the benefits of recruiting women into PMSC, focusing on the better utilization of resources when engaging with local host communities. Scholars are starting to look more into the issues of gender and security in the private industry share this view.<sup>81</sup>

The second reason was discussed *infra* regarding the relationship between PMSC and their female employees.<sup>82</sup> A non-discriminatory working environment, with no sexual-charge leading daily routines of employees can only contribute to a better provision of service from employees to the company and to the company to the entity that contracted it.

The Toolkit stresses the fact that every time a PMSC is involved in human rights violations, it loses credibility. The third reason is closely connected to what was said about PMSC and civilian women.<sup>83</sup> The cases that have been to public have not led to any substantive consequence, punitive enough to make the industry and policy/law-makers to address the issue as it deserves.<sup>84</sup> The Toolkit concludes, in this regard, that to have “operators involved in sexual assault, abuse or the exploitation of local women” not only consists in human rights violations, but it also increases “security risks for their clients and for themselves.”<sup>85</sup>

Finally, the fourth reason relates to a better coordination between agencies in the SSR. Although all the actors agree that good cooperation leads to greater achievements, it is known how difficult this is to put in practice. A good networking basis, grounded on gender training, and clarification on to whom to report gender-violence instances can improve the ultimate success of an operation.

## Conclusion

As it was shown throughout the present paper, it is patent that international community and national institutions feel the urging need to clarify what legal framework is applicable to PMSC. The scandals surrounding the industry, the trace of impunity that has come with it, and the lack of effective responses, due to the lack of regulation covering PMSC, have justified the timid initiatives.

Particularly regarding women and PMSC, scholars have recently started to research on the subject, and to present concrete solutions. Putting everything altogether, there are

79 See Toolkit, 3. Why is gender important to PMSCs?, p. 3.

80 See also, J. R. Bennett (2009). *The Softer Side of Security*. ISN, Center for Security Studies (CSS), ETH Zurich, Switzerland. Available at <http://www.isn.ethz.ch/isn/Security-Watch/Articles/Detail/?ots591=4888caa0-b3db-1461-98b9-e20e7b9c13d4&lng=en&cid=102726>.

81 See, for instance, A. Reeves (2012). “Gender and Private Military and Security Companies”. *Journal of International Peace Operations* n°4. Available <http://web.peaceops.com/archives/1887>.

82 Vide Part II, II and Notes 37 and 38.

83 Vide Part II, I.

84 See also Toolkit, 3. Why is gender important to PMSCs?, p. 5.

85 Idem.

four areas requiring urgent action: vetting personnel, education and ongoing training of personnel, reporting, and investigation and accountability.<sup>86 87</sup>

It is of the most importance that gender issues are included in contractual obligations and quality control processes. This is especially relevant to contracting states, when they assess if a determined PMSC is suitable to contract.

To recruit more women, at the same time that internal policies on sexual harassment and abuse are implemented is another angle from which international community should tackle the issue of gender and PMSC.

Perhaps, the aspect that connects all the particular measures that can be taken is training on gender and gender-based violence. This has to focus not only in respect to civilian women, but also, and importantly, to female contractors working for PMSC.

Finally, gender must be present in all regulation initiatives, both national and international. There is room to grow and know-how to grow well, making possible to achieve a private military industry that understands the value and importance of gender in its operations.

Along with inserting gender perspective into regulation, efficient mechanisms to investigate, prosecute and decide on gender-based violence violations must exist and work properly. The better acceptance of PMSC depends greatly on how efficient are the accountability mechanisms.

In sum, the time has come to allow gender to enter PMSC universe through the front door.

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86 See A. F. Vrdoljak (2011). *Women and...*, pp. 295-296.

87 See also Toolkit, 4. How can gender be integrated into PMSCs?, pp. 6-10.

# Gender, Disarmament, Demobilization and Reintegration and Violent Masculinities

## Irma Specht

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## Introduction

This chapter explores how gender roles change during and after conflict, with particular attention to the importance of masculine and feminine identities and how these can change in conflict contexts, as well as the influence of DDR on changing or cementing these identities. This exploration of changing gender roles in conflict and post-conflict settings is crucial for helping us to understand the prevalence of Gender Based Violence (GBV) in much conflict but also post-conflict societies. This chapter is analysing the following ideas, namely that: (1) the level of engagement of women in conflict is linked to pre-war gender roles; (2) that in some circumstances conflict can actually create opportunities for women's empowerment but that this creates additional challenges in gender dynamics; and (3) that the identity loss experienced by demobilized men is a crucial factor in explaining the prevalence of GBV after Disarmament, Demobilisation and Reintegration programmes. Whilst it is inevitably difficult to make conclusions about global trends, this chapter uses a range of pertinent case study examples, from Liberia to Afghanistan, to analyse and illustrate these concepts.

## Gender and Conflict

Within the development discourse the concept of gender has multiple definitions and understandings. Two key definitions used by the international community are described below:

The Integrated Disarmament, Demobilisation and Reintegration Standards (IDDRS) of the UN refers to gender as *socially constructed norms around roles, behaviours and attributes associated with being male and female and the relationships between women, men, girls and boys*

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<sup>1</sup> Special thanks go to Isabelle Ploumen, John Bosco Mubiru and Anna Tomson for their contributions.

as well as within same-sex groups (IDDRS 2006). The UN further reports that the attributes, opportunities and relationships are socially constructed and learned through socialization processes and that they are context/time-specific and changeable. Gender determines what is expected, allowed and valued in a woman or in a man in a given context (UNDP & UN Women 2011: 7).

*PeaceWomen add the issue of power relations between the sexes: The political, social and cultural significance attached to biological differences between men and women, boys and girls. A focus on gender not only reveals information about women and men's different experiences, it also sheds light on ingrained assumptions and stereotypes about men and women, the values and qualities associated with each, and the ways in which power relationships can change* (<http://www.peacewomen.org/pages/about-1325/key-gender-terms>, 2.01.2013).

Based on the above definitions, the term gender used in this chapter refers to the social, economic and political relationships, identities and values attributed to men and women in any given society. In addition to an understanding the term gender, it is also helpful to introduce the terms *masculinity* and *femininity* at this juncture. The term *masculinity* refers to the socially constructed roles for man, specifically ideals about how men should or are expected to behave in a given setting. Similarly, *femininity* refers to (expected) female gender identities, roles and behaviour.

Gender roles vary greatly within, and between, cultures and are dynamic and flexible, particularly when the social fabric is under high pressure, such as in conflict situations. Masculinities and femininities and the relations between the two therefore change over time.

In conflict and post-conflict contexts, gender dynamics and roles undergo substantial change. A number of issues can contribute to these changes in gender dynamics, including: women being directly involved in armed conflict, absence of men in the household, impact of men who leave and later return to the community, men's extensive involvement in violence, increase in economic activities by women, increase in female-headed households, etc. Men and women undertake different roles and responsibilities in conflict and consequently armed conflict impacts men and women differently which, highlights the need for gender-responsive and conflict sensitive programming. In this chapter, the changes in masculinities and femininities during and after conflict will be further explored.

### **Gender and Disarmament, Demobilization and Reintegration (DDR)**

The United Nations (2006:6) defines the concept of Disarmament Demobilisation and Reintegration as "A process that contributes to security and stability in a post-conflict recovery context by removing weapons from the hands of combatants, taking the combatants out of military structures and helping them to reintegrate socially and economically into society by finding civilian livelihoods". The UN (2006: 4-5) explains that *reintegration is essentially a socio-economic process with an open time-frame, primarily taking place at community level. It forms part of a wider process of development and security provision which is a national responsibility, and often necessitates sustained external assistance.* DDR has increasingly become a normative element of post-conflict statebuilding processes since the mid 1980s (Lamb, 2008 and Nezam and Marc, 2009: 1), report that over the last twenty years, there have

been DDR programs in more than 30 countries, of which two-thirds have been in Africa.

It is widely assumed within the international community that males present the primary threat to post-conflict security and that they therefore should be main focus of DDR programmes. However, often females are also likely to have been involved in violence, and may have participated in every aspect of the conflict, whether in voluntary or forced capacities (IAWG 2006:2). The DDR process experienced by men and women can have a significant impact on how masculine and feminine identities are (re)constructed. Gender-specific needs [and ambitions] must therefore be taken into account in DDR programming after conflict has ended (IAWG 2012: 9).

Gender responsiveness therefore became a priority element of the design and implementation of DDR programmes. The UN Integrated DDR Standards (IDDRS) recognizes the importance of gender responsive DDR programming, which is outlined in module 5.10 (UNDP & UN Women 2011: 7-8). This includes the disarmament, demobilisation and reintegration of all armed groups, including female combatants, as well as women associated with armed forces and groups (WAAFG). Awareness of the need to improve gender responsiveness of UN-supported disarmament, demobilization and reintegration (DDR) programmes has improved dramatically over the past years. However, often the growing commitment to address the different vulnerabilities and capacities of women and men, girls and boys in DDR programmes is still not met by sufficient levels of knowledge, skills, resources and coordination during planning and implementation. The sex and age disaggregated data which DDR programmes have been collecting in recent years is often left unanalyzed, or if analyzed, is often disregarded, particularly during the crucial planning and design of reintegration. Therefore a piecemeal approach to gender still prevails. Addressing the specific needs of WAAFG, female ex-combatants and dependents often becomes less relevant, is considered too costly, is added very late in the process or is disregarded to reduce cost with the argument that DDR is about reducing insecurity and that women are less of a security threat (UNDP, 2011).

More importantly, insufficient attention is paid to the fact that men and boys may also have special needs and ambitions, especially in terms of transforming their identities based upon violent masculinities, developed during their roles in the conflict, which if unattended easily results into self-directed violence (suicide, drug and alcohol abuse) and interpersonal violence (gender-based violence towards women and girls) (IWAG & UNDP, 2011).

### **Gender Based Violence (GBV)**

There are multiple definitions of Gender-Based Violence (GBV). Although not exclusive to women and girls, GBV principally affects them across all cultures. Violence may be physical, sexual, psychological, economic, or socio-cultural. Categories of perpetrators may include family members, community members, and those acting on behalf of or in proportion to the disregard of cultural, religious, state, or intrastate institutions (Ward 2009).

Men and women experience gender-based violence during conflict and in periods of transition from war to peace, but also during the post-conflict phase. GBV can thus



be understood as is a continuum of violence that varies in form and intensity depending on the dynamics of conflict (Sigsworth, 2008). GBV during conflict and post-conflict situations takes many forms including: rape, slavery, forced impregnation/miscarriages, female genital mutilation, kidnapping/trafficking, forced nudity, and disease transmission (Bott, Morrison and Ellsberg, 2004). Sexual abuse and rape tend to be the most common forms of GBV during conflict.

Research indicates that conflict worsens existing patterns of GBV in different ways. Firstly in terms of 'everyday violence' (particularly domestic violence) and second the escalation of violence in the context of masculine and militarized conflict situations, for example through the use of rape as a weapon of war (El Jack, 2003). The United Nations Security Council (UNSC) 1820 recognizes that there is a direct relationship between the widespread and/or systematic use of sexual violence as an instrument of conflict and the maintenance of international peace and security.

Furthermore, Rachida and Calleigh (2010) report that in recent years there has been a strong rise in domestic violence, sex trafficking, and forced prostitution in post-conflict areas, and that women and girls remain the most vulnerable to such forms of GBV. The UN General Assembly Security Council (2012) reveals that although both The Central African Republic and Chad are emerging from conflict following the signing of peace agreements and legislative elections, there are reports of continued sexual violence against women and girls. The primary perpetrators of violence are civilians, although current and former armed groups and continued presence of armed individuals are also implicated. For example, In the Central African Republic, the *Convention des patriotes pour la justice et la paix* and *road bandits*, known as "Zaraguinas" or "coupeurs de route", who operate in the north and east of the country, have been implicated in sexual violence crimes. In the south-east, the abduction of women and girls by LRA for use as sex slaves was reported by several victims, often teenage girls, who were able to escape, sometimes after years of captivity.

The variable causes and manifestations of GBV in conflict and post-conflict settings are explored in more depth later in the chapter.

### **Gender Roles before Conflict**

Accumulated feminist analyses prove that, while male oppression of women is universal, there are variations in gender ideologies in different societies (Farr, 2002). Although it is unrealistic to generalise gender roles across all cultures in the world, several common trends do emerge. Handrahan argues that 'women's disadvantageous location within global and local power structures combine to put women at risk, while simultaneously providing little room for them to voice their security problems' in situations of conflict (Farr, 2004: 429). As a general rule women's unequal relationship to men in global, national and local structures is evident in periods of conflict.

However, the extent to which women are able to change and influence gender roles in conflict contexts varies hugely across the globe. These trends allows us to present the following hypothesis; the formation of pre-conflict gender roles shape the extent to which gender roles can change during periods of conflict. In other words, the more equal

gender relations are prior to conflict the more scope there is for a substantial change in gender roles during the conflict period. In order to illustrate this hypothesis several case studies are explored throughout this chapter.

In pre-conflict Liberia Specht found that gender roles were largely representative of much of West Africa in that men were typically heads of households (Specht 2006). However, Liberian women are traditionally given more of a voice in the social and political arenas than in other parts of Africa, which has resulted in women taking an active role in traditional government structures in some parts of the country. This, combined with the influence of American culture, meant that pre-war gender roles in Liberia were significantly more equal than those in many neighbouring countries. The ensuing civil war presented an opportunity for women to [further] prove their equality, and in some cases gain independence (Fuest, 2009).

On the other hand, in Afghanistan, where space for women to speak out in public and demand for change has been extremely limited for several generations, the war did provide much more limited opportunities for change in independence or equality. Ahmed-Gosh (2003: 1) argues that 'there is a history over the centuries of women's subjugation' in Afghanistan, particularly exacerbated by the presence of the Mujahideen and the Taliban. Furthermore 'the issue of women's right in Afghanistan has been historically constrained by the patriarchal of gender and social relations deeply embedded in traditional communities' (Moghadam 1997: 76). This goes some way to explain why the existing gender division became stronger during the most recent conflict, as men actively kept women away from the public (conflict) spheres in the name of protection. So in contrast to the opportunities war provided for women in Liberia, conflict in Afghanistan went some way to solidify, and even worse, unequal gender relations.

***CASE Afghanistan: 'Honour and shame': gender roles in Afghanistan***

Whilst the strong patriarchal values of the Taliban were a significant factor in cementing the subordination of women during the Afghan civil war, the history of unequal gender relations in the country provided the basis for the ongoing division of gender roles in conflict. 'Public and private spheres have always been demarcated by a well entrenched kinship system that is based on honour and prestige vested in the women of the family' (Ahmed-Gosh, 2008: 4). During conflict Afghan masculinities were manipulated by the continued presence of violence and repeated subordination of women through the control of their bodies (*ibid*). Traditional concepts of 'honour' and 'shame' were intensified by the conflict leading some scholars to suggest that bringing honour was increasingly the role of the man, through his ability to protect and attack, whilst 'shame' became more inherently linked to women and their vulnerability to dishonourable activities such as rape and adultery (Enloe, 2000). Men are able to gain honour by engaging in war, but women would bring shame by emulating this perceived 'masculine' behaviour. (Ahmad, 1992; Weidman 2003; Wikan, 1984)

The contrast between the examples of Liberia, DRC and Afghanistan suggests the important influence that pre-war gender roles can have in creating space for a shift in gender relations during conflict. The above cases indicate the importance of taking pre-conflict gender roles into account when trying to understand how, and to what extent, gender roles may shift during conflict, and what change is maintained as part of the post-conflict societal change.

### **Gender Roles and Relations during Conflict**

The dynamic and high-pressure conditions that conflict creates, can instigate changes to the socio-economic and political make-up of societies, as communities adapt to unusual and difficult circumstances. Shifts in gender roles often happen as a part of this change. The differentiation of gender roles is a key indication of the community's distribution of power and means of social stability, both of which are often compromised during armed conflict. While it's important to understand each conflict on a case-by-case basis, there are some general trends to recognise.

#### ***The Construction of Violent Masculinity***

A particular feature of changing gender dynamics is the shift in cultural norms over what constitutes masculinity. During conflict the main social feature of a "good man" is his ability to protect, attack, to be violent. Uniforms and guns become features of heroism and girls and women often actively reconfirm this desired role of men.

Research on masculinities during conflict has indicated that men in highly militarized environments, such as protracted conflict or insurgency, experience a heightened emphasis on their (violent) masculinity. Men are the majority in the armed groups and are expected to be able to be violent, especially with possession of guns. This 'construction' of masculinity is evident in the way in which 'cultures develop gender roles that equate 'manliness' with toughness under fire' (Goldstein, 2001: 9). In contexts of conflict men feel pressure to become violent in order to attack the enemy and protect their community. 'Being a man' thus becomes inherently linked to violent behaviour; men may be forced to 'prove' their masculinity by adopting a violent and aggressive persona. This is what Mazuri (1977: 69) refers to as the link between masculinity and martial prowess'. This was for example the case in Liberia, where many of the boys joined armed groups in order to protect the female members of their community from sexual abuse (Specht, 2006: 45). In addition, GTZ (2009: 4) adds that in some societies affected by conflict, young men are forced to kill. In these situations commanders refuse to accept other models of masculinity; ridicule non-violent conflict resolution or negotiating skills as typically feminine characteristics and uphold militarism as the standard for masculinity. In general, during conflict violence and aggression are used as ways of asserting masculinity. Militarised masculinity in Eastern DRC is particularly visible as "weapons are used as status symbols and tools to achieve economic and social gains to wielding power over unarmed males and females" (Lwambo, 2011: 19).

The construction of masculinities in Afghanistan was largely exacerbated by the rise of the Taliban in 1994, which enforced relations between the sexes by law where previ-

ously they were monitored by tradition and kinship groups (Kandiyoti, 2007). In this way men were encouraged to prove their role as protectors by restricting the movement of women, for example it became illegal for women to travel outside the home without being accompanied by a male family member (*ibid*). It is important to recognise that war is inherently gendered (Goldstein, 2011) and that violence prevailing in conflict-torn societies affects men in disproportionate numbers. Multiple cultural norms across the globe ascribe a ‘warrior’ status to men and a ‘caregiver’ status to women (Basow, 1992).

It is important to note that not all men appreciate this change in masculinity and refuse to participate. One example is the refugees from South Africa during the apartheid regime that came to the Netherlands. These young white males refused military service which was strongly related to perpetration of violence, and achieved status of political refugees in the Netherlands as refusing to take the required masculine role in the white South African society was unaccepted and even resulted in imprisonment.

### ***War Time Feminism***

As explained above, during conflict gender roles can change dramatically, both in the household but also in the wider social sphere. As previously mentioned, the mobilisation of men into armed groups increases violent masculinities and “deepens the differentiation of men and women, masculinity and femininity, preparing men to fight and women to support them in doing so” (Corey, 2011: 9). However, the impact of conflict on women’s roles and position is more complex. In some cases, there can be an expansion of women’s freedom. So, whilst the shift in roles often has negative consequences, especially in terms of increased violence against women, the upheaval of traditional gender relations can create space for women to gain social, economic and political power.

Women may also take on more “masculine” roles during the conflict, such as becoming armed combatants. Women in conflict situations often find there that they can only gain status through their association with the new prevailing identity of violence; either through militarizing themselves or through forming relationships with men in power. Interviews with girls and young women in Liberia, DRC and Nepal all point to the same direction: becoming a combatant is the best way to show that you are equal to men.

Women have been actively involved as fighters in a large number of conflicts, and are part of fighting forces in 55 countries and in 38 involved in actual conflict including in Sri Lanka’s LTTE (one third); El Salvador’s Farabundo Martí National Liberation Front (one quarter); Sandinista National Liberation Front in Nicaragua (30%); Eritrean People’s Liberation Front (34%); Liberia (38%), East Timor underground resistance (more than 50%); Lord’s Resistance Army in Uganda, South Sudan, DRC and CAR (about 25%) and in the latest DDR programme in Nepal 33% were females (Transition International, 2010).

While some girls are forcefully recruited in conflict, many join without physical force and for reasons that may or may not be connected to the conflict situation. Highlighting the complexity of girls’ experience in the armed forces, Denov explains that in Sierra Leone ‘girls were simultaneously victims and perpetrators and continually drifted

between committing acts of violence and being victims of violence perpetrated by others' (Denov, 2007: 12). The violations committed against women and girls within the armed forces include, amongst others: forced recruitment, brutal training, verbal abuse, acts of cruelty, sexual violence, forced marriage and bearing witness to extreme acts of violence, intended as public displays of horror, against other combatants and civilians. It appears that many girls who join fighting forces have previously been victims of physical, verbal or psychological harassment and violence. As a way of coping with such abuses, Denov pointed out that girls adopted several strategies not only to ensure their own safety (such as owning and using small arms, 'marriages' to powerful commanders, and the perpetration of severe acts of violence), but also to enact both subtle and bold forms of resistance to their situation, such as resistance to sexual violence, forming forbidden bonds with other female combatants, refusal to kill during battle and escape (Sigsworth, 2008).

However, it must be highlighted that not all girls and women fighters experience this form of violence. Girls in Nepal expressed that they have been well treated in the Maoist party, actually better and with more respect than at home. Within Liberians United for Reconciliation and Democracy (LURD) in Liberia, girls were treated with respect and operated in a girls-only unit under the command of a female commander (Specht, 2006).

***CASE Colombia: Joining the FARC due to Domestic Violence***

In Colombia, Specht and Brett found that girls actually joined the rebels in order to escape from domestic violence and saw this as a way to gain protection and self-determination:

*"No, the day that my mom beat me was when, I mean, when I made that decision. [...] I joined the FARC because I was fed up with my mom...well, my mom had already told me off, and she'd told me that she was going to hit me again, and so I thought that she was going to beat me again, and so these, these guerillas appeared, to do guard duty, and I met up with them on the corner. I talked to one of them and they said, OK, they would pick me up in a park at eight o'clock that night, they told me to pack up a bag with blanket and nothing else, they said that there they would give me everything else, and so I went there and they took me with them."* Carolina, Colombia (Brett and Specht 2004: 69-70)

When girls join armed groups and gain powerful positions as leaders or higher commanders of the rest of the combatants, they express violent masculinities similar to those of men. For example, the Centre for Rights and Democracy found that in Sierra Leone the 'wives' of rebel RUF commanders were given responsibility as commanders of small boys units. Female combatants also perpetrated acts of extreme violence and committing atrocities (Sigsworth, 2008).

In addition, in situations where females possess guns, there seems to be a form of increased equality between men and women (Specht, 2006). In Liberia, increased gender equality between sexes also existed amongst the wives and husbands who had the same higher status and rank in the fighting forces. This implies that girls with higher military

structure ranks are the more likely have equal relationships with their husbands, which may not be the case with non-fighting girls who would generally be in an inferior position and passed from one commander to another.

***CASE Liberia: 'if you are a fighter you can be equal' – Female Combatants in Liberia***

In Liberia, girls reported that they took up guns for a number of reasons that included; protecting themselves, revenging against their enemies but also to prove they were equal to men. One of the Liberian girls interviewed said that: *“if you are equal as a girl to a boy depends on where you find yourself. If you are a fighter you can be equal. If you are a non-fighter, you can never be equal. These girls are always less”*.

Most of the girls received some basic military training, covering maintenance and use of weapons, combat tactics, fitness and drill. The training was intended to toughen the girls, and for some involved regular beatings. A smaller proportion of girl combatants had to go to the frontline immediately, learning the “job” as they went. The girl combatants used different coping strategies to deal with fear given the requirement “to be strong”.

Many female combatants expressed that they wanted to prove that women were as strong as men and defy common notions of femininity in Liberia, which described women as peaceful, obedient, fearful and weak people. Many of them derived a certain pride from being part of an activity that was typically preserved for men, and felt driven to prove their equality with men. Several of them encountered scepticism from male comrades: *You know, sometimes the remarks they used to make were that men are braver than women. And men can even do better than women. So the answer I used to give them “what men can do, women can do. In fact, women can even do better than men”. And most of the time when I used to go [to the front] with my girls, we actually used to prove to them that we could even do more than men.*

The phrase “women can even do better than men” became one of the slogans of the girls within LURD, as its female members enjoyed some visible successes in their struggle to demonstrate gender equality. While girls had initially been instructed to stay behind their male comrades when heavy fighting occurred, some girls simply broke these rules, earning the respect of their male comrades. Proving women’s toughness was one of the recurrent themes in interviews with girl combatants, motivating them to take considerable risks: *Sometimes we, the girls, will volunteer. We say yes we want to go. Sometimes we forced it, we said we have to go and then we went and slept in the bush. Sometimes we went a whole week in the ambush with them, rain beating on us. We were there with them, so they began to know that yes women were more than men.* (Specht, 2006)

In other circumstances the empowerment of women may actually be one of the aims of the conflict. For example in Eritrea women were actively encouraged to join the Eritrean People’s Liberation Front (EPLF) to fight for their freedom.

***CASE Eritrea: Fighting for Women's Liberation in Eritrea***

In 1991, 30 years of liberation war for Eritrean independence ended when the EPLF defeated the Ethiopian army forces. Female fighters had made up at least 25 to 30 percent of the total forces during the war. Women were first allowed to join the EPLF in 1973 and were thereafter encouraged to do so throughout the war (Klingebiel et al, 1995). Many female fighters joined quite young and without their parents' permission. According to the ideology of the EPLF, women's liberation and new alternative roles for women were important factors and part of the overall struggle for a liberated Eritrea (Barth, 2002). This ideology of the EPLF, and the opportunity to expand existing gender roles, could have been one of the most important reasons for the decision of these young Eritrean women and girls to join the movement (Coulter, Persson and Utas, 2008).

These examples illustrate the concept that by joining armed groups women are able to prove their strength in a situation of conflict, where the avenue to achieving social recognition is through ability to protect and fight. If you join as a girl however, you need to prove yourself more than the boys, the same as when joining any job that is regarded as a typical men's job. As a female car mechanic you need to prove yourself all the time, and each small mistake will be explained using a gender lens. The same seems to be the case in joining armed struggle as a woman. In short, in conflict the main way for women to prove their equality to men is joining armed groups and become equally tough, masculine and violent, in other words: war-time feminism.

***Conflict as an Opportunity***

Conflicts lead to absence, migration and displacement of men which results in the creation of, at least temporarily, female-headed households. This creates new roles for women both inside and outside the household as they assume responsibilities previously undertaken by men before conflict. Bouta, Frerks and Hughes (2005) report, that in such situations women are forced to acquire new skills and new responsibilities. In the absence of men women become the principle providers of education, healthcare, income and so on, both in homes and in the wider community. Conflict furthermore increases the need for women to work outside their homesteads, thereby often enlarging their social networks and exposure.

***CASE Uganda: Women's Increased Mobility and Public Presence in Uganda***

The LRA conflict threw the traditional division of economic roles and market segments into disarray. People were forced to flee to camps, others were abducted and some were killed. Family survival came to depend heavily on women, as large numbers of men were caught up in the conflict through recruitment in Local Defence Units (*militia* in Acholi and *amuka* in Lango), by joining the Uganda People's Defence Forces or being abducted by the LRA. The conflict forced women out of their households to search for other means of survival, increasing their mobility and public presence. The shift in roles has continued into the post-war period which witnessed a further expansion of cash-related activities by women, as circumstances continued to propel them to the head of family survival strategies. (International Alert, 2010: 19).

Changes to the social role of women can also take place, which can be empowering. In many cases, conflict itself also accentuates resourcefulness in adoption of coping and survival strategies with progressive and empowering gender role changes (Barth, 2002). For example, during the Liberian war in the 1990s, women were, in some regions, in less danger than men when travelling and able to pass roadblocks more easily. In such cases, men stayed home looking after children, while women took responsibility for trading over long distances (Specht, 2006).

Although in some examples conflict provided space for the socio-economic empowerment of women through the rise of female-headed households, the case is quite different in Afghanistan:

#### ***CASE Afghanistan: Secret Solidarity***

There are approximately 35,000 female-headed households in Afghanistan as a result of the protracted civil conflict. These households are known by the derogatory term *zamanee bee sarparast* meaning ‘unprotected women’ and often constitute the poorest of the poor (Povey, 2003). Additionally there is speculation that the rise of female-headed households is synonymous with a rise in sex-workers as women struggle to provide food for their families (Bennet *et al*, 2004). This contributes to the negative image of female-headed households as being ‘shameful’.

However, despite the increased gender inequality of war-time Afghanistan, some women found mechanisms of resistance and solidarity through the creation of secret organisations. One of the largest of these is the Women’s Vocational Training Centre which was active during the war. The centre has offered women in Kabul courses in English and German as well as computer skills courses. Its activists have also created income generating activities making in rural areas outside Kabul. Shafiq Moaber, the director, stated, ‘we had 6000 students from seven to 35 years of age. When Taliban came to power, they closed down our institution. But we continued our underground activities in our homes. Many times we were threatened with imprisonment and torture, but we continued.’ (Povey, 2003: 269). This example illustrates a different way in which conflict can change gender relations; whilst the opportunities of women in Afghanistan were far smaller than those of their counterparts in Liberia and Sierra Leone, the dynamic social pressure that conflict creates can still provide space for alternative relationships and roles to form.

As indicated above, conflict situations also often force women to organize themselves in solidarity groups in order to safeguard their basic necessities and to carry out activities related to education, healthcare, food distribution and care for family. Due to the (temporary) absence of men, women also assume political responsibilities (Bouta and Frerks, 2002). This implies that conflict offers windows of opportunities for women’s



emancipation and for the establishment and flourishing of women's groups. Women's organizations such as in Liberia are known for being at the forefront of peace movements.

***CASE Liberia: The Liberian 'Stand-off'***

The Liberian Women in Peacebuilding Network (WIPNET) is widely credited for its role in ending Liberia's civil conflict. In 2003 the warring government of Liberia and rebel Liberians United for Reconciliation and Democracy (LURD) party met in Ghana to begin peace talks. A delegation of WIPNET travelled to Ghana to continue campaigning for peace.

'Six weeks into the peace talks, the women had tired of the slow progress, the intense shelling and bombing of Monrovia and other regions, and news of approximately 200 deaths per day. Over 200 Liberian women staged a sit-in at the entrance of the conference hall, locking arms to block the exit of delegates and demanding that the leaders of warring factions sign the peace agreement to put an end to the hostility. During the sit-in, the women also demanded that no Liberian delegate would be allowed to leave the conference room for any reason until the agreement was signed. The women said their actions were intended to show to the world that they had finally had enough of the war in Liberia and were taking a stand to safeguard what was left of their society and communities. The standoff lasted for about two hours, during which the Chief Mediator and other diplomats pleaded with the women to disengage. The women agreed on the condition that the peace agreement would be signed within two weeks or the women would barricade the hall again. Two weeks later the Comprehensive Peace Agreement (CPA) was signed, marking the end of the Liberian civil war.' (Gbowee, 2009: 51)

Despite women's role in campaigning for peace in circumstances like Liberia, the percentages of female participation in formal peace processes worldwide are far from equal. UNIFEM (2010) provides evidence that only a small number of women actually participate in formal peace negotiations. In 24 major peace processes since 1998 only 2.5% of signatories, 3.2% of mediators, 5.5% of witnesses and 7.6% of negotiators were or are women. For example, women were completely absent from the Dayton peace process that ended the war in Bosnia and Herzegovina (Rehn and Sirleaf, 2002). These results are therefore questioning if women's increase in civic participation during conflict is actually leading to more equality in post-conflict political processes. Female combatants are often sent home by their seniors when political negotiations start and generally speaking women in post conflict societies remain at the margins of political, economic and social power; their voices and experiences often diminish when the peace processes start.

However, different sources seem to indicate that the increasing number of women participating in political leadership in post-conflict African countries is remarkable. In 2010 Rwanda, South Africa, Mozambique, Angola, Uganda and Burundi were all post-conflict African countries ranking in the top 30 countries worldwide with more than 30% of women in their parliaments. It is significant that conflict has increasingly enhanced the legitimacy of

women in leadership. Women in post-conflict states have increasingly presented themselves as political leaders at both national and local levels (Fuest, 2008). Bouta and Frerks (2002) stress that women bring diverse conflict experiences; they represent different interest groups and set other priorities than men. Their participation in the actual peace talks often fosters a wider popular mandate for peace, making it more sustainable, such as in South Sudan.

***CASE South Sudan: Political Freedom in South Sudan***

The coming together in Juba of diverse population groups with different life experiences has meant, in the words of one woman, that there is now greater ‘social freedom’ and acceptance of differences in traditions and cultural norms, and greater opportunities for learning from each other.

Women’s greater economic role was pointed out by both men and women as a positive development, and an example of the attitudinal change in society as a result of urbanisation and people’s experiences during displacement. Since Juba became the capital of South Sudan, women are playing a much more visible role in politics, and international actors have actively promoted the participation of women in government. Some women who previously were very active within the SPLM/A or civil society groups hold ministerial posts, and campaign and work within the town. (Martin, 2010: 4)

The above cases explain the complexity of the change in gender relations during conflict. On one hand female often become victims of gender based violence during war, or are pushed in the domestic fields while men ‘play war’ such as in Afghanistan. On the other hand the societal changes that conflict creates can provide space for more equal gender relations to form, both through the recruitment of females as combatants, and greater socio-economic responsibilities at the household level.

***Woman’s Roles in Instigating Violence***

Ideas about women and femininity form an essential part of the process of constructing a male identity that is deemed appropriate for a warring society (Farr, 2002). Even if they do not enlist as soldiers, women can, and do, participate in conflict through supporting and maintaining guerrilla forces. They supply the essentials of war: information, food, clothing and shelter. They nurse soldiers back to health. Mohammed (2003: 85) writes of a Somali saying about the role of women in the times of conflict: ‘An army with women cannot be easily defeated’.

In addition to the direct role that women can play in supporting armed groups and forces also referred to as “violent femininities”, women can also play a part in encouraging men to go to war. Barth (2002: 3) argues that ‘women are often as central to the roots and perpetuation of an armed conflict as men’. They praise those who join conflict without hesitation and at the same time they also ridicule, nag and abuse those who are reluctant to fight. During conflict, women have the power to initiate and give moral support to their husbands, fathers, sons and brothers for example through singing songs to

give courage to men (De Pauw, 2000). It is therefore important to take into account when planning DDR programmes that women can also contribute to on-going insecurity.

***CASE Karamoja: Cattle Raiding and Women in Uganda***

The role of women in instigating violence in Karamoja, Uganda, was highlighted at the ACTED conference as an under-researched area (Knaute and Kagan, 2008). Dolan and Okello (2007) raise the issue of women as unseen instigators of violence, who apply pressure on men to prove their manliness by going on raids. The inability of most men to meet this expectation is seen as a source of 'psycho-social problems' which can manifest themselves in domestic violence and substance abuse (Powel, 2010).

Jabs (2007: 1498), believes that cultural gender norms now perpetuate conflict and are 'leading to increased intractability' in Uganda. In 2007, she reported the current bride price to be between 60 and 100 heads of cattle, an amount which, according to focus groups, is difficult to obtain without raiding (Powel, 2010). In 2002, Halderman et al estimated the figure at 50–200 heads of cattle, up from around 25 heads of cattle during the previous generation (Powel, 2002: 42), although they had trouble explaining why this inflation has taken place. Furthermore, marriage must be ratified by cows or there is a risk of a woman leaving for another man of higher status and cattle wealth. The increased pressure to meet this elevated bride price is an instigating factor in the prevalence of cattle raiding.

***Rape Camps and Brave Fighters: Gender Based Violence during Conflict***

Gender based violence has increasingly become a key element of 'new wars' (Kaldor, 2007) in the last half century. GBV during conflict is present both as a tactic and a response to violence. Whilst GBV comes in multiple forms during conflict, rape is one of the most prevalent and damaging examples.

In the analysis of recent conflicts, rape is commonly described as a weapon of war. Card (1996) argues that using rape as a weapon is a form of terrorism which has two targets- first the victim or 'sacrificial target' who is raped (usually a civilian), and second the wider enemy community that the victim belongs to. Whilst women are generally the primary target, rape can also be seen as an attack on masculinity as men are unable to protect their wives/sisters/daughters. Dolan (2002: 12) refers to this as 'a direct attack on the most fundamental basis of adult masculine identity' whilst Baaz and Stern (2009: 500) argue that mass rape can be 'an effective means to humiliate (feminize) enemy men by sullyng "his" women, nation and homeland'. Furthermore rape can be employed as a tool for broader forms of violence such as ethnic cleansing. The 'rape camps' established by Serbian forces in the Bosnia and Herzegovina conflict are described as a deliberate weapon of war to fulfil the policy of ethnic cleansing through forced impregnation (Diken and Laustsen, 2005).

### ***CASE DRC: The Rape Capital of the World***

The Democratic Republic of Congo has repeatedly been described as 'the rape capital of the world'. During the civil conflict rape was so common that some report that it became a 'normalised' form of violence (Baaz and Stern, 2009). The violence particularly in the east of the country is 'exemplary of the use of rape not only to terrorise, displace and demoralise, but also to deliberately incur severe sexual trauma' (Mukwege and Nangini, 2009). Extraordinary high levels of extremely violent rape coupled have characterised a significant part of the conflict in DRC. In a study of rape survivors in Eastern Kivu Mukwege & Nangini found that *'72% of women reported that they were tortured during the rape itself (beaten, wounded with machetes, genitally mutilated/ burned by drops of plastic melted by flame), and 12.4% had had objects inserted into their vaginas (sticks, bottles, green bananas, pestles coated in chili pepper, rifle barrels); some women, after being raped, were killed by shots fired into their vaginas. Many women interviewed also believed that the rapes were aimed at destroying women's identity by means of "ethnic cleansing," and that spreading HIV/ AIDS and impregnating women are also deliberate acts'* (Mukwege and Nangini, 2009: 2).

Issues of violent masculinities are often heavily interlinked with the presence of GBV in conflict, particularly rape. The masculine heterosexuality of 'brave fighters' necessitates regular sexual relief to prevent soldiers from being 'distracted' by their sexual urges (Baaz and Stern, 2009). Furthermore rape can be viewed as an inherent expression of masculine dominance over women. However, women are not the exclusive victims of rape. Sivakumaran (2007) argues that male sexualised violence during conflict is also extremely important in understanding the construction, and deconstruction, of violent masculinities. Male rape, forced nudity and masturbation, and genital violence including sterilisation are all forms of GBV towards men which can occur during conflict. Similarly to GBV towards women, often sexual and gender based violence towards men is about power and dominance (Jones 2006, Sivakumaran, 2007). GBV therefore becomes a means to reinforce the masculinity of the perpetrator whilst simultaneously emasculating the victim.

Conflict can also lead to an increase in prostitution and sex trafficking as women in single-headed households are unable to support themselves so are forced into survival sex, making them increasingly vulnerable to sexualised violence (Mukwege and Nangini, 2009). Furthermore, numerous reports have also shown that internally displaced people (IDPs) and refugees fleeing a conflict area, especially women and children, are more vulnerable to violence, both by members of armed forces and by civilian populations (UN, 1998). GBV acts, such as rape, can occur at every stage of the refugee cycle, not only during conflict, but also in refugee camps and during reintegration process. Internally displaced women face additional dangers as they are often invisible to the international community within the context of violent conflict. Violence against women by an intimate partner or husband is reportedly common in refugee and internally displaced camps. In these settings, many

women also face the threat of violence when they engage in basic survival daily tasks such as fetching water or gathering firewood.

According to Sigsworth (2008: 22) and Women War Peace (2012), specific challenges faced by female displaced persons include increased vulnerability to human rights abuses including sexual harassment, and severe sex discrimination, among which are reasons many women and girls flee their homes in the first place. Abducted women and girls are often forced to serve as sex slaves, porters or soldiers in enemy militias and are therefore seen as accomplices and rejected by the community once the conflict is resolved.

In addition, many conflict settings lack legal frameworks, and/or safe and effective reporting mechanism for GBV. “Reporting wartime abuses was often frowned upon and risked bringing shame to households or communities” (Bangura and Specht, 2012: 55).

### **Gender Roles after War**

We have seen the different ways in which gender dynamics change during conflict. These relations change again after conflict and its dynamics need to be taken seriously throughout the conflict transformation period. Women’s participation in conflict-related work can be overlooked because stereotypical notions of gender-appropriate labour, and are often re-mobilized after conflict when a society strives to return to “normal”. However, an exploration of the extent to which there is a lasting shift in the role of women, building on changes triggered by conflict shows a complexity of factors.

### ***During the War I Was a Man: Identity Loss after Demobilisation***

If conflict cements traditional gender roles of men being warriors, then disarmament, demobilization and reintegration goes some way to deconstruct them, particularly in terms of their feelings of masculinity. Men can thus lose their identity as ‘fighter’ or protector once the conflict ends. The importance of a violent masculinity, which was valued and encouraged during the war, is no longer relevant once open conflict begins to subside and peace and reconciliation begin to be promoted.

Feelings of emasculation can further be intensified for men whose families have been negatively affected by conflict. The prevalence of rape, death and injury of family members during conflict stresses the failure of men to exert their role of protector. In addition the harsh living conditions faced by male soldiers make it difficult for them to fulfil their role as the ‘provider’ in the family sphere, thus further emasculating them both during conflict, when they are fighting, and when the conflict ends (Baaz and Stern, 2009).

Furthermore armed groups that return home defeated face an additional loss of masculine identity as ‘defeat in war is seen as inherently feminizing’ (Jones, 2006: 454). Combatants who are perceived to have ‘lost’ face social stigma for failing to uphold the ‘brave fighter’ identity constructed during conflict. These men have failed to both attack and protect the essential characteristics of a violent masculinity.

Men may also feel threatened and emasculated by women who took on more “masculine” roles during the conflict, such as those that participated in the armed conflict groups. This tension over loss of status can lead to an increase in violence against women as men

struggle to reassert their previously held power and control. This reassertion may be exacerbated by the violent militarized masculinities during the conflict which normalise violence and can lead to a higher prevalence of SGBV (Cockburn, 1999). As gender roles are challenged and subsequently re-established, the risk of SGBV heightens in a post-conflict setting (Corey, 2011). Furthermore the increasingly central role in the socio-economic sphere that women can play during conflict can lead to further feelings of emasculation among men.

Specht (2008) reveals that prior to the war in Liberia men were always the principle wage earner in the household, but because of the conflict many became unemployed. After the conflict, many men expected their wives to (also) contribute to the family income and in several cases forced them to engage in criminal activities such as smuggling, prostitution and drug dealing or in badly remunerated work in the informal sector. Bouta and Frerks (2002) report that because of great need for human resources in post-conflict rehabilitation activities, formal employment opportunities for women initially increase, although later they often decrease because of the return of men and the re-introduction of traditional labour divisions that existed in the pre-conflict period. Adaptation to the “new old life” is difficult for many men, as well as for their families who had to survive for a long time without their support. The loss of social status becomes more pressing if combined with trouble to find new jobs after conflict.

Finally the experiences of conflict can leave lasting psychological damage which may mean men find it challenging to shift away from violent masculinities ascribed to them during conflict. The lack of social and practical life skills both limits vocational opportunities and also contributes to low self-esteem and inability to manage disputes non-violently (UNDP, 2011).

#### ***CASE South Africa: the Challenge of Internalised Violence***

Gear (2002), in her study of on ex-combatants in post-apartheid South Africa, illustrates how one ex-combatant's attempt to adapt and re-adapt to civilian life in between periods of combat contributed to his violence: *“These types of experiences bring about a type of rage – a temper that is so hard to resist. I am sometimes faced with situations and have to physically walk away with hands and arms rigid in case I let go and hurt someone. It took me three years or so (with help from other mates that have been on the same situation) to cool down the aggression and nightmares.....My wife tells me that I get a ‘look’ and she knows that she is now dicing with death- that if she pushes a few more buttons, the consequences may be serious. On a few occasions she ended up against the wall with a pistol in her mouth, once on the floor, bleeding. There are no excuses for this type of behaviour. My wife being an ex-PF has seen this before and understood that it wasn't the loving man that she married but another person. That is why I don't drink in excess.....because of the possible explosion that lack of control caused by alcohol brings. I cannot risk that I lose control. The blow-out that could occur may be terrible. Hence I always must watch my temper, a temper that I never had before army.”* (Sigsworth, 2008: 27)

Many ex-combatants never learn how to manage social relationships constructively from their parents, community members and educators because they spend a significant portion of their lives with armed forces and groups which can eventually limit their

ability for self-expression, increasing the likelihood of expressing violent anger and frustrations, including in the form of GBV. DDR programmes insufficiently assist men in obtaining alternative and constructive masculinities.

### ***Alternative Peace Time Masculinities***

As explained above, men tend to prove their masculinity through violent and aggressive behaviour during times of conflict or protracted armed violence. However, following the end of conflict, violent behaviour is no longer the norm and men can face a loss of identity as they are forced to reconceptualise what it means to be a man.

#### ***CASE Afghanistan: 'Being a Man' in Afghanistan***

For at least the last ten years, “being a man” in Afghanistan has been linked to violent behaviour and the motivation to protect the honour of their women. As Afghanistan now makes the transition to democracy, Afghan women have been able to exercise a greater capacity for participation in the political sphere, an area that is generally considered to be masculine (Dudink *et al*, 2004: 4). Furthermore, women’s organisations that have moved into Afghanistan have been industriously providing women with increased opportunities to participate in the workforce, but have done little by the way of providing the same opportunities for men. This has resulted in a great deal of resentment among Afghan men (Abirafeh, 2007: 8-9). Masculinities are threatened under these conditions as traditional gender roles begin to shift and men stop being the sole economic provider of the family. One particularly interesting illustration of how men are attempting to challenge this threat to their masculinity is by their efforts to preserve their sense of pride by refusing food assistance despite having concerns about family income (Gilani, 2008: v60).

Possession of employment opportunities provides an alternative to the violent masculinities amongst the ex-combatants. UNDP (2011) reports that jobs or livelihoods are not only important as a source of income, but also represent a source of respect, identity and purpose in post-conflict settings. However, in some contexts, ex-combatants may perceive available jobs and income-generation opportunities as lacking in comparison with the status, prestige and easy access to resources associated with being a combatant. For example in Liberia ex-combatants expressed resistance to jobs they deemed as ‘unmanly’ or ‘women’s work’. UNDP (2011) adds that particularly younger men may reject work in ‘traditional’ sectors such as agriculture in favour of more ‘modern’ mechanical or technical jobs, even if market demands are limited and they lack necessary skills. They may prefer trades that are perceived to provide quick gains.

In contrast to the above, ex-combatants in other contexts are willing to accept lower paid jobs that will provide them dignity, respect and security. Male ex-combatants expressed a strong desire for jobs that would provide a sustainable alternative to violent or criminal activities or to work with private security companies, even if these jobs were less

lucrative (UNDP, 2011). If ex-combatants are unable to access these forms of livelihood then adopting criminality as an alternative masculine identity is at high risk.

***CASE Colombia: Criminality and Masculinity in Colombia***

For over 40 years, Colombia has been affected by continuing cycles of armed conflict and violence involving paramilitary, guerrilla and criminal groups. Following a ceasefire in 2002, a total of 53,141 combatants from both guerrilla and paramilitary groups (87% men and 13% women) went through the DDR process. However, the expansion of illegal drug cultivation and trade, targeted assassinations of ex-combatants, emergency of a wide spread gang culture, and the circulation of small arms and light weapons have led many ex-combatants to join gangs and emerging criminal groups for security, economic and social reasons. According to a report by the office of the Presidential High Counsellor for Reintegration, 7% of those demobilized (3,582 ex-combatants, among them 30 women) have re-entered criminal activities, and another 1,921 participants in the reintegration process are at high risk of re-entering criminal activities. (UNDP & IAWG, 2012: 56).

Additionally it is important to understand that DDR is not experienced by all men in the same way. The UN Inter-Agency Working Group on DDR (2012) reports that among young able-bodied males, DDR may lead to a masculinity crisis which in turn increases the pervasiveness of violent behaviour. For example in some cases, young ex-combatants may be perceived as a threat to elders or authorities when they return to their communities which may lead to their rejection if reintegration is not supported. The youth may perceive that power has been returned to old male elite and thus feel excluded from decision making. This is often compounded by a loss of trust in youth from elder members of the community, who experienced violence and humiliation from combatants during the conflict. On the other hand, for elderly and disabled men the process may create opportunities to renegotiate their masculinities vis-à-vis the existing hegemonic ideal of manhood.

***No Way Back: Crossing the Line of Femininity***

Similarly to the experiences of male combatants who are demobilized, DDR can also represent a loss of identities amongst female ex-combatants. Their newly ascribed status, gained through their roles in armed groups, and the degree of equality and social recognition achieved by their military ranks is often rapidly removed. In processes of DDR it is often women, both combatants and WAAFG, who are first to be demobilized. The challenge for women is that they are forced to return to the narrower, more restrictive roles as caretakers or mothers (UNDP, 2011: 1).

In addition, female combatants often experience significant problems with stigma during socio-economic reintegration, because they have “crossed the line of femininity”; behaviour that might have been appreciated during conflict, but retrospectively is often regarded as inappropriate. De Pauw argues that historically women who have been



actively involved in armed conflict are categorised as either 'dykes' or 'whores' (2000: 4), both terms with negative connotations. In addition to this stigma, the main challenges faced by female ex-combatants include: finding income for themselves and dependents; gaining access to and supporting themselves during education; feeling dependent/ loyal to former units/ commanders; adjusting to new social status and returning to dependence on male providers; negative perception of the receiving community and from their (potential) employees.

***CASE Liberia: Female Combatants Never Existed***

In Liberia ex-combatant girls struggle with roles ascribed to them by society and face a society that neither recognizes their past achievements nor leaves women space to prove equality to men. The stigma attached to women who have fought in the bush can be particularly problematic during reintegration; "Targeting female soldiers is a problem when women do not want to be recognized as combatants after a war is over because of stigma attached to this. In Liberia many women wanted to hide the fact that they had been soldiers. Such women are hard to find - 'You can't find them, it is like they never existed' - and consequently they never received any benefits after the war." (Bennett 1995).

In addition to the stigmatisation of female ex-combatants, Specht (2006) reports that girls may also face the stigma of being classified as a rape victim which may diminish her chance of getting married or make her feel weak or dependent. In many post-conflict societies it may be difficult for a girl who has been raped to find a partner for marriage. Rachida and Calleigh (2010) report that over 25% of married rape victims in Liberia were divorced by their husbands following their rape, of which 15% resulted in unwanted pregnancies. Unwanted pregnancies from rapes may lead to further stigmatization by the community, as well as economic and emotional consequences for mothers who are unable to support their children.

Jeannie and Moriah (2009) reported that returning mothers in Northern Uganda with difficult family situations were forced to look for husbands. However, instead of relieving them, these new husbands often compounded their problems. For example, Adule, who was abducted for five years by the LRA, explained, "*I was mistreated by my aunt and so I decided to get a man because I couldn't bear the conditions. If I didn't get married, no one could help me or advise me. But then I got married and there is no proper care like I thought. My husband allows me to stay with my child from the LRA and gives me some money for feeding, but he doesn't help at all with gardening. He helps his other wife. When I ask him to help, he says that he has never been to the bush [with the LRA] so he doesn't want someone from the bush disturbing him*" (Jeannie and Moriah 2009: 156). This example suggests that the stigma attached to ex-combatants can be debilitating, both socially and economically.

While DDR programmes become more and more gender responsive in terms of addressing specific needs of women and girls, they are less geared toward women empowerment. The recently closedown of the Nepalese DDR programme presented the

following conclusion on the gender responsiveness of the programme: The programme has done an outstanding job in attracting and maintaining a high percentage of women in the programme and providing outstanding gender specific support, but has missed opportunities to assist the girls and young women to build on their freedom, knowledge and strengths. The programme did not have a strong transformative gender impact (although some in economic spheres) but the focus has been on RE-integration, assisting women to find back their place in the traditional society of Nepal and less to become agents of change.

### ***Gender Based Violence after Conflict***

As previously stated, rates of domestic violence tend to rise following the end of conflict. A reason suggested for this is that as people return to their communities and the prevalence of open violence falls, GBV begins to manifest itself in the private rather than the public sphere. The following three dimensions should be taken into account to understand and address this issue:

Firstly, as previously mentioned economic, political and social challenges prevailing after conflict can lead men to feel disempowered and emasculated (Page, 2009). Domestic violence can therefore constitute a means for men to reaffirm their power over women. There are strong indications that the loss of identity, the frustration and uncertainty of men about their undefined new role, results in an increase in domestic violence, including Sexual GBV (SGBV). Unemployed, demobilised frustrated and aggressive young men and soldiers socialized to violence and brutality during war may form gangs, particularly in urban areas and can pose a constant threat to the security of women and children (Vavra, 2005). The multiple forms of emasculation that the end of conflict can trigger, for example through disarmament, loss of employment and status, and defeat, can result in the formation of an 'even more volatile hyper-masculinity' (Jones, 2006: 454). This new expression of masculinity forms as a response to the deconstruction of original violent masculinities during conflict and is particularly manifested in domestic violence as men seek to regain their dominance. Alongside the need to reassert male dominance, Manjoo and Mcraith (2011) and ICTJ (2008), relate post-conflict increases in domestic violence to the availability of small arms, an increased tolerance of violence within society and the fact that heads of households have previously been engaged in military violence. Furthermore research suggests that the 'presence of a gun in the home increases the likelihood that domestic violence will result in death' (Schroeder, Farr and Schnabel, 2005: 6).

Secondly, militarization combined with wide-spread availability of small weapons in communities, is a significant factor in the increased incidence GBV during and at the end of the conflict. The failure to ensure accountability through investigation, prosecution and punishment for these crimes allows sexual violence acts to persist in most post-conflict societies characterised by a weak security sector. Most perpetrators of sexual violence have not been charged with a criminal offence even when a complaint has been registered with the police. Also, in the absence of rights to confidentiality, victim support mechanisms and positive examples of the system being able to resolve such cases,

victims are generally reluctant to seek legal remedy. This implies that the breakdown or failures of the justice systems in post-conflict countries can play a part in protracting the incidence of GBV in post-conflict circumstances.

Thirdly, as previously discussed, women's economic role can increase as a result of the absence of men during conflict. This often gives women space to assume greater status and take on roles during and after conflict that were previously undertaken by men in the pre-conflict period. This kind of economic empowerment can result in women taking a more central role in decision-making within the household. In these circumstances women invariably have to bear greater responsibility for their children, elderly relatives and often wider community. When conflict ends often women are thus no longer inclined to return to their pre-war position in the household. Hamber *et al*, *explain* (2006: 298) that 'economic security is crucial to women's re-imaginings of the concept [of security], because it is regarded as a key factor in ensuring their independence. In post-conflict situations, however, women's empowerment can emasculate men who are used to providing materially for their families, resulting in increased tension between genders that can ignite domestic violence'. According to Hamber *et al.* (2006), some South African women respondents expressed concern that male resentment towards the equality agenda often manifests itself in violence against women. This is especially true for husbands going through a self-confidence crisis and not accepting the new assertiveness of their wives and their leadership capacities (Vavra, 2005).

Although often present in different forms, GBV is still a serious issue in post-conflict contexts. With the reduction of open violence, the persistence of rape and overt forms of GBV tend to reduce whilst more 'private' forms of GBV, such as domestic violence, often rise. The changing gender roles and relations that come as a result of conflict have significant impact on the increasing rates of GBV during and in post-conflict contexts. This is triggered by both by the women's more central economic role as household heads which threatens men, and the deconstruction of violent masculinities of demobilised men. DDR programmes should explicitly work on these two dimensions and also link to broader SSR programmes that can work on strengthening legislative and reinforcement capacities to stop cultures of impunity.

### **Conclusions: Gender DDR and Violent Masculinities**

From an exploration of changing gender roles during and after conflict we can draw several conclusions. Firstly that the ascribed social characteristics of men and women, and specifically what is masculine and feminine, are dynamic and that the conditions of conflict create space for gender roles to change substantially. We furthermore saw that these the extent to which gender roles shift and the way they change during conflict is partially determined by the nature of pre-war gender relations.

Conflicts create social, economic and political space for girls and women but the extent to which these changes create lasting results is not uniform. While in some countries the conflict really transformed traditional gender roles, elsewhere these changes were only of temporally nature. In some countries gender divisions actually become stricter due to the conflict.

During conflict men are pressurised by society, both by fellow men and also by women, to adopt violent masculinities in order to be effective protectors of the family, community, region, nature or honour.

In a number of countries the feature of war-time feminism can be observed where women take up arms to prove their equality to men. They prove that they can be as effective in protecting, attacking and violent behaviour and thereby gain status in societies where violent masculine behaviour is the highest valued identity.

Economic, political and social challenges prevailing after conflict can lead men to feel disempowered and emasculated and GBV can therefore constitute a means for men to reaffirm their power over women. There are strong indications that the loss of identity, the frustration and uncertainty of men about their undefined new role after demobilisation, results in an increase in domestic violence.

When men are demobilised finding their wives and daughters back in the communities this creates a sensitive process of re-balancing and re-determining gender relations. Several cases show increased tensions between empowered women and frustrated men that come home without a job and loss of social status. Increase in domestic violence can at least partly be ascribed to these tensions.

The link between DDR and GBV requires more attention in the design and implementation of DDR programmes. Gender responsive DDR should go much beyond attracting women into DDR processes and addressing their immediate needs, such as separate lodging in demobilisation camps, child care support etc. Programmes should try to address issues of identity loss of both male and female combatants and should attempt to stimulate a transformative impact, building on changed gender roles and dynamics, instead of trying to RE-integrate combatants into their old pre-conflict roles. The majority of the combatants worldwide are youth, and DDR programmes should stimulate the agency of these young men and women, who often had the courage to break out of traditional roles and where at the forefront of movements demanding for social change.

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# Gender Based Violence and International Humanitarian Law: Steps to Improve the Protection of Women in War

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## Introduction

“It is now more dangerous to be a woman than a soldier in modern wars.”

Major General Patrick Cammaert, Former Deputy Force Commander,  
MONUC<sup>2</sup>

“In no other area is our collective failure to ensure effective protection for civilians more apparent – and by its very nature more shameful – than in terms of the masses of women and girls, but also boys and men, whose lives are destroyed each year by sexual violence perpetrated in conflict.”

Ban Ki-moon, Secretary-General of the United Nations<sup>3</sup>

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1 The author would like to thank Caroline Roy and Paola Robotti for their help.

2 Quoted in the Background document: Session II (“Sexual Violence against Women and Children in Armed Conflict”), Parliamentary Hearing at the United Nations, New York, 20-21 November 2008. Available at <http://www.ipu.org/splz-e/unga08/s2.pdf>

3 Statement by Ban Ki-moon presenting the Report of the Secretary-General on the Protection of Civilians in Armed Conflict (S/2007/643). Available at <http://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/Civilians%20S2007643.pdf>. UN SG’s Statement available at <http://www.un.org/apps/news/story.asp?NewsID=24631&Cr=civilians&Cr1=conflict>

“We are like snowflakes. One alone will melt, but together, we can stop traffic.”

Laura Liswood, Secretary-General, Council of Women World Leaders<sup>4</sup>

Women are affected in many ways by war, some of them are very specific to women. Their plight does not receive the attention it deserves. The law which protects them is too frequently not observed. In many ways, they are “tools of war”. The level of protection and assistance they receive is all too often inadequate.

Women have specific instruments and provisions of international and domestic law to protect their rights in time of armed conflict. A better respect for them is urgently needed.

Women in war are both victims and actors. Even if, in history, women were at times playing an active role in combat,<sup>5</sup> international humanitarian law deals with women mostly as victims. One example is the “*Lieber Code*” (1863).<sup>6</sup> Another more recent example is the “*Responsibility to Protect*” (2001).<sup>7</sup> In both cases, the only reference to women is about rape. Today, women are increasingly acknowledged as actors of international humanitarian law and action. They were pioneers of humanitarian action and codification on behalf of war victims: the women of Lombardy (Solferino), Clara Barton (founder of the American Red Cross), Florence Nightingale, Harriet Beecher Stowe (Uncle Tom’s Cabin), Eleanor Roosevelt (one of the drafters of the Universal Declaration of Human Rights), Carla Del Ponte (former Prosecutor of the International Criminal Tribunal for Former Yugoslavia - ICTY), Navi Pillay (United Nations High Commissioner for Human Rights - OHCHR), Valerie Amos (Head of OCHA), the Directors of UNICEF, UNESCO, as well as Graça Machel,<sup>8</sup> Sadako Ogata,<sup>9</sup> Gro Brundtland,<sup>10</sup> Louise Arbour, Jody Williams (1997 Nobel Peace Prize) and also many other women who did play important roles away from the limelight.<sup>11</sup>

4 Quoted by Zainab Hawa Bangura, Special Representative of the Secretary-General on Sexual Violence in Conflict, in her Keynote speech on the occasion of the 30th Anniversary of the Committee on the Elimination of Discrimination against Women (CEDAW). “Protecting Women from Sexual Violence in Conflict and Post-Conflict Situations”, Geneva, Palais des Nations, 18 October 2012. Available at <http://www2.ohchr.org/english/bodies/cedaw/docs/30anniversary/StatementByMs.ZainabHawaBangura.pdf>

5 See the Irène Hermann and Daniel Palmieri (2010). “Between Amazons and Sabinés: a historical approach to women and war”. *International Review of the Red Cross* n.º 877, pp. 19-30.

6 Instructions for the Government of Armies of the United States in the Field, prepared by Francis Lieber, LL.D., Originally Issued as General Orders nº100, Adjutant General’s Office, 1863. Available at [http://avalon.law.yale.edu/19th\\_century/lieber.asp](http://avalon.law.yale.edu/19th_century/lieber.asp)

7 The Responsibility to Protect: Report of the International Commission on Intervention and State Sovereignty. paragraphs 2.29 and 4.20. Available at <http://responsibilitytoprotect.org>.

8 Available at [www.theelders.org/elders/graca-machel](http://www.theelders.org/elders/graca-machel).

9 United Nations High Commissioner for Refugees (1990-2000), President of the Japan International Cooperation Agency (2003-2012) and Chairperson of the World Economic Forum Japan (2012). Available at <http://www.weforum.org/news/mme-sadako-ogata-becomes-chairperson-world-economic-forum-japan>.

10 Available at [www.theelders.org/gro-brundtland](http://www.theelders.org/gro-brundtland).

11 See the movie *The Whistleblower* (2010) based on the true story, the experience of Kathryn Bolkovac, a Lincoln, Nebraska police officer who served as a peacekeeping post-war Bosnia and criticized the UN for covering up a sexual slavery and human-trafficking scandal. See all the International Conventions: International

## Women Protected by a Two-tiered Approach: General and Specific Protection

Women in war are protected by International Humanitarian Law (IHL), also called Law of Armed Conflicts (LOAC), not only by written rules but also by customary rules, especially peremptory norms (“*jus cogens*”) such as Common Art. 3 of the 1949 Geneva Conventions<sup>12</sup> and non-derogable human rights.<sup>13</sup> These fundamental rules should be the basis for protection war victims against gender-based violence in all situations of armed conflicts. They, as all war victims, could also be protected by Human Rights on the regional and universal level<sup>14</sup>, as well as by Refugee Law on the regional and universal level<sup>15</sup>, and by domestic law (including Military Manuals and Rules of Engagement – ROE), and, in all civilizations, by religious and traditional values as well as by ethics (military, medical), and by the “public conscience” (embodied in the “Martens Clause” since the 1899 Hague Regulations).<sup>16</sup> Women in War are protected by a two-tiered approach: they are protected by general protection for all war victims, women and men, provided by the 1949 Geneva Conventions and by both 1977 Additional Protocols.<sup>17</sup> Women are

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Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights in 1966, International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) in 1965, International Covenant on the Elimination of All Forms of Discrimination against Women (CEDAW) in 1979, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) in 1984, Convention on the Rights of the Child (CRC) in 1989, International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICRMW) in 1990, International Convention for the Protection of All Persons from Enforced Disappearance (CPEd) in 2006.

- 12 See Jelena Pejic (2011). “The Protective Scope of Common Article 3: More than Meets the Eye”. *International Review of the Red Cross* n.º 881. Available at <http://www.icrc.org/eng/resources/documents/article/review-2011/irrc-881-pejic.htm>
- 13 See the Geneva Academy on International Humanitarian Law and Human Rights. Rule of Law in Armed Conflicts Project. Available at [www.geneva-academy.ch/RULAC/derogation\\_from\\_human\\_rights\\_treaties\\_in\\_situations\\_of\\_emergency.php](http://www.geneva-academy.ch/RULAC/derogation_from_human_rights_treaties_in_situations_of_emergency.php)
- 14 International Legal Protection of Human Rights in Armed Conflicts United Nations Human Rights. New York and Geneva, 2011. Available at [http://www.ohchr.org/Documents/Publications/HR\\_in\\_armed\\_conflict.pdf](http://www.ohchr.org/Documents/Publications/HR_in_armed_conflict.pdf)
- 15 UNHCR Handbook for the Protection of Women and Girls, and Resolution 1925 SC (2000) Part 12 “Calls upon all parties to armed conflict to respect the civilian and humanitarian character of refugee camps and settlements, and to take into account the particular needs of women and girls, including in their design, and recalls its resolutions 1208 (1998) of 19 November 1998 and 1296 (2000) of 19 April 2000”
- 16 On the Martens Clause, see Theodor Meron (2000). “The Martens Clause, Principles of Humanity, and Dictates of Public Conscience”. *American Journal of International Law*, vol. 94, pp. 78-89. Available at <http://users.polisci.wisc.edu/kinsella/martens%20clause.pdf>. S. Miyazaki (1984). “The Martens Clause and international humanitarian law” in Swinarski (ed.), *Studies and Essays on International Humanitarian Law and Red Cross principles in Honour of Jean Pictet*. Geneva : ICRC, pp. 433-444. R. Ticehurst (1997). “The Martens Clause and the Laws of Armed Conflict”. *International Review of the Red Cross* n.º 317, pp. 125-134. Michel Veuthey (2004). “Public Conscience in International Humanitarian Law Today” in Horst Fischer, Ulrike Froissart, Wolff Heintschell von Heinegg (eds), *Krisensicherung und Humanitärer Schutz – Crisis Management and Humanitarian Protection*. Festschrift für Dieter Fleck. Berlin: Berliner Wissenschafts-Verlag pp. 611-642. Available at [www.droit-international-humanitaire.org/telechargements/pictures/veuthey\\_public\\_conscience\\_fleck.pdf](http://www.droit-international-humanitaire.org/telechargements/pictures/veuthey_public_conscience_fleck.pdf)
- 17 1949 Wounded and Sick (GC I), 1949 Shipwrecked (GC II), 1949 Prisoners of War (GC III), 1949 Civilians (GC IV), 1977 AP I & II, all available (texts and commentaries) on the ICRC’s website: [www.icrc.org/ihl](http://www.icrc.org/ihl).

also protected by some 40 provisions of the 1949 Geneva Conventions and the 1977 Additional Protocols: those are specific protections for women.

Within this specific protection for women, we again have a two-tiered approach:

- A General Protection for All Women:

Women enjoy a general protection according to the 1949 Geneva Conventions. Among others, let us mention Article 12, 4 of both First and Second Conventions: «Women must be treated with all consideration due to their sex.» and Article 27 of the Fourth Convention: «Women must be especially protected against any attack on their honor, in particular against rape, enforced prostitution, or any other form of indecent assault».

- Specific Protection for Certain Women:

Certain women, such as expectant women, mothers of children under seven years of age and women in detention benefit from a special protection.<sup>18</sup> Here are the specific protections for women in the Third Geneva Convention: «Women shall be treated with all the regard due to their sex and shall in all cases benefit by treatment as favourable as that granted to men. (Art. 14, 2). Taking into consideration the provisions of the present Convention relating to rank and sex, and subject to any privileged treatment which may be accorded to them by reason of their state of health, age or professional qualifications, all prisoners of war shall be treated alike by the Detaining Power, without any adverse distinction based on race, nationality, religious belief or political opinions, or any other distinction founded on similar criteria (Art. 16).

In any camps in which women prisoners of war, as well as men, are accommodated, separate dormitories shall be provided for them (Art. 25, last paragraph). Prisoners of war shall have for their use, day and night, conveniences which conform to the rules of hygiene and are maintained in a constant state of cleanliness. In any camps in which women prisoners of war are accommodated, separate conveniences shall be provided for them (Art. 29, paragraph 2). A woman prisoner of war shall not be awarded or sentenced to a punishment more severe, or treated whilst undergoing punishment more severely, than a woman member of the armed forces of the Detaining Power dealt with for a similar offence (Art. 88, 2). In no case may a woman prisoner of war be awarded or sentenced to a punishment more severe, or treated whilst undergoing punishment more severely, than a male member of the armed forces of the Detaining Power dealt with for a similar offence (Art. 88, 3).

Women prisoners of war undergoing disciplinary punishment shall be confined in separate quarters from male prisoners of war and shall be under the immediate supervision of women (Art. 97, paragraph 4).

A woman prisoner of war on whom such a sentence has been pronounced shall be confined in separate quarters and shall be under the supervision of women. (Art. 108,

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18 See Julie Ashdown and Mel James (2010). “Women in Detention”, *International Review of the Red Cross*, vol. 92, n.° 877, pp. 123-143. Available at <http://www.icrc.org/eng/assets/files/other/irrc-877-ashdown-james.pdf>

paragraph 2) Here are the specific protections for women in the 1949 Fourth Geneva Convention: In time of peace, the High Contracting Parties and, after the outbreak of hostilities, the Parties thereto, may establish in their own territory and, if the need arises, in occupied areas, hospital and safety zones and localities so organized as to protect from the effects of war, wounded, sick and aged persons, children under fifteen, expectant mothers and mothers of children under seven (Art. 14).

The wounded and sick, as well as the infirm, and expectant mothers, shall be the object of particular protection and respect (Art. 16). The Parties to the conflict shall endeavour to conclude local agreements for the removal from besieged or encircled areas, of wounded, sick, infirm, and aged persons, children and maternity cases, and for the passage of ministers of all religions, medical personnel and medical equipment on their way to such areas (Art. 17).

Persons regularly and solely engaged in the operation and administration of civilian hospitals, including the personnel engaged in the search for, removal and transporting of and caring for wounded and sick civilians, the infirm and maternity cases shall be respected and protected (Art. 20, par. 1).

Convoys of vehicles or hospital trains on land or specially provided vessels on sea, conveying wounded and sick civilians, the infirm and maternity cases, shall be respected and protected in the same manner as the hospitals provided for in Article 18, and shall be marked, with the consent of the State, by the display of the distinctive emblem provided for in Article 38 of the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of 12 August 1949, Art.22. Aircraft exclusively employed for the removal of wounded and sick civilians, the infirm and maternity cases or for the transport of medical personnel and equipment, shall not be attacked, but shall be respected while flying at heights, times and on routes specifically agreed upon between all the Parties to the conflict concerned (Art. 21).

Each High Contracting Party shall allow the free passage of all consignments of medical and hospital stores and objects necessary for religious worship intended only for civilians of another High Contracting Party, even if the latter is its adversary. It shall likewise permit the free passage of all consignments of essential foodstuffs, clothing and tonics intended for children under fifteen, expectant mothers and maternity cases (Art. 23). Women shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault (Art. 27, 2).

Children under fifteen years, pregnant women and mothers of children under seven years shall benefit by any preferential treatment to the same extent as the nationals of the State concerned (Art. 38, paragraph 5).

The Occupying Power shall not hinder the application of any preferential measures in regard to food, medical care and protection against the effects of war which may have been adopted prior to the occupation in favour of children under fifteen years, expectant mothers, and mothers of children under seven years (Art. 50, last paragraph). Women



shall be confined in separate quarters and shall be under the direct supervision of women (Art. 76, paragraph 4).

Whenever it is necessary, as an exceptional and temporary measure, to accommodate women internees who are not members of a family unit in the same place of internment as men, the provision of separate sleeping quarters and sanitary conveniences for the use of such women internees shall be obligatory. (Art. 85, last paragraph). Expectant and nursing mothers and children under fifteen years of age, shall be given additional food, in proportion to their physiological needs (Art. 89, last paragraph).

Maternity cases and internees suffering from serious diseases, or whose condition requires special treatment, a surgical operation or hospital care, must be admitted to any institution where adequate treatment can be given and shall receive care not inferior to that provided for the general population (Art. 91, paragraph 2).

A woman internee shall not be searched except by a woman. (Art. 97, paragraph 4). Women internees undergoing disciplinary punishment shall be confined in separate quarters from male internees and shall be under the immediate supervision of women (Art. 124, last paragraph). Sick, wounded or infirm internees and maternity cases shall not be transferred if the journey would be seriously detrimental to them, unless their safety imperatively so demands (Art. 127, paragraph 3). The Parties to the conflict shall, moreover, endeavour during the course of hostilities, to conclude agreements for the release, the repatriation, the return to places of residence or the accommodation in a neutral country of certain classes of internees, in particular children, pregnant women and mothers with infants and young children, wounded and sick, and internees who have been detained for a long time (Art. 132, paragraph 2).

Here are the specific protections for women in the First 1977 Additional Protocol applicable in international armed conflicts:

For the purposes of this Protocol: a) “wounded” and “sick” mean persons, whether military or civilian, who, because of trauma, disease or other physical or mental disorder or disability, are in need of medical assistance or care and who refrain from any act of hostility. These terms also cover maternity cases, new-born babies and other persons who may be in need of immediate medical assistance or care, such as the infirm or expectant mothers, and who refrain from any act of hostility (Art. 8). This Part, the provisions of which are intended to ameliorate the condition of the wounded, sick and shipwrecked, shall apply to all those affected by a situation referred to in Article 1, without any adverse distinction founded on race, colour, sex, language, religion or belief, political or other opinion, national or social origin, wealth, birth or other status, or on any other similar criteria (Art. 9, 1). If the civilian population of any territory under the control of a Party to the conflict, other than occupied territory, is not adequately provided with the supplies mentioned in Article 69, relief actions which are humanitarian and impartial in character and conducted without any adverse distinction shall be undertaken, subject to the agreement of the Parties concerned in such relief actions. Offers of such relief shall not be regarded as interference in the armed conflict or as unfriendly acts. In the distribution of relief consignments, priority shall be given to those persons, such as children, expectant mothers, maternity cases and

nursing mothers, who, under the Fourth Convention or under this Protocol, are to be accorded privileged treatment or special protection (Art. 70, 1).

Women whose liberty has been restricted for reasons related to the armed conflict shall be held in quarters separated from men's quarters. They shall be under the immediate supervision of women. Nevertheless, in cases where families are detained or interned, they shall, whenever possible, be held in the same place and accommodated as family units (Art. 75, paragraph 5). Chapter II (Articles 76 to 78) explicitly addresses the protection of women and children:

Art 76. Protection of women:

- Women shall be the object of special respect and shall be protected in particular against rape, forced prostitution and any other form of indecent assault ;
- Pregnant women and mothers having dependent infants who are arrested, detained or interned for reasons related to the armed conflict, shall have their cases considered with the utmost priority;
- To the maximum extent feasible, the Parties to the conflict shall endeavour to avoid the pronouncement of the death penalty on pregnant women or mothers having dependent infants, for an offence related to the armed conflict. The death penalty for such offences shall not be executed on such women.

Here are the specific protections for women in the Second 1977 Additional Protocol, applicable in non-international armed conflicts:

- This Protocol shall be applied without any adverse distinction founded on race, colour, sex, language, religion or belief, political or other opinion, national or social origin, wealth, birth or other status, or on any other similar criteria (hereinafter referred to as “adverse distinction”) to all persons affected by an armed conflict as defined in Article 1 (Art. 2) (a) except when men and women of a family are accommodated together, women shall be held in quarters separated from those of men and shall be under the immediate supervision of women (Art. 5, paragr. 2, letter a).
- The death penalty shall not be pronounced on persons who were under the age of eighteen years at the time of the offence and shall not be carried out on pregnant women or mothers of young children (Art. 6, paragr. 4).

Gender-based violence is included in the definition of grave breaches of the four 1949 Geneva Conventions<sup>19</sup> and of the war crimes in the Statutes the International Criminal Court (ICC),<sup>20</sup> International Criminal Tribunal for the former Yugoslavia (ICTY),<sup>21</sup> International Criminal Tribunal for Rwanda (ICTR).<sup>22</sup> On 9 January 1997, the ICTR

19 “Wilful killing, torture or inhuman treatment, including biological experiments, wilfully causing great suffering or serious injury to body or health and taking of hostages are grave breaches. “ See also GC I, Art. 50; GC II, Art. 51; GC III, Art. 130; GC IV, Art. 147. All States Parties to the Geneva Conventions have a universal jurisdiction to prosecute or extradite war criminals.

20 Available at [http://untreaty.un.org/cod/icc/statute/english/rome\\_statute\(c\).pdf](http://untreaty.un.org/cod/icc/statute/english/rome_statute(c).pdf)

21 Available at [http://www.icty.org/x/file/Legal%20Library/Statute/statute\\_sept09\\_en.pdf](http://www.icty.org/x/file/Legal%20Library/Statute/statute_sept09_en.pdf) (Updated Statute)

22 Available at <http://www.unictl.org/Portals/0/English/Legal/Statute/2010.pdf> See also <http://hrbrief.org/2010/10/security-council-amends-ictr-statute-to-promote-fulfillment-of-completion-strategy/> (UN Security Council amends ICTR Statute)

held its first trial, one of the most momentous cases in international law: *The Prosecutor v. Jean-Paul Akayesu*.<sup>23</sup> During the 1994 Rwandan Genocide, Jean-Paul Akayesu served as the mayor of Taba, a city in which thousands of Tutsis were systematically raped, tortured and murdered. At the start of his trial, Akayesu faced 12 charges of genocide, crimes against humanity and violations of Common Article 3 of the 1949 Geneva Conventions in the form of murder, torture and cruel treatment. In June 1997, the Prosecutor added “three counts of crimes against humanity and violations of Common Article 3 and Additional Protocol II for rape, inhumane acts and indecent assault” (Report of the ICTR (S/1997/868)). These additional counts marked the first time in the history of international law that rape was considered a component of genocide.<sup>24</sup> Legal provisions are not sufficient. We would like to emphasize the seven stages in the struggle for the respect of legal norms protecting human life and dignity in war: codification, ratification, application, implementation (for instance training),<sup>25</sup> sanction of violations, reparation and rehabilitation, and reconciliation.<sup>26</sup> We should include all of them in considering how

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23 Prosecutor v. Jean-Paul Akayesu, International Criminal Tribunal for Rwanda, Case No. ICTR-96-4-T 2, 2 september 1998. Available at [www1.umn.edu/humanrts/instree/ICTR/AKAYESU\\_ICTR-96-4/AKAYESU\\_ICTR-96-4\\_Index.html](http://www1.umn.edu/humanrts/instree/ICTR/AKAYESU_ICTR-96-4/AKAYESU_ICTR-96-4_Index.html)

24 Available at <http://untreaty.un.org/cod/avl/ha/ictr/ictr.html>

25 UN SC Resolution 1888 (2009), 19. «Encourages Member States to deploy greater numbers of female military and police personnel to United Nations peacekeeping operations, and to provide all military and police personnel with adequate training to carry out their responsibilities»

26 UN SC Resolution 1325 (2000), 13. «Encourages all those involved in the planning for disarmament, demobilization and reintegration to consider the different needs of female and male ex-combatants and to take into account the needs of their dependants», UN SC Resolution 1325 (2000) 16. «Invites the Secretary-General to carry out a study on the impact of armed conflict on women and girls, the role of women in peace-building and the gender dimensions of peace processes and conflict resolution, and further invites him to submit a report to the Security Council on the results of this study and to make this available to all Member States of the United Nation», UN SC Resolution 1888 (2009) « Reaffirming that ending impunity is essential if a society in conflict or recovering from conflict is to come to terms with past abuses committed against civilians affected by armed conflict and to prevent future such abuses, drawing attention to the full range of justice and reconciliation mechanisms to be considered, including national, international and “mixed” criminal courts and tribunals and truth and reconciliation commissions, and noting that such mechanisms can promote not only individual responsibility for serious crimes, but also peace, truth, reconciliation and the rights of the victims», UN SC Resolution 1888 (2009)1. « Reaffirms that sexual violence, when used or commissioned as a tactic of war in order to deliberately target civilians or as a part of a widespread or systematic attack against civilian populations, can significantly exacerbate situations of armed conflict and may impede the restoration of international peace and security; affirms in this regard that effective steps to prevent and respond to such acts of sexual violence can significantly contribute to the maintenance of international peace and security; and expresses its readiness , when considering situations on the agenda of the Council, to take, where necessary, appropriate steps to address widespread or systematic sexual violence in situations of armed conflict». But also UN SC Resolution 1888 (2009)13. «Encourages States, with the support of the international community, to increase access to health care, psychosocial support, legal assistance and socio economic reintegration services for victims of sexual violence, in particular in rural areas ; [...]» 15. «Encourages leaders at the national and local level, including traditional leaders where they exist and religious leaders, to play a more active role in sensitizing communities on sexual violence to avoid marginalization and stigmatization of victims, to assist with their social reintegration, and to combat a culture of impunity for these crimes;”

to improve the implementation of international humanitarian law without forgetting the role of women in all stages, at the international and local levels.

A good example of codification through a woman is Jody Williams' role for the Ottawa Convention (1997). Jody Williams is the founding coordinator of the International Campaign to Ban Landmines (ICBL),<sup>27</sup> which was formally launched by six nongovernmental organizations (NGOs) in October 1992. The ICBL is a network of like-minded Governments, International Organizations like UNICEF, the ICRC as well as Red Cross/Red Crescent National Societies, and NGOs. The ICBL achieved its goal of an international treaty banning antipersonnel landmines during the diplomatic conference held in Ottawa in September 1997. Jody Williams' approach was imitated by the adoption of the ICC Rome Statute in 1998 and for the Convention on the Cluster Munitions adopted in Oslo in 2008.<sup>28</sup>

Today, the trend is more to adopt soft-law instruments (Code of conduct for Private-Military Security Companies,<sup>29</sup> Declarations, "Deeds of Commitment" for armed non-State actors, Documents, such as the "Montreux Document",<sup>30</sup> "Plans of Action",<sup>31</sup> Guidelines,<sup>32</sup> "Voluntary Principles on Security and Human Rights",<sup>33</sup> etc.) rather than hard treaty law (Conventions or Protocols), especially in relation with Non-State Actors (parties to armed conflicts, PMSCs, private business, civil society at large). The *Geneva Call* ("Appel de Genève")<sup>34</sup> was founded in 2000 by Elisabeth Decrey

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27 Available at <http://www.icbl.org/>

28 Kenneth Anderson (2000). "The Ottawa Convention Banning Landmines, the Role of International Non-Governmental Organizations and the Idea of International Civil Society". *EJIL*, vol. 11, n°1. Available at <http://ejil.oxfordjournals.org/content/11/1/91.full.pdf>

29 See «The International Code of Conduct for Private Security Service Providers». Available at <http://www.icoc-psp.org> and <http://www.dcaf.ch/Event/Working-Towards-an-International-PMSC-Code-of-Conduct>

30 "Montreux Document on Pertinent International Legal Obligations and Good Practices for States related to Operations of Private Military and Security Companies during Armed Conflict". Available at [www.eda.admin.ch/psc](http://www.eda.admin.ch/psc)

31 See the OHCHR's (2002). *Handbook on National Human Rights Plans of Action*. Professional Training Series n.° 10, Geneva. Available at <http://www.ohchr.org/Documents/Publications/training10en.pdf>. UN WOMEN (2012). *Handbook for National Action Plans on Violence against Women*. New York. Available at <http://www.un.org/womenwatch/daw/vaw/handbook-for-nap-on-vaw.pdf>. USAID (2012). *Implementation of the United States National Action Plan on Women, Peace, and Security*. Washington, D.C. Available at [http://transition.usaid.gov/our\\_work/cross-cutting\\_programs/wid/peace/US\\_NAP\\_WPS\\_Implementation.pdf](http://transition.usaid.gov/our_work/cross-cutting_programs/wid/peace/US_NAP_WPS_Implementation.pdf)

32 See Women's Initiative for Gender Justice (2005). *Gender in Practice. Guidelines & Methods to Address Gender Based Crimes in Armed Conflict*. The Hague. Available at [http://www.iccwomen.org/whatwedo/training/docs/Gender\\_Training\\_Handbook.pdf](http://www.iccwomen.org/whatwedo/training/docs/Gender_Training_Handbook.pdf)

33 The Voluntary Principles on Security and Human Rights (VPs), established in 2000 by the British Foreign & Commonwealth Office (FCO) and the US State Department, provide advice to oil, gas and mining companies on how to engage with public and private security providers, so as to ensure that their security operations do not lead to human rights abuses or exacerbate conflict. See <http://fcohrdreport.readandcomment.com/human-rights-in-promoting-britains-prosperity/promoting-responsible-business-practice/voluntary-principles-on-security-and-human-rights/>. See the English text available at [http://www.voluntaryprinciples.org/files/voluntary\\_principles\\_english.pdf](http://www.voluntaryprinciples.org/files/voluntary_principles_english.pdf).

34 The Geneva Call is a neutral and impartial humanitarian organization dedicated to engaging armed non-

Warner. It has concluded many “Deeds of Agreements” with armed Non-State Actors (NSAs) including provisions on the protection of women and children in situations of armed conflict.<sup>35</sup>

As the Ottawa Convention and the ICC Statute have clearly demonstrated, codification is not enough: we need ratification and application in order to achieve a better implementation.

We need also to sanction violations: three pioneers in that field are Louise Arbour, Carla Del Ponte and Navi Pillay. Louise Arbour was the Chief Prosecutor for the International Criminal Tribunals for the former Yugoslavia and for Rwanda from 1996 until 1999. She then was UN High Commissioner for Human Rights from 2004 until 2008. Carla Del Ponte was the ICTY’s and ICTR’s Prosecutor for more than eight years, from 1999 to 2007. During her mandate, almost 100 accused persons were brought to the Tribunal’s custody.<sup>36</sup> Navanethem Pillay, now UN High Commissioner for Human Rights since September 2008, was a judge on the International Criminal Tribunal for Rwanda, where she served a total of eight years, the last four (1999-2003) as President. She played a critical role in the ICTR’s groundbreaking jurisprudence on rape as genocide, as well as on issues of freedom of speech and hate propaganda. In 2003, she was appointed as a judge on the International Criminal Court in the Hague, where she remained until August 2008.<sup>37</sup>

### **Implementation and Proposals for a Better Protection of Women**

For a better protection of women in time of armed conflict, we would like to make three proposals: first reinforce existing mechanisms of international humanitarian law, then make a better use of mechanisms of other legal systems, and be more creative in using remedies.

#### ***Reinforce Existing Mechanisms of International Humanitarian Law***

The mechanisms provided for in the 1949 Geneva Conventions are:

- (1) The States Party, which undertake to “*respect and ensure respect*” for the Conventions in all circumstances.”<sup>38</sup> “*Respect*” clearly refers to the individual obligation to apply it in good faith from the moment that it enters into force.<sup>39</sup> “*To ensure respect*”, according to the ICRC Commentary to the 1949 Conventions, “demands in fact that the States which are Parties to it should not be content merely to apply its provisions themselves, but should do everything in their power to ensure

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State actors (NSAs) towards compliance with the norms of international humanitarian law (IHL) and human rights law (IHRL). Available at <http://www.genevacall.org>.

35 Available at [www.genevacall.org/Themes/Gender/gender.htm](http://www.genevacall.org/Themes/Gender/gender.htm).

36 On 11 August 1999 the UN Security Council appointed her to the position of Prosecutor of the International Criminal Tribunals for the former Yugoslavia and Rwanda. She was re-appointed to the position of ICTY Prosecutor for a second four-year term in September 2003 <http://www.icty.org/sid/101>

37 Available at <http://www.ohchr.org/en/aboutus/pages/highcommissioner.aspx>

38 Common Article 1 to the 1949 Geneva Conventions

39 ICRC Commentary on the Additional Protocols, Geneva, ICRC, 1987, p. 35, para. 39

that it is respected universally.<sup>740</sup> This collective responsibility to implement international humanitarian rules<sup>41</sup> often takes the form of bilateral or multilateral measures by States Party. Leaving aside the exceptional meeting provided for in Article 7 of Protocol I of 1977<sup>42</sup> States Party to international humanitarian law treaties have used bilateral or multilateral meetings, at the United Nations,<sup>43</sup> the Non-Aligned Movement (NAM), regional organizations (OAS, AU, OSCE, the European Parliament, the Council of Europe) as well as the Inter-Parliamentary Union (IPU), to manifest their concern that humanitarian law should be respected.<sup>44</sup> *In all circumstances* means in time of armed conflict, as well as in time of peace, taking preventive steps, in the form of training<sup>45</sup> or evaluation,<sup>46</sup> and prose-

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40 ICRC Commentary III, p. 18 (Art. 1). See Luigi Condorelli and Laurence Boisson de Chazournes (1984). “Quelques remarques à propos de l’obligation des Etats de «respecter et faire respecter» le droit international humanitaire «en toutes circonstances» in Christophe Swinarski (ed), *Studies and Essays on International Humanitarian Law and Red Cross Principles*. Geneva: ICRC, pp. 17-35; Umesh Palwankar (1994). “Measures available to States for fulfilling their obligation to ensure respect for international humanitarian law”. *IRRC* n.º 298, pp. 9-25; Laurence Boisson de Chazournes and Luigi Condorelli (2000). “Common Article 1 of the Geneva Conventions revisited: Protecting collective interests”. *IRRC* n.º 837, pp. 67-87. Available at <http://www.icrc.org/eng/resources/documents/misc/57jqcp.htm>

41 The 1949 Geneva Conventions as well as Additional Protocol I, for the States Party to this Protocol. See the ICRC Commentary on the Protocols, ad Art. 1 of Protocol I, p. 35-38

42 Article 7 (« Meetings »): « The depositary of this Protocol [Switzerland] shall convene a meeting of the High Contracting Parties, at the request of one or more of the said Parties and upon the approval of the majority of the said Parties, to consider general problems concerning the application of the Conventions and of the Protocol ». Such a meeting was convened by Switzerland on 5 December 2001 in Geneva. (« Conference of the High Contracting Parties to the Fourth Geneva Convention»).

43 Especially since the adoption of Art. 89 («Co-operation») of the First 1977 Additional Protocol which states: «In situations of serious violations of the Conventions or of this Protocol, the High Contracting Parties undertake to act, jointly or individually, in co-operation with the United Nations and in conformity with the United Nations Charter».

44 ICRC Commentary on the Additional Protocols, p. 36, paragr. 43.

45 Training is an obligation according to the four 1949 Geneva Conventions: Article 47 of the First Convention states the following: «The High Contracting Parties undertake, in time of peace as in time of war, to disseminate the text of the present Convention as widely as possible in their respective countries, and, in particular, to include the study thereof in their programmes of military and, if possible, civil instruction, so that the principles thereof become known to the entire population, in particular to the armed fighting forces, the medical personnel and the chaplains.» The Second Convention contains a similar provision (Article 48). Article 127 of the Third Convention adds the following paragraph: « Any military or other authorities, who in time of war assume responsibilities in respect of prisoners of war, must possess the text of the Convention and be specially instructed as to its provisions.» Article 144, 2 of the Fourth Convention reads as follows: «Any civilian, military, police or other authorities, who in time of war assume responsibilities in respect of protected persons, must possess the text of the Convention and be specially instructed as to its provisions. » Additional Protocol I reaffirms the duty to disseminate (Article 83 – Dissemination); and adds the obligation to ensure that legal advisers are available (Art. 82 Legal Advisers in armed forces). Additional Protocol II, applicable in non-international armed conflicts, simply states that « This Protocol shall be disseminated as widely as possible.» (Art. 19 – Dissemination).

46 Article 36 (New Weapons) of Protocol I reads as follows: «In the study, development, acquisition or adoption of a new weapon, means or method of warfare, a High Contracting Party is under an obligation to determine whether its employment would, in some or all circumstances, be prohibited by this Protocol or by any other rule of international law applicable to the High Contracting Party.»

cution.<sup>47</sup> According to Common Article 1 to the four 1949 Geneva Conventions and to Article 1 of Additional Protocol I, all States Parties to these instruments have the obligation «to respect and ensure respect» for them «in all circumstances». This wording has been widely understood as implying a double responsibility for every State Party: for its own individual duties as well as a collective responsibility for the behavior of other States Parties.<sup>48</sup> The International Court of Justice held that Article 1 had turned into customary law: the *Nicaragua Case* stresses the duty of States Parties to abstain from promoting violations;<sup>49</sup> the 2004 Advisory Opinion on the *Wall*<sup>50</sup> goes further: States Parties should act in order to ensure compliance: «Given the character and the importance of the rights and obligations involved, the Court is of the view that all States are under an obligation not to recognize the illegal situation resulting from the construction of the wall in the Occupied Palestinian Territory, including in and around East Jerusalem. They are also under an obligation not to render aid or assistance in maintaining the situation created by such construction. It is also for all States, while respecting the United Nations Charter and international law, to see to it that any impediment, resulting from the construction of the wall, to the exercise by the Palestinian people of its right to self-determination is brought to an end. In addition, all the States parties to the Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949 are under an obligation, while respecting the United Nations Charter and international law, to ensure compliance by Israel with international humanitarian law as embodied in that Convention».

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47 The four 1949 contain common provisions on the «Repression of Abuses and Infractions»: First Convention: Art. 49-51; Second Convention: Art. 50-52; Third Convention: Art. 129-131; Fourth Convention: Art. 146-148. Article 85 of Additional Protocol I reaffirms those provisions, adds a few acts to be considered as grave breaches (specially attacks against civilians and civilian objects), and classifies grave breaches of the 1949 Conventions and Protocol I as war crimes. See on grave breaches and war crimes Maria Teresa Dutli and Cristina Pellandini (1994). «The International Committee of the Red Cross and the Implementation of a System to Repress Breaches of International Humanitarian Law». *IRRC* n.º 300, pp. 240-254; Marko Divac Öberg (2009). «The Absorption of Grave Breaches into War Crimes Law». *IRRC* n.º 873, pp. 163-183. Available at [www.icrc.org/eng/resources/documents/article/review/review-873-p163.htm](http://www.icrc.org/eng/resources/documents/article/review/review-873-p163.htm); Manual for Courts-Martial United States (2012). Available at [http://www.loc.gov/rr/frd/Military\\_Law/pdf/MCM-2012.pdf](http://www.loc.gov/rr/frd/Military_Law/pdf/MCM-2012.pdf)

48 Jean S. Pictet (ed) (1958). *The Geneva Conventions of 12 August 1949. Commentary. IV. Geneva Convention Relative to the Protection of Civilian Persons in Time of War*. Geneva: International Committee of the Red Cross, pp. 15-17.

49 International Court of Justice, *Case Concerning the Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Judgement of 27 June 1986 (Merits), vol. 114, Para. 220. See Antonio Cassese (2005). *International Law*. London: Oxford University Press, pp. 6-8 («Collective Responsibility»), p. 182. («State Responsibility») and especially pp. 207-210 and p. 419. In the *Nicaragua Case*, the International Court of Justice noted that under common Art. 1, the United States was under «an obligation not to encourage persons or groups engaged in the conflict in Nicaragua to act in violation of the provisions of Article 3 common to the four 1949 Geneva Conventions [...]». *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Merits, ICJ Reports 1986, p. 14, para. 115.

50 *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion*, I.C.J. Reports 2004, p. 136. Available at [www.icj-cij.org/docket/files/131/1671.pdf](http://www.icj-cij.org/docket/files/131/1671.pdf)

A practical example of this collective responsibility of States Parties to “respect and ensure respect” for the 1949 Geneva Conventions and their 1977 Additional Protocols are the 2005 *European Union Guidelines on promoting compliance with international humanitarian law*.<sup>51</sup> The first paragraph of these 2009 “*Updated Guidelines*” deserves quotation: The purpose of these Guidelines is to set out operational tools for the European Union and its institutions and bodies to promote compliance with international humanitarian law (IHL). They underline the European Union’s commitment to promote such compliance in a visible and consistent manner. The Guidelines are addressed to all those taking action within the framework of the European Union to the extent that the matters raised fall within their areas of responsibility and competence. They are complementary to Guidelines and other Common Positions already adopted within the EU in relation to matters such as human rights, torture and the protection of civilians.<sup>52</sup>

(2) The Protecting Power,<sup>53</sup> which was widely used in Europe during WW II<sup>54</sup> and much less thereafter.<sup>55</sup> Additional Protocol I defines the Protecting Power in inter-

51 First published in the Official Journal C 327 of 23.12.2005, updated in the Official Journal C 303 of 15.12.2009 («Updated European Union Guidelines on promoting compliance with international humanitarian law»). Available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2009:303:0012:0017:EN:PDF>

52 See EU Guidelines on Human Rights Dialogues (approved by the Council on 13 December 2001, updated on 19 January 2009); Guidelines for EU Policy towards Third Countries on Torture and other Cruel, Inhuman or Degrading Punishment or Treatment (approved by the Council on 9 April 2001, updated on 29 April 2008); EU Guidelines on Children and Armed Conflict (approved by the Council on 8 December 2003, updated on 17 June 2008); EU Guidelines on the Promotion and Protection of the Rights of the Child (approved by the Council on 10 December 2007); Guidelines on Violence against Women and Girls Combating all Forms of Discrimination against Them (approved by the Council on 8 December 2008) and Council Common Position 2003/444/CFSP of 16 June 2003 on the ICC (OJ L 150, 18.6.2003, p. 67)

53 See G.I.A.D. Draper (1979). “The Implementation and Enforcement of the Geneva Conventions of 1949 and of the Two Additional Protocols of 1977”. *Recueil des Cours*. The Hague, pp. 1-54. George A.B. Peirce (1980). “Humanitarian Protection for the Victims of War: the System of Protecting Powers and the Role of the ICRC”. *Military Law Review*, pp. 89-162. David P. Forsythe (1976). “Who Guards the Guardians: Third parties and the Law of Armed Conflict”. *American Journal of International Law*, pp. 41-61. Improving the Compliance with International Humanitarian Law. Proceedings of the Bruges Colloquium 11-12 September 2003. Bruges: Collegium of Europe. Available at <http://www.coleurope.eu/content/publications/pdf/Collegium30.pdf>

54 See H. Coulibaly (1989). “Le rôle des Puissances protectrices au regard du droit diplomatique, du droit de Genève et du droit de La Haye” in F. Kalshoven and Y. Sandoz (eds), *Implementation of International Humanitarian Law*. Dordrecht: Martinus Nijhoff, pp. 69-78. See also C. Dominicé, J. Patrnoic (1979). “Les Protocoles Additionnels aux Conventions de Genève et le Système des Puissances Protectrices”. *Annales de Droit International Médical*, pp. 24-50. J. P. Knellwolff, Die Schutzmacht im Völkerrecht unter Besonderer Berücksichtigung der Schweizerischen Verhältnisse, Dissertation Bern. Bern, Ackermanndruck, 1985. B. Laitenberger (1978). “Die Schutzmacht”. *German Yearbook of International Law*, vol. 21, pp. 180-206.

55 It was used in Suez in 1956, in Goa in 1961 and between India and Pakistan in 1971. For a more recent example, see the State Department Press Briefing, Thursday, April 1, 1998 p.m.: «The United States Government is contacting authorities in Belgrade through our Protecting Power, Sweden, in regard to the illegal abduction of three American servicemen who were serving in non-combatant status in Macedonia. There is no basis for their continued detention by the Belgrade authorities. We insist that they be provided any necessary medical assistance and treated humanely and in accordance with all prevailing international agreements and standards. We will hold Belgrade authorities responsible for their safety and treatment.» Available at <http://www.hri.org/news/usa/std/1999/99-04-01.std.html>.



national humanitarian law as: “a neutral or other State not a Party to the conflict which has been designated by a Party to the conflict and accepted by the adverse Party and has agreed to carry out the functions assigned to a Protecting Power under the Conventions and this Protocol.”<sup>56</sup>

The role of the Protecting Power is to maintain the liaison between two States at war, to bring relief assistance to the victims and protection to prisoners of war and civilian internees. It could be used, formally or informally, to promote the protection of women in today’s conflicts, international or even non-international.

- (3) The International Committee of the Red Cross (ICRC), which received mandates from the international community in the 1949 Geneva Conventions: to visit and interview prisoners of war<sup>57</sup> and civilian internees<sup>58</sup>; to provide relief to the population of occupied territories<sup>59</sup>; to search for missing persons and to forward family messages to prisoners of war<sup>60</sup> and civilians<sup>61</sup>; to offer its good offices to facilitate the institution of hospital zones<sup>62</sup> and safety zones<sup>63</sup>; to receive applications from protected persons<sup>64</sup>; to offer its services in other situations<sup>65</sup> and especially in time of non-international armed conflicts.<sup>66</sup> The First 1977 Additional Protocol mentions two additional mechanisms of implementation:
- (a) The United Nations, “in situations of serious violations of the Conventions or of this Protocol” (Art. 89 of Protocol I). As we shall see, this provision is a very important development in the implementation and enforcement of international humanitarian law.
- (b) The optional “International Fact-Finding Commission” (Art. 90 of Protocol I).<sup>67</sup> To this day, Article 90 of Protocol I has not been invoked. We should not exclude its use in the future. The implementation mechanisms of international criminal law<sup>68</sup> was significantly developed as the United Nations Security Council established the ad hoc Tribunals on Former Yugoslavia and Rwanda<sup>69</sup> and with the 60<sup>th</sup>

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56 Protocol I, Art. 2, letter C

57 Third Geneva Convention, Article 126

58 Fourth Geneva Convention, Article 143

59 Fourth Geneva Convention, Articles 59 and 61

60 Third Geneva Convention, Article 123

61 Fourth Geneva Convention, Article 140

62 First Geneva Convention, Article 23

63 Fourth Geneva Convention, Article 14

64 Fourth Geneva Convention, Article 30

65 Article 9 of Conventions I, II and III; Article 10 of the Fourth Convention

66 Common Article 3 to the 1949 Conventions.

67 The website of the Commission is <http://www.ihffc.org>

68 See “International Criminal Law” by Patrick Healy and Kimberly Prost. McGill University Faculty of Law. Available at <http://www.law.mcgill.ca/academics/coursenotes/healy/intcrimlaw/> and the following links mentioned there. The Nuremberg Trials London Agreement of August 8th 1945 (<http://www.yale.edu/lawweb/avalon/imt/imt.htm>). Charter of the International Military Tribunal (<http://www.yale.edu/lawweb/avalon/imt/imt.htm>), Judgment of the IMT for the Trial of German Major War Criminals (<http://www.yale.edu/lawweb/avalon/imt/imt.htm>)

69 See the following links, quoted by Patrick Healy and Kimberly Prost: Jurisdiction of the Yugoslavian and Rwandan Ad Hoc Tribunals, Security Council Resolution 827(1993), 25 May 1993 (<http://www.un.org/>

ratification of 1998 Rome Statute of the International Criminal Court<sup>70</sup> on 11 April, and its entry into force on 1 July 2002 The International Criminal Court is a milestone in the international community's fight to end impunity for war crimes, genocide and crimes against humanity.

The International Criminal Court will be able to punish war criminals and perpetrators of genocide or crimes against humanity in cases where national criminal justice systems are unable or unwilling to do so. It is vital for the Court's effective functioning that all States ratify the Rome Statute and that the States Parties rapidly adopt comprehensive implementing legislation in order to be able to cooperate with the Court.<sup>71</sup>

### ***Make a Better Use of Mechanisms of Other Legal Systems***

- Human rights, universal and regional;
- Refugee law, universal<sup>72</sup> and regional;

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Docs/sc.htm), Security Council Resolution 955 (1994), 8 November 1994, (<http://www.un.org/Docs/sc.htm>), Statute of the International Criminal Tribunal for the Former Yugoslavia ("ICTY"), Arts. 6, 8, 9. (<http://www.un.org/icty/basic.htm>), Statute of the International Criminal Tribunal for Rwanda ("ICTR"), Arts. 5,7,8 (<http://www.ictcr.org>), ICTY, Rules of Procedure and Evidence, Rules 7-13 (<http://www.un.org/icty/basic.htm>), ICTY, Prosecutor V. Dusko Tadic a/k/a "Dule", Appeals Chamber Decision on the Jurisdictional Motion, 2 October 1995, ss. 9-48, 9-64. (<http://www.un.org/icty/cases-ae2.htm>), Substantive Law and the Ad Hoc Tribunals, Statute of the ICT Y, Arts 2-5, 21 (<http://www.un.org/icty/basic.htm>), Statute of the ICTR, Arts 2-4, 20 (<http://www.ictcr.org>), ICTY, Prosecutor v. Drazen Erdemovic, Appeals Chamber, Joint separate opinion of Judge McDonald and Judge Vohrah, ss. 32-58, 66, 73-91, Separate and dissenting opinion of Judge Cassese, ss. 11-12, 40-51 (<http://www.un.org/icty/cases-ae2.htm>), ICTR, The Prosecutor v. Jean-Paul Akayesu, Trial Chamber, Summary of the Judgment. (<http://www.ictcr.org>), ICTR, The Prosecutor v. Jean-Paul Akayesu, Trial Chamber, Judgment, ss. 5.5 and 7. (<http://www.ictcr.org>), Evidence, Procedure, and the Ad Hoc Tribunals , ICTY, Rules of Procedure and Evidence, Rules 39-43, 54-61, 89-98 <http://www.un.org/icty/basic.htm>), ICTY, Prosecutor V. Dusko Tadic a/k/a "Dule", Judgment on evidentiary matters. (<http://www.un.org/icty/cases-te.htm>), Judgment on Corroboration in section V(c), Judgment on Hearsay in section V(h), ICTY, Prosecutor v. Blaskic, Judgment on the request of The Republic of Croatia for review of the decision of Trial Chamber II of 18 July 1997, ss. 25-60. (<http://www.un.org/icty/blaskic/ace14.htm>)

70 See Jurisdiction of the ICC: Trigger Mechanisms and the Exercise of the Court's Jurisdiction (<http://www.un.org/icc/backinfo.htm>) Rome Statute of the International Criminal Court, Arts 11-15, 17-18. (<http://www.un.org/icc>). Substantive Law and the ICC: Crimes within the Court's Jurisdiction (<http://www.un.org/icc/backinfo.htm>). Rome Statute of the International Criminal Court, Arts 5-9, 21, 22-33, 55, 67, 69 (<http://www.un.org/icc>). Preparatory Commission for the International Criminal Court: results of working groups on ICC rules of procedure and evidence. Most recent laws (<http://www.un.org/law/icc/prepcomm/docs.htm>)

71 International Criminal Court: A Reality at Last. Geneva: ICRC, 11 April 2002. Available at <http://www.icrc.org/eng/resources/documents/misc/59cmvr.htm>

72 See the UNHCR's: Note on international protection. Report of the High Commissioner. A/AC.96/1110. Executive Committee of the High Commissioner's Programme. Geneva, 1-5 October 2012. See especially paragraphs 24, 29-32 («Preventing and Responding to Sexual and Gender-based Violence»). E. Feller, V. Türk and F. Nicholson (eds). (2003). *Refugee Protection in International Law: UNHCR's Global Consultations on International Protection*. Cambridge: Cambridge University Press; UNHCR (2003). *Handbook on Procedures and Criteria for Determining Refugee Status and the Guidelines on International Protection*. Available at <http://www.unhcr.org/4a1ba1aa.html>. UNHCR (2012). Refugee Protection and Mixed Migration: the 10-Point Plan in Action. Available at <http://www.unhcr.org/50ab86d09.html>

- The prohibition of torture,<sup>73</sup> universal and regional (European);<sup>74</sup>
- The prohibition of genocide;<sup>75</sup>
- The protection of the natural environment;
- The protection of cultural objects;
- Disarmament and arms control<sup>76</sup> (including arms transfers);
- The prohibition of illicit trafficking<sup>77</sup> (arms, diamonds, drugs, human beings);<sup>78</sup>
- Labor law conventions, especially protecting women and children against forced labor;<sup>79</sup>

73 See Cordula Droege (2007). «In Truth the Leitmotiv: the Prohibition of Torture and other Forms of Ill-treatment in International Humanitarian Law». *International Review of the Red Cross* n.° 867, pp. 515-541. Available at <http://www.icrc.org/eng/assets/files/other/irrc-867-droege.pdf>. Jamie Mayerfeld (2008). «In Defense of the Absolute Prohibition of Torture». *Public Affairs Quarterly* n.° 2, pp. 109-128. Available at <http://faculty.washington.edu/jasonm/4-Mayerfeld.indd.pdf>. REDRESS (2006). *Bringing the International Prohibition of Torture Home. National Implementation Guide for the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*. London. Available at [www.redress.org/downloads/publications/CAT%20Implementation%20paper%2013%20Feb%202006%203.pdf](http://www.redress.org/downloads/publications/CAT%20Implementation%20paper%2013%20Feb%202006%203.pdf)

74 See Aisling Reidy (2003). *The prohibition of torture. A guide to the implementation of Article 3 of the European Convention on Human Rights*. Strasbourg : Council of Europe (Human rights handbooks, No. 6). Available at <http://echr.coe.int/NR/rdonlyres/0B190136-F756-4679-93EC-42EEBEAD50C3/0/DG2EN-HRHAND062003.pdf>

75 On 17 July 2012, Secretary-General Ban Ki-moon appointed Adama Dieng of Senegal as his Special Adviser on the Prevention of Genocide. See [www.un.org/en/preventgenocide/adviser/](http://www.un.org/en/preventgenocide/adviser/). See also <http://www.genocidewatch.org>.

76 IRCC (2011). *Protecting Civilians and Humanitarian Action through an Effective Arms Trade Treaty*. Available at <http://www.icrc.org/eng/assets/files/publications/icrc-002-4069.pdf>

77 Report of Special Rapporteur on Trafficking in Persons, Especially Women and Children, Joy Ngozi Ezeilo, Human Right Council, Twentieth Session, agenda item 3. Available at <http://daccess-dds.ny.un.org/doc/UNDOC/GEN/G12/138/05/PDF/G1213805.pdf?OpenElement>, Resolution 1653 (2006), Adopted by the Security Council at its 5359th meeting, on 27 January 2006 «Aware that the link between the illegal exploitation of natural resources, the illicit trade in those resources and the proliferation and trafficking of arms is one of the factors fuelling and exacerbating conflicts in the Great Lakes region of Africa, and especially in the Democratic Republic of the Congo». Women in War are also protected by the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of others, March 21, 1950.

78 The United Nations Convention against Transnational Organized Crime, adopted by General Assembly resolution 55/25 of 15 November 2000, is the main international instrument in the fight against transnational organized crime. It opened for signature by Member States at a High-level Political Conference convened for that purpose in Palermo, Italy, on 12-15 December 2000 and entered into force on 29 September 2003. The Convention is further supplemented by three Protocols, which target specific areas and manifestations of organized crime: the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children; the Protocol against the Smuggling of Migrants by Land, Sea and Air; and the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition.

79 See the ILO Convention No 182 on the worst forms of child labor (1999). Art. 3, letter a) includes « forced or compulsory recruitment of children for use in armed conflict ». The ILO and the IPU published in 2002 a Handbook for Parliamentarians and Eliminating the Worst Forms of Child Labour: a Practical Guide to ILO Convention. Available at <http://www.ilo.org/ipecinfor/product/viewProduct.do?productId=1200> as well as Combating Child Trafficking. Handbook for Parliamentarians. Available at [http://www.unicef.org/publications/files/IPU\\_combattingchildtrafficking\\_GB\(1\).pdf](http://www.unicef.org/publications/files/IPU_combattingchildtrafficking_GB(1).pdf). See also generally, ABC of Women Workers' Rights and Gender Equality. Second edition (2007). Available at <http://www.ilo.org/wcmsp5/groups/>

- Compensation and reparation (civil liability);<sup>80</sup>
- Reconciliation and reconstruction (role of women).<sup>81</sup>

In addition to the formal mechanisms of implementation of international humanitarian law and human rights, there is an increasing role for informal mechanisms, on the international as on the national level: good offices<sup>82</sup> ; media, local, regional and international<sup>83</sup> ; NGOs such as Human Rights Watch or Amnesty International ; engaging non-State actors<sup>84</sup> to abide by humanitarian rules and principles<sup>85</sup> ; civil so-

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public/---dgreports/---gender/documents/publication/wcms\_087314.pdf and more specially: ILO helps Sri Lankan war victims pick up the pieces (2 January 2013). Available at [http://www.ilo.org/global/about-the-ilo/newsroom/features/WCMS\\_195979/lang-en/index.htm](http://www.ilo.org/global/about-the-ilo/newsroom/features/WCMS_195979/lang-en/index.htm)

- 80 See Ryan S. Lincoln (2012). “Too Rough a Justice: the Ethiopia-Eritrea Claims Commission and International Civil Liability for Claims for Rape under International Humanitarian Law ». *Tulane Journal of International and Comparative Law*, Vol. 20, issue 2, p. 385-419. Available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2073878](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2073878). John F. Murphy (1999). “Civil Liability for the Commission of International Crimes as an Alternative to Criminal Prosecution” *Harvard HRJ*, vol. 12, pp. 1-56. Michael Matheson (2012). *International Civil Tribunals and Armed Conflict*. Leiden : M. Nijhoff, p. 382.
- 81 See Camille Pampell Conaway (2006). *The Role of Women in Stabilization and Reconstruction*. Washington,DC, USIP, August, 22 p. Online at: [http://www.usip.org/files/resources/srs\\_three.pdf](http://www.usip.org/files/resources/srs_three.pdf). See also Jeanne Izabaliza “The Role of Women in Reconstruction: the Experience of Rwanda” on the UNESCO website <http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/SHS/pdf/Role-Women-Rwanda.pdf> and Harriette E. Williams. Women and Post-Conflict Reconstruction in Africa. Durban: ACCORD. Available at <http://www.isn.ethz.ch/isn/Digital-Library/Publications/Detail/?ots591=0c54e3b3-1e9c-be1e-2c24a6a8c7060233&lng=en&cid=104552>
- 82 The ICRC can offer its good offices to facilitate the establishment of hospital zones (according to Article 23 of the First 1949 Convention) and safety zones (Art. 14, First Convention). Other institutions or persons could offer their good offices. See B.G. Ramcharan (1983). *Humanitarian Good Offices in International Law: The Good Offices of the United Nations Secretary-General in the Field of Human Rights*. The Hague: Martinus Nijhoff. See also Michel Veuthey (2011). “Diplomatie Humanitaire: Préserver les Chances de la Diplomatie Humanitaire au Moment où elle est la plus Nécessaire”. DiploWeb. Available at <http://www.diploweb.com/Diplomatie-humanitaire.html> and “Humanitarian Diplomacy: Saving It When it is Most Needed” in Alexandre Vautravers and Yvita Fox (eds.) (2012). *Humanitarian Space. Webster University Geneva 16th Humanitarian Conference*. Geneva: Webster University, pp. 195-208
- 83 See Roy W. Gutman (1998). “Spotlight on Violations of International Humanitarian Law: the Role of the Media”. *IRRC* n.° 325, pp. 619-625. Urs Boegli (1998). «A Few Thoughts on the Relationship between Humanitarian Agencies and the Media». *IRRC* n.° 325, pp. 627-631. More generally, Yael Daniel (ed) (2002). *Sharing the Front Line and the Back Hills. International Protectors and Providers: Peacekeepers, Humanitarian Aid Workers and the Media in the Midst of Crisis*. Amityville, NY: Baywood Publishing.
- 84 See Rainer Hofmann (ed). *Non-State Actors as New Subjects of International Law: International Law – From the Traditional State Order towards the Law of the Global Community*. Proceedings of an International Symposium of the Kiel Walther-Schücking-Institute of International Law, March 25 to 28, 1998. Berlin: Duncker und Humblot. Daniel Byman, Peter Chalk, Bruce Hoffman, William Rosenau and David Brannan (2001). *Trends in Outside Support for Insurgent Movements*. Santa Monica: RAND.
- 85 See the «Guidelines for Engaging Non-State Actors in a Landmine-Ban». Available at <http://www.icbl.org/wg/nsa/library/draft%20guidelines.html>. Claude Bruderlein (2000). “The Role of Non-State Actors in Building Human Security: The Case of Armed Groups in Intra-State Wars.” Policy Paper for the Centre for Humanitarian Dialogue, Geneva, Switzerland (prepared for the Ministerial Meeting of the Human Security Network in Lucerne), May 2000. Available at [www.hdcentre.org/NewsEvents/1999/Policy%20paper.doc](http://www.hdcentre.org/NewsEvents/1999/Policy%20paper.doc).

ciety<sup>86</sup>; individuals (journalists and writers like Samantha Power,<sup>87</sup> artists like Angelina Jolie, for years Goodwill Ambassador and now Special Envoy of the UN High Commissioner for Refugees,<sup>88</sup> and Barbara Hendrix, longest serving UNHCR Goodwill Ambassador. The world-famous classical singer has met with refugees and policy-makers in Africa, Asia and Europe over the last 25 years. Having been on a number of field missions, Hendricks is committed to making a real difference for refugees and carries her advocacy to the highest diplomatic and governmental levels. She is particularly concerned about the plight of refugee women)<sup>89</sup>; *ad hoc* independent monitors, agreed upon by all parties<sup>90</sup>; private diplomacy, including private economy (multinational as well as local); spiritual leaders.<sup>91</sup>

### ***Use Remedies More Creatively***

- Asking for compensation by way of civil liability claims<sup>92</sup>;
- Introducing claims against private companies supporting groups that commit violations<sup>93</sup>;

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86 Safeguarding human rights is not only the concern of Governments and international organizations. Representatives of other international and local players, like human rights defenders, drawn from civil society, have also felt committed to this issue for a long time. See the « Human Security Network » Commitments at the Second Ministerial Meeting in Lucerne, Switzerland, May 11-12. Available at <http://www.humansecuritynetwork.org/commit-e.asp>

87 See her ground-breaking article in the September 2001 issue of *The Atlantic Monthly*. «Bystanders to Genocide: Why the US let the Rwandan Tragedy Happen». Available at <http://www.theatlantic.com/magazine/archive/2001/09/bystanders-to-genocide/304571/>

88 <http://www.unhcr.org/pages/49c3646c56.html> (Angelina Jolie)

89 <http://www.unhcr.org/pages/49c3646c50.html> (Barbara Hendrix)

90 See the recent Human Rights Watch appeals on Colombia, the Congo (DRC), Côte d'Ivoire and Syria: Ending the cycle of abuse in Congo (January 2, 2013); EU: Provide Protection for Syrian Refugees (Dec. 23, 2012); Syria: Strong Coalition Message against Targeting Civilians (Dec. 21, 2012); Living Up to the Nobel: EU Must Act on Syria (Dec. 10, 2012); Colombia: Obstacles to Care for Abused, Displaced Women (Nov. 14, 2012); A Long Way from Reconciliation. Abusive Military Crackdown in Response to Security Threats in Côte d'Ivoire (November 14, 2012). All above mentioned documents are available at [www.hrw.org](http://www.hrw.org).

91 See Daniel L. Smith-Christopher (ed) (1998). *Subverting Hatred: The Challenge of Nonviolence in Religious Traditions*. New York: Orbis Books.

92 On civil claims see Christine Evans (2012). *The Right to Reparation in International Law for Victims of Armed Conflict*. Cambridge: Cambridge University Press. Won Kidane (2008). «Civil Liability for the Violations of International Humanitarian Law : the Jurisprudence of the Eritrea-Ethiopia Claims Commission in The Hague». *Wisconsin International Law Journal* n°1, pp. 23-87, available at <http://hosted.law.wisc.edu/wordpress/wilj/files/2012/02/kidane.pdf>, and Ryan S. Lincoln (2012). «Too Rough a Justice: the Ethiopia-Eritrea Claims Commission and International Civil Liability for Claims for Rape under International Humanitarian Law». *Tulane Journal of International and Comparative Law* n°2, p. 385-419, as well as John F. Murphy (1999). «Civil Liability for the Commission of International Crimes as an Alternative to Criminal Prosecution». *Harvard HRJ* (Spring), pp. 1-5.

93 See Julia Graff (2004). «Corporate War Criminals and the International Criminal Court: Blood and Profits in the Democratic Republic of Congo». Available at <http://www.wcl.american.edu/hrbrief/11/2graff.pdf>

- Using traditional customary mechanisms («*gacaca*») <sup>94</sup>;
- Restorative justice («Truth and Reconciliation Commissions») <sup>95</sup>;

### ***Make the Protection of the UN Concerning Gender-based Violence More Credible***

The 8 March 2007, On International Women's Day, ten United Nations agencies came together to form the joint initiative, U.N. Action against Sexual Violence in Conflict. The United Nations Development Programme (UNDP), the Office of the High Commissioner for Human Rights (OHCHR), United Nations High Commissioner for Refugees (UNHCR), the Office for the Coordination of Humanitarian Affairs (OCHA), the United Nations Development Fund for Women (UNIFEM), the United Nations Children's Fund (UNICEF), the World Health Organization (WHO), the World Food Programme (WFP), the United Nations Population Fund (UNFPA), and the Department of Peacekeeping Operations (DPKO) have joined forces to improve the quality of programming to address sexual violence, to increase the coordination of efforts for comprehensive prevention and response services, and to improve accountability. <sup>96</sup>

In today's international community, the United Nations Security Council is the only international mechanism with enforcement capabilities. Unfortunately, the Security Council Resolutions adopted for the protection of women in armed conflicts remain to this day largely ineffectual. And this failure is not for the lack of good ideas – some of them are excellent - but for not dedicating adequate resources and big and small Powers committing political will.

The first resolution on women, peace and security, Security Council Resolution 1325, was unanimously adopted by United Nations Security Council on 31 October 2000. This resolution marked the first time the Security Council addressed the disproportionate and unique impact of armed conflict on women, recognized the under-valued and under-utilized contributions women make to conflict prevention, peacekeeping, conflict resolution and peace-building. It also stressed the importance of women's equal and full participation as active agents in peace and security. <sup>97</sup>

Resolution 1325 on women, peace and security is the first to link women's experiences of conflict to the international peace and security agenda, focusing attention on the impact of conflict on women, and calling for women's engagement in conflict resolu-

94 See Laura M. Olson (2002). «Mechanisms Complementing Prosecution». *International Review of the Red Cross* n.º 845, pp. 173-189. Available at <http://www.icrc.org/eng/assets/files/other/173-190-olson.pdf>

95 See the excellent publications by Priscilla Hayner (among others: *Unspeakable Truths: Confronting State Terror and Atrocity* (London: Routledge, 2001) and Toni Pfanner (2006). «Cooperation between Truth Commissions and the International Committee of the Red Cross». *International Review of the Red Cross* n.º 862, pp. 363-373. See this special issue of the *International Review of the Red Cross* on Truth and Reconciliation Commissions on line at [www.icrc.org/eng/resources/international-review/review-862-truth-reconciliation-commissions/index.jsp](http://www.icrc.org/eng/resources/international-review/review-862-truth-reconciliation-commissions/index.jsp)

96 [http://www.un-ngls.org/article.php3?id\\_article=255](http://www.un-ngls.org/article.php3?id_article=255)

97 [http://www.peacewomen.org/themes\\_theme.php?id=15&subtheme=true](http://www.peacewomen.org/themes_theme.php?id=15&subtheme=true)

tion and peacebuilding. Two follow-up resolutions (Resolution 1820 and 1888) identify, for the first time, sexual violence as a tactic of warfare and call for political and security responses to prevent its use as a means of fighting<sup>98</sup>. UNSC Resolution 1888 (2009)<sup>99</sup> lists several concrete measures of implementation for all armed forces.<sup>100</sup>

On 30 September 2009, the UN Security Council unanimously adopted Resolution 1888 that aims to further strengthen the efforts of the international community to combat sexual violence in armed conflict. The resolution, co-sponsored by more than 60 Member States, calls on the UN Secretary-General to appoint a Special Representative to intensify efforts to end sexual violence against women and children in conflict situations and who should engage on a high level with military and civilian leaders<sup>101</sup>.

### **Two Women have been Special Representatives of the Secretary General (SRSG) on Sexual Violence in Conflict (SVC)**

Mrs. Margot Wallström, a Swedish diplomat, became the first-ever Special Representative of the Secretary-General on Sexual Violence in Conflict on 2 February 2010. Her portfolio was global and multifaceted, focused overall on leading and coordinating efforts to end conflict-related sexual violence against women and children.<sup>102</sup>

Mrs. Zainab Hawa Bangura of Sierra Leone was appointed by the United Nations Secretary-General Ban Ki-moon on 22 June 2012 as his Special Representative on Sexual Violence in Conflict at the level of Under-Secretary-General. Ms. Bangura replaced Margot Wallström. She was the Minister of Health and Sanitation for the Government of Sierra Leone, brings to the position over 20 years of policy, diplomatic and practical experience in the field of governance, conflict resolution and reconciliation in Africa.<sup>103</sup>

The last Annual Report of the Secretary-General to the Security Council on women and peace and security (S/2012/732, of 2 October 2012)<sup>104</sup> on the implementation of Resolution 1325 (2000) is based on the contributions of 27 entities of the United Nations system,<sup>105</sup> including field missions and country offices, and eight regional and sub-

98 <http://www.unifem.org/campaigns/1325plus10/1325-highlights/index.html>

99 UN Resolution 1888, available at <http://www.un.org/News/Press/docs/2009/sc9753.doc.htm>

100 See Amy Barrow (2010). "UN Security Council Resolution 1325 and 1820: constructing gender in armed conflict and international humanitarian law". *International Review of the Red Cross* n.° 877. Available at <http://www.icrc.org/eng/assets/files/other/irrc-877-barrow.pdf>

101 [http://www.un-ngls.org/spip.php?page=article\\_s&cid\\_article=1627](http://www.un-ngls.org/spip.php?page=article_s&cid_article=1627)

102 <http://www.un.org/apps/news/newsmakers.asp?NewsID=26>

103 <http://www.un.org/News/Press/docs/2012/sga1354.doc.htm>

104 Available at [http://www.un.org/ga/search/view\\_doc.asp?symbol=S/2012/732&referer=http://www.un.org/en/sc/documents/sgreports/2012.shtml&Lang=E](http://www.un.org/ga/search/view_doc.asp?symbol=S/2012/732&referer=http://www.un.org/en/sc/documents/sgreports/2012.shtml&Lang=E)

105 Department of Field Support, Department of Peacekeeping Operations, Department of Political Affairs, ECLA, ESCAP, ESCWA, FAO, IFAD, OCHA, Office for Disarmament Affairs, Office of the Special Adviser on the Prevention of Genocide, Office of the Special Representative of the Secretary-General on Children and Armed Conflicts, Office of the Special Representative of the Secretary-General on Sexual Violence and Conflict, UNCTAD, OHCHR, UNHCR, Peacebuilding Support Office, UNICEF, UNDP, UNESCO, UN-Women, UNEP, UNODC, UNFPA, UNRWA, WHO and World Bank.

regional organizations.<sup>106</sup> The report gives a list of 37 Member States which have adopted national action plans, adding that “[T]he capacity to implement, monitor, cost and finance those plans varies significantly.”<sup>107</sup> The Secretary-General then mentions that, in the past decade, “the international community has firmly expressed its aspiration to move from a culture of reaction to a culture of prevention, as demonstrated by the inclusion of the protection of civilians in the mandates of 8 out of 16 peacekeeping missions.”<sup>108</sup> The following sentence of the same paragraph nevertheless mentions the mass rape perpetrated in Walikale (DRC) in 2010 and intercommunal violence in the Republic of South Sudan in 2011 and 2012. And the annex to his Report on conflict-related sexual violence (S/2012/33) contains a list of parties to conflict that are credibly suspected of committing or being responsible for patterns of rape and other forms of sexual violence in situations of armed conflict in Africa, in Asia, in the Balkans, in the Middle East, in Latin America. The Secretary-General has to acknowledge that “Women and girls continue to be affected by violations of international human rights, humanitarian and refugee law, including forced displacement, constraints on humanitarian access, and sexual and gender-based violence. During the past year, sexual violence and the threat of sexual violence continued to be employed as a tactic of conflict across a range of contexts, including in Côte d’Ivoire, the Democratic Republic of Congo, Libya, the Syrian Arab Republic and northern Mali. In Afghanistan, the United Nations Assistance Mission in Afghanistan reported an increase in the number of women and children killed in conflict-related violence in 2011 compared to 2010.”<sup>109</sup>

The keynote speech by the Special Representative of the Secretary-General on Sexual Violence in Conflict, Mrs Zainab Hawa Bangura, on the occasion of the 30<sup>th</sup> Anniversary of the Committee on the Elimination of Discrimination against Women (CEDAW) “Protecting Women from Sexual Violence in Conflict and Post-Conflict Situations” (Geneva, Palais des Nations, 18 October 2012) offers more concrete considerations and proposals. Allow me to quote a few sentences. This paragraph stresses the global context of violence against women and children in armed conflicts: “An attack on women and children during or post-conflict is more than an attack on an individual; it is an attack on families, communities, on the rule of law, and an assault on the belief in your government to protect you. In short, it is an attack on dignity and humanity.” She then outlines a five point agenda (developed by her predecessor, Margareta Wahlström):

“First, we believe that there must be an end to impunity for perpetrators and justice for victims. Rape during war must be taken seriously and condemned as a war crime, not written off as an inevitable by-product of war. Ultimately, prosecution is also prevention – because it sends a clear message to perpetrators that there is no hiding place, that wherever you go we will go after you to make sure

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106 ASEAN, Council of Europe, League of Arab States, Organization of American States, Organization of Islamic Cooperation, OSCE, NATO and Shanghai Cooperation Organization.

107 S/2012/732, paragraph 6.

108 *Ibid.*, paragr. 10.

109 *Ibid.*, paragr. 31.



that you are prosecuted, and it can also serve as a deterrent to would-be perpetrators. Second, protection and empowerment are twin pillars of the solution to sexual violence. This means that sexual violence must be treated as a serious peace and security issue that warrants a security response, and women must not be seen just as victims but as stakeholders who will be included in all measures taken to combat sexual violence.

Third, we must engage political leaders to strengthen the implementation of the Security Council resolutions that are the foundations of our mandate. To make this a reality, we need active scrutiny from the Security Council to ensure that these resolutions are being implemented by Member States and they are held accountable for their commitments. It is time that rape is treated as a security issue with real consequences, not a second-class crime that happens to second-class citizens. Fourth, there is a need for consistency and coordination in the response from the international community to this crime. A rape victim doesn't know – and should not have to know – about Security Council resolutions. She simply knows whether their country and the UN are providing the security they need and the justice they deserve. There also needs to be a holistic response to victims of sexual violence as the crime affects every aspect of their lives. Ultimately, we need to have standardized best practices that are used in responding to sexual violence and its aftermath. Fifth, the world needs to recognize rape as a tactic of war. It is important to understand what it means when rape is used as a tool of war and peoples' bodies are used for military gain or political advantage. This war tactic is as effective as any bomb and as destructive as any mine, and it needs to be addressed with the same determination as any other deadly weapon used in war.<sup>110</sup>

Lastly, I have added to this agenda a sixth point – the emphasis on national ownership, leadership and responsibility. Solutions cannot be imposed from the outside. What is required more than anything else is a change in the attitudes of everyone from political leaders, to activists, to journalists, to citizens. Every sector of society needs to understand the devastating impact of this scourge, and be determined to end it.”<sup>111</sup>

## Conclusion

Legal tools (treaty law and customary rules, as well as UN Security Council groundbreaking Reports, Presidential Statements and Resolutions) are at hand for a better protection against gender-based violence, for the protection of life and dignity of women and children in armed conflicts.

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110 On this see also Carly Brown (2012). «Rape as a Weapon of War in the Democratic Republic of the Congo». *Torture* n.° 1, pp. 24-37. Jennifer Park (2007). “Sexual Violence as a Weapon of War in International Humanitarian Law”. *International Public Policy Review* n.° 1, pp. 13-18. Available at <http://www.ucl.ac.uk/ippr/journal/downloads/vol.3-1/Park.pdf>

111 Available at <http://www2.ohchr.org/english/bodies/cedaw/docs/30anniversary/StatementByMs.ZainabHawaBangura.pdf>

Mechanisms are available, beginning with Governments, international organizations, international courts. Nevertheless, violations still abound.<sup>112</sup> What is urgently needed is a real political will by Governments and other actors at the international and local levels to press violators – including UN peacekeepers, national armies and militias - to change behavior. A shift in public conscience is needed. For too many years, we have been silent, and, when vocal, largely ineffective. We must get serious<sup>113</sup> about ending the ongoing tragedies: mobilizing awareness<sup>114</sup> and taking effective steps to protect the life and dignity of women and children in war.

## **Instruments of International Law**

### ***Some Instruments Protecting Women in Armed Conflicts***

- 1945 United Nations Charter.
- 1947 Nuremberg Principles (UN General Assembly Res, 177 21 November 1947).
- 1948 UN Convention on the Prevention and Punishment of the Crime of Genocide.
- 1949 Geneva Convention I for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field.
- 1949 Geneva Convention II for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea.
- 1949 Geneva Convention III Relative to the Treatment of Prisoners of War.
- 1949 Geneva C. IV Relative to the Protection of Civilian Persons in Time of War.
- 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict.
- 1977 United Nations Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques.
- 1977 Geneva Protocol I Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts.
- 1977 Geneva Protocol II Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts.
- 1978 Red Cross Fundamental Rules of International Humanitarian Law Applicable in Armed Conflicts.
- 1980 United Nations Convention on Prohibitions or Restrictions on the Use of

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112 See the Appeal on Kivu published in *Le Monde* of 25 December 2012 («Au Kivu, on viole et massacre dans le silence»). Available at [http://www.lemonde.fr/idees/article/2012/12/25/au-kivu-on-viole-et-massacre-dans-le-silence\\_1810191\\_3232.html](http://www.lemonde.fr/idees/article/2012/12/25/au-kivu-on-viole-et-massacre-dans-le-silence_1810191_3232.html)

113 R. Feeley and C. Thomas-Jensen (2008). “Getting Serious about Ending Conflict and Sexual Violence in Congo. Enough Project”. *Strategy Paper* n.º 15.

114 See the interesting online symposium organized by the Harvard Law School Human Rights Law Journal on “Avoiding the Trap: Aspirations, Anxieties, and the Appropriateness of Mass-Mobilization Awareness Campaigns”. Available at <http://harvardhrj.com>

Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects (CCW).

- 1980 Protocol I on Non-Detectable Fragments.
- 1980 Protocol II on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices.
- 1980 Protocol III on Prohibitions or Restrictions on the Use of Incendiary Weapons.
- 1995 Protocol IV on Blinding Laser Weapons.
- 1996 Amended Protocol II on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices.
- Protocol on Explosive Remnants of War (Protocol V to the 1980 Convention), 28 November 2003, entered into force on 12 November 2006.
- 1994 ICRC/UNGA Guidelines for Military Manuals and Instructions on the Protection of the Environment in Time of Armed Conflict.
- 1994 UN Convention on the Safety of United Nations and Associated Personnel.
- 1996 The International Court of Justice Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons.
- 1997 Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction (Ottawa).
- 1998 Rome Statute of the International Criminal Court entered into force on 1 July 2002.
- 2000 Optional Protocol on the Involvement of Children in Armed Conflict, entered into force on 12 February 2002.
- Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects. Geneva, 10 October 1980. Amendment Art. 1, 21 December 2001.
- Agreement for and Statute of the Special Court for Sierra Leone, 16 January 2002.
- Protocol on Explosive Remnants of War (Protocol V to the 1980 Convention), 28 November 2003.
- Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the Adoption of an Additional Distinctive Emblem (Protocol III), 8 December 2005.
- Convention on Cluster Munitions (Oslo Convention), 30 May 2008.
- Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others; March 21, 1950.

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# Gender Based Violence in Armed Conflicts: Women's Rights and International Law

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*“(...) If women were human, would we be a cash crop shipped from Thailand in containers into New York’s brothels? Would we have our genitals sliced out to purify us (of what?) and to bid and define our cultures? Would we be used as breeders, made to work without pay our whole lives, burned when our dowry money wasn’t enough or when men tired of us, starved as widows when our husbands died if we survived his funeral pyre, forced to sell ourselves sexually because men won’t value us for anything else? (...)”<sup>1</sup>*

## **Women’s Rights: Why Do We Still Have to Talk about Them? Is ‘Equality’ Not Enough?**

Human Rights (HR) belong to all humans. This could be considered today as a simple truism. But the apparently obvious truth is not very old, totally universal or even consensual.

There is a relatively common wisdom according to which the problem is ‘simply’ to attain Gender Equality. And that this is a goal for and about Women. On the other hand, many believe that Gender Equality problems no longer exist, because sex discrimination has been outlawed in virtually the whole world (in fact, not quite) and the vast majority of countries have signed international conventions that enshrine sex equality as a major objective and a positive obligation of States. The most conspicuous and the most relevant is CEDAW, the *Convention Against All Forms of Discrimination Against Women* (UN, 1979).

But if one opens a newspaper, either on paper or online, and reads news like this one from Kabul, it becomes clear that the disrespect for the human rights of women has special or particular dimensions, in the sense that often the violation of women’s human rights is directly connected with their sex or, better put, with the dominant gender relations in the society where they live. Some such news is not totally understandable in terms of equality versus discrimination, because the violation of fundamental rights in extreme situations is often beyond the reasoning of ‘equality’, anyway. Would violence be acceptable if equally distributed? The answer of course is ‘No’; although one can say

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1 Catharine MacKinnon (1999). *Are Women Human?*. Available at <http://www.nostatusquo.com/ACLU/mackinnon/mackin1.html>



that violence is also a means of fostering or perpetuating inequality, because it hinders its victims of a fully enjoyed and lived public or private life. Sometimes it deprives its victims of life altogether.

“KABUL, Afghanistan — When she refused to prostitute herself or have sex with the man she was forced to marry when she was about 13, officials said, Sahar Gul’s in-laws tortured her and threw her into a dirty, windowless cellar for months until the police discovered her lying in hay and animal dung.”<sup>2</sup>

On the other hand, if one reads about the millions missing women in China and India due to systematic “Gendercide”, or “Femicide”, new words for an old phenomenon, one has to accept that there is in fact a strange discrimination dimension in the most basic and literally lethal ways of violating human rights: sex-related abortion and infanticide or slow, selective starvation of girls that lead to distorted sex ratios of the general population in such countries and are invariably connected with the inferior status of women in those societies.

Gender based violence in armed conflicts is another common and widespread example of gross violation of human rights, more often than not directed against women, often civilians and or refugees, caught in the midst of armed conflict. There is of course also a gender dimension in many violations of men’s human rights in armed conflicts. The obvious example is the common practice of sexualised acts of torture practiced on men, or even the indirect attack on their ‘honour’ by raping or otherwise mistreating their female next of kin, in order to subdue or humiliate them. Even if the primary direct victims obviously are the women in such cases, men’s traditional role as such is often intentionally put into question in those situations. But the usual meaning of the expression ‘Gender based violence in armed conflicts’ points in particular towards the suffering of women, often civilians, in the context of war, of whatever kind. And that is why there is a strong and important connection between the struggles against Gender based violence in armed conflicts and ‘Women’s Rights in International Law’<sup>3</sup>.

### **Human Rights, Women’s Rights: ‘Women’ and ‘Gender’**

The history of (“Western”) Human Rights embodies a non linear, fragmentary inclusion of large groups of people that were excluded from various Declarations or social and political practices. A major and obvious such group is formed by the people we describe as *women*. The United Nations (UN) have long pursued in various ways a deliberate policy of *advancing the status of women*. From the beginnings of the or-

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2 Graham Bowley (2012). “Wed and Tortured at 13, Afghan Girl Finds Rare Justice”. *The New York Times*, 12th August. Available at <http://www.nytimes.com/2012/08/12/world/asia/wed-and-tortured-at-13-afghan-girl-finds-rare-justice.html?pagewanted=2&src=recg>

3 From the Program of the Seminar: “Violence based on gender is considered the worst form of cruelty that seriously inhibits the individual ability to enjoy rights and freedoms and seriously harms the transition from armed conflicts to peace. Moreover, it affects deeply women, men, girls and boys across the world not only during armed conflicts but also long time after the cessation of armed hostilities. Therefore, gender based violence protracts armed conflicts even after the arms lay down, undermining the link between security and development. GBV is, indeed, considered the ultimate generational form of violence.”

ganization, it became clear to some that human rights have a particularly strong *gender dimension*. The more obvious side is women's subordination or, as more commonly put, *discrimination against women*.

The UN Charter of 1945 and later, to this day, all major International HR documents promised gender equality, or at least non discrimination. Yet, the UN itself fails to fulfil the obligation to have a fair percentage of women in its top posts, and the first time that a woman opened the debates in the GA happened only very recently, in 2011, with the President of Brazil, Dilma Roussef.

Vienna, 1993 (UN Conference on Human Rights) is a date to remember: *Women's rights are human rights*. Apparently, this was a not so obvious truism that needed to be said<sup>4</sup>.

But "Gender Issues" is of course a much broader concept that reflects the progressive awareness of the fact that both men and women can be limited or victimized by the imposition of gender roles, be it by law or by custom. Child soldiers (and soldiers in general) are predominantly male, and one of the more obvious associations with masculinity is the triad violence/weapons/war. While female genital mutilation has been condemned by all sorts of HR texts, documents and in all sorts of international *fora*, male children circumcision is also being questioned on the grounds of a right to body integrity. So is early surgical intervention on 'intersex' newborn children. Some male athletes were dismayed when they found that the Olympic authorities barred them from competing as synchronized swimmers, considered too 'feminine' a modality. Parental leave has been extended to fathers in many countries and child custody is being fought for by fathers who demand that their parental role be considered as seriously as mothers' role traditionally has been, etc. Sexual orientation or preference has come to the fore as a HR issue in recent years, with courts and laws changing dramatically in some countries (from decriminalization of same sex activities to the possibility of formal marriage<sup>5</sup>). So has the supposed immutability of sexual or gender identity, with more and more countries allowing a legal change of sex and the UN or the European Court of Human Rights (ECHR) stating sexual identity as a right and including the possibility of change as protected<sup>6</sup>.

Nonetheless, it is fair to accept that the issue of *gender* in human rights instruments and

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4 "The human rights of women and of the girl-child are an inalienable, integral and indivisible part of universal human rights. The full and equal participation of women in political, civil, economic, social and cultural life, at the national, regional and international levels, and the eradication of all forms of discrimination on grounds of sex are priority objectives of the international community." UN Conference on Human Rights (1993).

5 In 2010, Portugal altered its Civil Code to include same sex marriage. The law had recognized "de facto unions" between two people of same or different sex since 2001. The Constitution included "sexual orientation" as an explicit forbidden ground of discrimination in 2005 – and the lawyers have ever since been discussing its implications. Adoption or artificial insemination is still legally forbidden to same sex couples.

6 UN, Human Rights Council: 'A resolution submitted by South Africa requesting a study on discrimination and sexual orientation (A/HRC/17/L.9/Rev.1) passed, 23 to 19 with 3 abstentions, in the Human Rights Council on June 17, 2011. This is the first time that any United Nations body approved a resolution affirming the rights of LGBT people. The resolution calls on the office of United Nations High Commissioner for Human Rights Navi Pillay to draw up the first U.N. report on challenges faced by gay people worldwide.' [http://en.wikipedia.org/wiki/Sexual\\_orientation\\_and\\_gender\\_identity\\_at\\_the\\_United\\_Nations#UN\\_Human\\_Rights\\_Council\\_Resolution](http://en.wikipedia.org/wiki/Sexual_orientation_and_gender_identity_at_the_United_Nations#UN_Human_Rights_Council_Resolution) (for a good overview) - acc. 12 September 2012.

discourse arose from the awareness of the absence or limited protection of *women*. This is also true about *Gender Studies* in general. Masculinities studies followed on Women Studies. The research on the social, economic, political, legal situation of women as a *lower caste* (see Cass Sunstein) entailed the investigation of the social construction of *gender relations*. And the social system of gender relations is most deeply marked by an imbalance of power in various spheres of life that, on the whole, predominantly favours men against women - *some men against some women, of course*. The gender system is not isolated from class, race or any other basis or 'pretext' of domination. Imbalance of power, domination, and discrimination are functions of many variables, intertwined and mutually influential. The official European Union (EU) policy on discrimination has notably been insisting on the need to consider *multiple discrimination* a major fundamental rights problem. Things become even more complicated when it comes to *intersectional discrimination* (e.g., discrimination against 'black women', or 'immigrant women', or 'Muslim men', or any such combination of factors).

### **Gender Identity, Gender Relations, Gender System**

It is important to notice that the various social and legal changes that have taken place in recent years have not in general challenged the identification-by-gender (as opposed to what happened with race, most notoriously) or its dual nature, even if biologists as Fausto-Sterling or writers as Virginia Woolf have considered that two sexes are too few for human variation and richness. For common sense as well for the hegemony in scientific and other discourses (legal, most obviously!) two is the only possible number. Now, the history of law and custom suggest that the deviation of the supposedly natural behaviour in gender terms has always been more or less severely repressed, which questions any simple belief in the sheer basis on nature – and finally the inevitability of categorization by gender and its stern dual persistence.

In fact, people do not 'belong' to a gender. They live in a *gender relations system* which associates imbalances of power with natural sex differences. The Law has been a major actor, together with religion, custom, science in the building of a hierarchy, an *imbalanced difference*, between men and women – just as it did (and still does, for sure) in many places and centuries with race or religion.

Gender is not only about individual identity or what a society teaches us a man or woman, boy or girl should be like or how they should behave. Gender is also a way of structuring relations of power - whether that is within families, where the man is often considered the head of the household, or in societies at large, where men tend to be the ones in whose hands political, economic, and religious and other forms of cultural power are concentrated.

### **Women Treated in an Inferior Way to Men: Exclusion, Oppression, and Discrimination**

In most if not all societies in the world as we know it, women are considered and treated as inferior to men, or have been so in the very recent past. The ways and manners that such inferiority is rationalized or practiced vary immensely, but Anthropology has noted

both this variation and its constancy. This can be observed in all spheres of life, including the public arena (political participation, rules of nationality, Armed Forces), the so called private life (family, personal relationships, codes of behaviour) and the mixed area of work and employment. The division of such spheres is in itself problematic from the point of view of Women's Rights, precisely because *the most traditional way of submitting women is to privatise them* – mostly through their husbands (and before that, by their fathers). On the other hand the “private life” is strongly regulated by legal norms of a compulsory, non-optional nature (Family Law, most obviously; but also Criminal Law about sex crimes), which shows the problematic nature of the division between “public” and “private”.

### ***Public Arena (Public Sphere): Nulla Mulier in Ecclesia***

In the so-called Public Arena, women have been barred from political participation, discriminated against by the legal rules of nationality, and totally or partially excluded from the Armed Forces. This means that their link to the State, their statehood, is *indirect* (through Father and Husband). Rules of propriety, or appropriate behaviour, reinforce the private, secluded realm of women's lives that seem to perpetuate for many centuries the Greek tradition of the confinement of women to the Gynaecium. So called Victorian morals and the absolute creed in the appropriate nature of different spheres is but an extreme recent example of such survival of the centuries old doctrine. The tradition of Roman Family Law, coupled with Greek Classical Philosophy – Aristotle most particularly in *De Generatione Animalium* – seem to be the distant but persistent roots of the Western sexist Civilization.

*Nulla mulier in ecclesia*. Women should be silent in public. The Seneca Falls Convention, 1848, that proclaimed the *Declaration of Sentiments*, the somewhat belated feminist replica to the *Declaration of Independence* of 1776, has its origin in the reaction of two Women Activists in the Anti-Slavery Movement. They attended the London Conference on Abolition, being major activists, but were not allowed to speak due to their sex. They had to stay in the gallery and shut up.

In France, the revolutionary *Declaration des Droits de l'Homme et du Citoyen* (1789) was quickly followed by the prohibition of women's political clubs and Olympe de Gouges alternative *Declaration des Droits de la Femme et de la Citoyenne* (1791) had to wait almost 200 years to become a reality in French law and politics. Women's suffrage only arrived in the home of the French Revolution in 1948. Olympe herself was executed under Robespierre in the guillotine, giving a chilling (in)consistency to her claim of uniting the access to the scaffold and to the tribune<sup>7</sup>. The republican concept of citizenship is – was born as – “male”.

Often women's participation in revolutionary movements is not ‘rewarded’ when the change in the political regime consolidates itself. The most recent and clear example of such phenomenon is probably the ‘Arab Spring’.

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7 Benoîte Groult (2013). *Ainsi Soit Olympe de Gouges*. Paris : Grasset. Isabel do Carmo e Lígia Amâncio (2004). *Vozes Insubmissas*. Lisboa: D. Quixote.

### ***Paid Work: Employment***

At work, all over the world women earn less, they do not easily reach the top of professional careers, they carry the burden of double or triple work (paid professional work; unpaid care work at home, doing housework, and taking care of children, other relatives and also in-laws); they will often have to interrupt work or work part time because of maternity, suffering setbacks in their professional careers or being made to make and carry on “impossible choices”; they can be stopped from getting a job (or even be thrown out from school) because they are pregnant; they can suffer from sexual harassment that is not taken seriously.

### ***Private Sphere: Family, Sexuality and Reproduction***

In the family, their share of care work is unfair, and home authority is traditionally the man; laws protect that authority until did so until very recently; some customary laws still do; some confessional laws (Islamic, e.g.) still do; domestic violence compounds the subordination.

Sexuality: Women are portrayed as *objects of pleasure for men*. Their “autonomous” sexuality is often denied; repression of homosexual relations – also in the case of women – is connected with gender inequality, because lesbian relationships question the male hegemony in sexual and social terms. Pornography (or even seemingly ‘harmless’ sexist advertisements) can be harmful to women. The exploitation of the female body as an enticement to multiple products has become endemic in countries like Italy. The general context of representations of sexuality and in particular certain forms of pornography have evolved towards what can be described as rape culture. Rape is the crime traditionally most underreported and under-repressed, making the shame fall uncritically on the victims. Rape and connected acts have only very recently been recognized as serious crimes against Humanity by International Law, mostly by the Rome Statute (ICC, 1998) and in the case law of *ad hoc* criminal courts (Rwanda, ex-Yugoslavia). And yet they have been the staple diet of invading armies everywhere.

Reproduction, a process that affects women in a most obvious way, both in terms of pregnancy and motherhood, has in most places and in many ways traditionally been controlled by men. Legislation, religious restrictions or medical practices related to birth control and abortion have in many ways been out of women’s hands. And so is artificial insemination, because authority in the legislative, religious, and medical spheres is still largely in the hands of men.

### ***Equality, Discrimination and Rights***

Societies all over the world are marked by imbalanced gender relations. The phenomenon takes quite different shapes and sizes. Anthropology has noticed both its variation and its ubiquity.

In “modern”, developed countries, the hegemonic legal and political way of dealing with the perceived imbalance of “Gender” is the framework of an inseparable pair: *Equality* and *Discrimination*. This presupposes that people are naturally men (male) and

women (female), that somehow an imbalance has been established between these categories and that Law – and to some extent Politics, including legislation – has to be called upon to correct the asymmetries.

For historical and political reasons, this path has been particularly resorted to in the context of the labour market. The original version of Art. 119 of the Treaty of Rome 1950 (European Economic Community, later European Union) – drafted for fighting unfair competition based on cheap female labour – partly dictated a sharp concentration of EEC policies and directives on (paid) work, employment, salaries and similar issues.

This traditional way of dealing with inequality forgets, among other things:

- (1) That Law was to a large extent complicit in creating the very inequality that it is supposed to fight;
- (2) That the very concepts of men and women are historically – and also legally – created by a plurality of discourses, and are normatively endowed with expectations and presuppositions that must be deconstructed;
- (3) That the philosophical tradition (of Aristotelian origin) that correlates equality and difference does not question the *perception of difference* (who says what is different and why, and on whose authority) and mixes difference with submission;
- (4) It also fails to see that the problem is not difference, but subordination, domination, exclusion; to put it another way: *hierarchical difference*;
- (5) Nor does it question the assumption that its reasoning tends to equate male=norm and female=deviance; the ‘false neutral’ is male;
- (6) It tends to consider all men and all women as two homogeneous groups, therefore assuming an essence (*Das ewig Weiblich*) in their nature and features, which is empirically and historically untenable;
- (7) The concentration on paid work is short sighted and inefficient.

*Difference*, like beauty, is largely in the eye of the beholder.

What one sees, the beholder’s vision, is shaped by power relations, stereotypes, hegemonic discourse, and common sense. Prejudice and habits, traditions, and personal or common held beliefs – prejudicial conceptions, preconceptions – determine what he/she is able to see and how to interpret it, to give meaning to it.

Discursive power, like all power, is unevenly distributed and complex. The power to determine, to define, to label, to establish difference (the existence and meaning thereof) belongs to few. So does the power to be heard and to establish patterns or rules.

So, treating the “similar” alike and the “dissimilar” (different) unlike (Aristotle) begs the question of *what* is similar or dissimilar, of *who* says so and based on what.

It is at best a self-fulfilling prophecy. The same remain the same, the different remain different. At worst, it will create, justify or reaffirm/reinforce power hierarchies that can be extremely harmful to the ones at the bottom, the so called “different”: Jews; Women; Blacks; Gays and Lesbians; Foreigners; the Old; the Poor; the Immigrants; the Sick; the Other.

The French philosopher Simone de Beauvoir<sup>8</sup>, was one of the best theorists of woman seen and treated as ‘the other’; to this day we can see how that idea is persistent; it is always ‘women’s difference’ that is supposed to need explanation or justification, even if they are the majority of the world population; whether we are dealing with pregnancy or with female judges or politicians, the question is always: what is the equivalent in men – for pregnancy? Or: do women do it differently from men? Are they better, more moral, more compassionate – as judges and politicians? The question is never asked the other way round.

### **Human Rights Declarations: Universality and Exclusion**

*“The International Bill of Human Rights, combined with related human rights treaties, thus lays down a comprehensive set of rights to which all persons, including women, are entitled. However, the fact of women’s humanity proved insufficient to guarantee them the enjoyment of their internationally agreed rights...”*<sup>9</sup>

Universal in their language, the Declarations of Rights always seem to leave some people out. As a matter of fact, most humans were left out of the circle of the ‘protected’ happy few. In some cases, this happened in an explicit way: “the *merciless indian savages*” were considered out of the ‘All Men are born equal...’ of the American Declaration of Independence, 1776. More often than not the exclusion happened in an implicit way, and sometimes it would later become explicit: the women, the slaves or the colonial peoples, the poor, the disenfranchised (United States of America, 1776; France, 1789)

Sometimes the implicit exclusion needed to be made explicit: the Portuguese electoral republican law of 1911 was changed in 1913 after the medical doctor and widow Carolina Beatriz Ângelo had managed to be admitted to the vote in the elections for the Constituent Assembly of 1911, claiming to be the head of the family (being a widow and a mother). The wording of the law was changed to ‘male heads of family’.

### **Women’s Rights in International Law**

*But the fine words of these documents and of the Vienna Declaration in 1993 and the declaration of Beijing in 1995 stand in sharp contrast to the daily reality of life for millions of women. Of the 1.3 billion people living in poverty, 70 per cent are women; the majority of the world’s refugees are women; female illiteracy is invariably higher than male illiteracy. Women and girl-children are treated as commodities in cross-border prostitution rackets and the pornography industry.*

Mary Robinson, HCHR, 2000

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8 See Simone de Beauvoir (1947). *Le Deuxième Sexe*. Paris: Gallimard.

9 Acc. March 2009. Available at <http://www.un.org/womenwatch/daw/cedaw/history.htm>

Most international and regional Organizations have fostered Conventions or created structures to fight against sex discrimination, as it happened with other discrimination factors, most notably ‘race’.

The most obvious change has perhaps been from some sort of chivalrous respect (as with the Geneva Conventions: “respect due to their sex”) to the idea of Equality (many UN Conventions on Women’s rights and all the various non discrimination clauses) and finally the beginning of the questioning of natural roles and divisions of labour and spheres. This last step happens most obviously with CEDAW and its insistence on challenging the division of roles and tasks between men and women as one major condition for changing gender relations. Considering that the Convention dates from 1979, the idea is quite ahead of its time and the common belief on a natural and to a large extent immutable division of male and female roles lingers in all societies as a persistent and ...

The United Nations were the first major international organization to vouch for the prohibition of sex discrimination and the creation of organizational structures to promote the status of women. All its major texts, from the Charter to the Universal Declaration on Human Rights (UDHR, 1948) and the International Covenants on Civil and Economic Rights (ICCPR and ICSECR, 1966) contain clauses on sex discrimination. Various Conventions on Women’s Rights (political participation, nationality of married women, etc) were amalgamated into a general Women’s Convention in 1979 (CEDAW). The fact that these Conventions were created reveals the awareness that the ‘equality clauses’ were far from being enough to protect the rights of women. The World Conferences on women often verified that the Conventions themselves are not strong enough against centuries old habits and prejudices (Mexico, 1975; Nairobi, 1980 Copenhagen, 1985; Beijing, 1995).

The European Union and the Council of Europe (CoE) have been two major actors on European territory. A major comment on the role of law on the part of the latter is quite clear. Law is important, but insufficient. The fight against discrimination is a *slow social and political process*.

[CE, Recommendation CM/Rec(2007)17]

“While formal gender equality can be achieved quite rapidly by enshrining this principle into constitutions, laws or specific norms, the same does not happen in regard to substantive gender equality. Its achievement is a complex process which must be regularly monitored and evaluated.

As a first step it requires an in-depth knowledge of women’s and men’s real situation in all areas of life, and of the obstacles and barriers that stand in the way of gender equality. A second step consists in the devising of strategies, plans and programs to overcome these obstacles and barriers. A third step is the implementation of these strategies and plans and their regular assessment and evaluation, a process that requires adequate tools and instruments to measure progress.”

And so have the Organization of African Unity and the Organization of American States on their respective continents.



As in other parts of the world, in Africa the idea won that the African Charter on Human Rights and Peoples' Rights, 1981, was not 'enough' to protect women. The Maputo Protocol on the Rights of Women in Africa – a *most advanced text* was signed in 2003 to create this extra protection.

In the Americas, the American Convention on Human Rights, 1969, has been supplemented by, among others, the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Belém do Pará, 1994).

In all three continents the case law of some courts, both national and international, has contributed in a significant manner to the definition of the legal protection of women and the fight against discrimination – most notably, the European Court of Justice, the ECHR, the Inter-American Court of Human Rights some domestic courts like the Constitutional Court of South Africa.

More recently, the ad hoc Criminal Courts for ex-Yugoslavia and Rwanda and the International Criminal Court (ICC) have made significant progress in giving international visibility to serious violations of women's rights in situations of extreme violence and total disrespect for HR in general.

Looking at the paraphernalia of texts, structures, committees, courts, *rapporteurs*, special missions and proclamations in International Law and Organizations, one has the contradictory feeling that everything has changed and that nothing (or almost nothing) has changed<sup>10</sup>. Certainly some rules of European Directives on Equality and Discrimination (EU), or some articles of the latest Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (CoE, Istanbul, 2011) would seem quite impossible not so many years ago. Even some clauses of CEDAW and some opinions of its Committee on concrete cases of complaints seem quite impossibly *advanced*, in social and political terms. But when one looks at persistent forms of Gender Inequality, particularly when associated with poverty and continuous insecurity or war, the wealth of legal rules seems powerless to contradict the whims of economic power or of authoritarian rulers, often in some kind of mutual association and interdependence.

But so is the plight of International Law – and maybe of Law in general.

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10 A very interesting and recent comment can be read at *The New York Times* of 16th February, 2013: "Why Gender Equality Stalled", by Stephanie Coontz. Available at [http://www.nytimes.com/2013/02/17/opinion/sunday/why-gender-equality-stalled.html?pagewanted=3&\\_r=0&smid=fb-share](http://www.nytimes.com/2013/02/17/opinion/sunday/why-gender-equality-stalled.html?pagewanted=3&_r=0&smid=fb-share)

# Gender and European Union's Common Security and Defense Policy

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## Introduction

To what extent is gender integrated into the EU's Common Security and Defense Policy (CSDP)? This paper first addresses why it is important to address gender, as an aspect in the EU Foreign and Security Policy in general and in CSDP in particular. Secondly, it describes the various EU commitments and policy documents that are seeking to advance its implementation of the key UN Security Council Resolutions on Women, Peace and Security. These are divided into three main objectives: (A) UNSCR 1325 as a political objective; (B) CSDP and – to be addressed only briefly – (c) humanitarian assistance and development co-operation. Thirdly, the paper analyses to what extent the EU has been making a difference in advancing the cause of women in peace and security – particularly through CSDP – and outlines a number of challenges. Finally, a way ahead towards “1325 + 25” is suggested so that – hopefully – by 2025 “gender, peace and security” will have become common place in EU crisis management.

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1 This article is written on a personal basis and does not necessarily reflect any institutional positions. The author is a Dutch national who works as an official for the European External Action Service, as of 1 January 2013 for the Security Policy and Conflict Prevention Directorate. She previously worked for the General Secretariat of the Council of the European Union in various capacities and directorates, namely from 2001-2003 on development co-operation, from 2003-2006 on human rights and from 2006 to 2012 on Common Security and Defense Policy. She holds a PhD from the European University Institute and Master Degrees from the University of Chicago and the Vrije Universiteit Amsterdam.

## Why Gender and CSDP?

The resolutions on Women, Peace and Security adopted over the years by the UN Security Council (UNSCRs), starting with the adoption of UNSCR 1325 in 2000, where a recognition of the fact prior, during and post conflict more had to be done to strengthen the protection of women and girls, to prevent violence against them and to promote their participation in peace building and reconstruction.<sup>2</sup> A particular role was seen for the United Nations and its Member States, especially in the context of peacekeeping operations.

Over time there was an increasing recognition of the role of women as active participants in conflict in various roles – hence not only as victims – but also of the often neglected impact on men and boys, particularly also as victims of sexual violence. Hence, the use of the term “gender” that aims to capture and make explicit the particular impact of conflict on both men and women. Major General (ret) Patrick Cammaert – today one of DPKO’s prominent trainers of peacekeepers on countering sexual and gender based violence, famously said at Wilton Park in 2008: “it is perhaps more dangerous to be a woman than a soldier in armed conflict”.<sup>3</sup> Atrocities documented during and after conflicts around the world testify to the biting truth of that statement. There are many reasons as to why – 12 years after the adoption of UNSCR 1325 and its successor resolutions – it remains important to integrate gender into the EU’s CSDP. The Force Commander of the second EU military operation in the DRC during the 2006 elections quoted the gender advisor of his team as one of the 10 key factors contributing to the success of the mission.<sup>4</sup> The Force Commander of one of the few EU operations with a protection element in its mandate, EUFOR Tchad (2008-2009) admitted that “We initially thought ‘gender issues’ were only about the behavior of troops... not realizing the operational interest, the added value to the effectiveness of the mission of integrating gender perspectives”.<sup>5</sup> Despite this recognition at senior level, both planners in Head Quarters and staff in the field need to be constantly reminded of the importance of gender aspects when planning new missions, reviewing ongoing ones and when conducting operations in theatre. Why is this the case? The 2010 UN inventory and others point out that sexual violence as an instrument of war remains the least condemned war crime.<sup>6</sup> The notion that it is somehow a cultural or inevitable trait of conflict has contributed to sexual violence not being condemned as a crime. A public/private divide in security

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2 1325 focused on increased participation and representation of women and on mainstreaming a gender perspective in programming, training and peacekeeping. Follow-up resolutions to UNSCR 1325 strengthened the protection pillar: 1820 (focus on sexual violence), 1888 (introduced inter alia a Special Rapporteur and Expert Teams of Women Protection Officers), 1889 and 1960 (set up a mechanism for compiling data and listing perpetrators sexual violence for sanctions).

3 Quoted in the UN analytical inventory of peacekeeping practice, page 10. New York, June 2010.

4 Lessons identified EUFOR RDC 2006, doc. xxx/06

5 Brig. General Jean-Philippe Ganascia, former Force Commander of EUFOR Chad, at EU Seminar in Brussels, 9 July 2009. Quoted in UN analytical inventory, page 18, New York, June 2010.

6 UN Inventory June 2010, Kvinna to Kvinna Report 2012, UNSG Report on 1325/1829 dated October 2012

policy has kept rape off the radar screen. Public security issues receive more attention than what are considered “private” security concerns, even though the crime goes to the core of protecting the safety of citizens and their social fabric in all countries. Also sexual and gender based violence (SGVB) remains particularly invisible in a male dominated security sector – where women are afraid to report crimes to men with arms who they tend to see as a threat. Moreover, women and men play varying roles during conflict as early warners, victims, activists, peacebuilders, providers, combatants... but also as negotiators? This turns out not to be the case.<sup>7</sup> The term sexual violence is usually not even mentioned in the body of the text of such agreements even though there is no conflict in which it is not used as a tactic of war. This is counter effective as impunity and gender-blind peace agreements impede sustainable peace and security. Moreover, international law and Programmes of Action clearly recognize that SGBV is not a women’s issue but a human rights issue that concerns us all.<sup>8</sup>

In 2012, the EU started to deploy new missions in the Horn of Africa, South Sudan, Niger and is planning new deployments in Libya and Mali. Many of these countries are listed by the October 2012 report on 1820 by the UN Secretary General as conflicts where parties perpetrate sexual violence as a tactic of war. It is thus an impediment for the EU to ensure that it finds ways to effectively address gender aspects in the planning, conduct and review of its missions and operations – as it has said it will in numerous policy statements and documents. To what extent then is gender an integral part of EU external action?

### **The EU Approach towards Implementing the Key UN Security Council Resolutions**

The adoption of UNSCR 1325 coincided with the start of the EU’s CSDP. Its very first deployment in the DRC in 2003 EU deployed staff was immediately confronted with the different impact of conflict on men and women. By 2012, with a total of 25 civilian missions and military operations of which 15 ongoing, the EU developed a comprehensive approach towards integrating gender aspects into CSDP encompassing foreign policy instruments such as diplomacy and CSDP as well as development and humanitarian assistance.

#### ***UNSCR 1325 as a Political Objective***

The EU tries to adopt a holistic approach towards the implementation of UNSCR 1325 by gearing all its instruments towards the same objective, which is to ensure a gender perspective to all EU activities.

A number of policy documents embody and set out this approach, of which the

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7 A UNIFEM study points out that of the major peace processes since 1992 women represented only 2,5% of signatories, 3,2 % mediators, 5,5% witnesses, 7,6% negotiators - little has improved since 2000.

8 Geneva Conventions (protection civilians) 1977, Vienna Declaration and Programme of Action 1993, Beijing Platform for Action 1995, CEDAW (1981) and OP (2000) on elimination of violence against women, ICC Rome Statute.

most encompassing is the 2008 “Comprehensive approach to the EU Implementation of the UNSCRs 1325 and 1820 on Women, Peace and Security”. The comprehensive approach is a cross-pillar which is still very relevant in today’s post-Lisbon Treaty context. It spans from conflict prevention to reconstruction and institution building. It calls for policy dialogue with local partners about women, peace and security issues as well as gender mainstreaming in crisis management and long-term development strategies. It also lists specific activities to protect, support and empower women. Furthermore, it insists that indicators should be developed to verify implementation of UNSCR 1325/1820. These were subsequently adopted and reported on in 2010, thus establishing a baseline for future comparison. The second report is now due mid 2013.

Other relevant documents include the 2003 EU Guidelines on Children and Armed Conflict which were revised in 2008, the 2008 EU Guidelines on Violence and Discrimination Against Women and Girls and the Guidelines on International Humanitarian Law from 2005 that were revised in 2009. These guidelines aimed to strengthen the EU’s human rights policy in this field and listed EU tools to combat violence and discrimination.

The 2009 EU concept on Strengthening EU Mediation and Dialogue Capacities has set a policy goal of promoting the representation of women and the availability of adequate resources for dedicated mediation gender expertise from an early stage of mediation processes onwards. Operational support has been given to a number of priority countries (including Libya, Syria, Tunisia, Yemen, Nigeria, Mali, Zimbabwe and DRC) as well as work on two thematic issues (security sector reform and the role of women in peace processes). In all this work, the aim is to strengthen capacities and provide guidance for staff as well as mainstreaming prevention throughout the EU’s work. Close cooperation with multilaterals and also, thanks to the Instrument for Stability, with a number of NGOs, including those under the umbrella organization of the European Peacebuilding Liaison Office. Most recently, in June 2012, the EU adopted a “Strategic Framework and Action Plan on Human Rights and Democracy” where women are placed at the centre of the EU’s relations with all third countries and in all areas of its external action. The Human Rights country strategies also include reporting on women’s rights.

Finally, the so-called Copenhagen criteria remain of relevance. In 1993 the European Council identified the economic and political requirements candidate countries will need to fulfill to join the EU. It also concluded that accession could take place as soon as they were capable of fulfilling them. The political criteria include stability of institutions guaranteeing democracy, the rule of law, human rights, and respect for and protection of minorities. A recent visit by a group of women leaders from Kosovo to the EU Head Quarters stressed that this is a major leverage the EU should use to force partner and candidate countries to make progress on gender indicators and legislative reform to ensure equal treatment of women and men.

Now who is implementing the EU’s commitments on UNSCR 1325 as a political objective?

Internally, the EU has instituted a inter-service Task Force that includes staff from across the EU institutions with many dedicated individuals - men and women - trying to make a difference in the various areas they work on - both inside the EU and outside the EU.

Member States play an important role, more than half of the 27 Member States now have a National Actions Plans and some others are in the process of developing one. Their representatives can raise gender related issues in all Council Working Parties and at Ambassadorial level whenever they feel that draft EU policy documents did not properly take into account gender aspects.

The European Parliament is an active promoter of UNSCR 1325 and its successors and adopted its own resolutions in 2000, 2006, 2009 and 2010.

The EU also actively works with Civil Society – in terms of policy exchanges, funding, seminars and for instance studies.

In the external relations of the EU, the High Representative / Vice-President Lady Catherine Ashton sees promoting the role of women in peace and security as one of her key priorities, particularly in countries in transition. She thus raises this issue regularly in her diplomatic contacts and public speeches and meets women human rights defenders where she can during her travels, such as recently in Egypt and Tunisia. She appointed in July 2012 a Special Representative on Human Rights, Mr. Stavros Lambrinidis, who is also on record as seeing this as one of his priority issues to advance. The EU's regional special representatives also have in their mandate to advance human rights issues and regularly report specifically on women's rights.

Of course the EU Delegations play an important role in carrying out local dialogues with their counterparts and in co-ordination with other actors on the ground. The 2010 indicators report found that women, peace and security related concerns were raised during political dialogue with over 70 countries in 2010.

The EU also raises gender related issues with its multilateral partners, such as the UN, AU, OSCE, NATO (at staff-to-staff level) and G8 and seeks to advance the implementation of UNSCR 1325 together with them. This is done through exchanging best practice during for instance the EU-UN Steering Committee on Crisis Management or pledging concrete commitments, for instance during the Equal Partnerships Initiative that was launched in the margins of the UN General Assembly in September 2012. Representatives of international organizations are invited at the annual EU meeting on UNSCR 1325 which was originally meant to promote the adoption of National Action Plans by Member States.

Finally, promotion of this political objective is funded in a variety of ways. The EU's Common Foreign and Security budget supports with about EUR 200 million a year the development and the implementation of national action plans, funding for non-governmental organizations and training for governmental agencies outside the EU. Some projects are financed through the European Initiative for Democracy and Human Rights (EIDHR), for example UN Women carrying out a project entitled "Women Connect Across Conflicts: Building Accountability for Implementation of UN SCR 1325" which

is implemented across South Asia, Southern Caucasus and Central Asia.<sup>9</sup> The Instrument for Stability also has a special gender focus. It funds for instance UN Women and UNDP in promoting the implementation of UNSCR 1325 in Liberia, Timor Leste and Kosovo (2 Mio Euros).<sup>10</sup>

### ***Common Security and Defense Policy (CSDP)***

To what extent has the EU implemented its commitments under UNSCR 1325 and its successor resolutions in its Common Security and Defense Policy (CSDP)? Over the past decade, a series of guidelines and checklists has sought to address various aspects of these resolutions.

In 2003 the EU adopted Guidelines on Protection of Civilians in CSDP Missions and Operation. They were reviewed in 2010. Also in 2003 Generic Standards of Behavior for ESDP operations were adopted. Nowadays these standards – which amount to a zero tolerance policy – are included in the operational plans of CSDP missions and operations.

In 2005 a checklist and in 2006 operational guidance on mainstreaming Gender into CSDP were developed. These documents intend to provide concrete operational guidance to planners.

Originally compiled in 2007, in 2008 all relevant documents were published in a kind of handbook, entitled “Mainstreaming of Human Rights and Gender into ESDP – Compilation of Documents”. This compilation also provides numerous practical examples of how the various EU commitments on human rights and gender can be concrete translated into job descriptions, pocket cards, planning documents and reviews.

Also in 2008, the EU agreed on a further guiding document, titled “Implementation of UNSCR 1325 and UNSCR 1820 in the context of CSDP”, which was reviewed and updated in March 2012.

In 2010 lessons and best practice were identified on the extent to which these various documents had been implemented in practice and recommendations were formulated to seek further improvement.

Finally, over time, training efforts increased: the European Security and Defense College started to include presentations on human rights and gender mainstreaming in its courses on CSDP (taught mainly by experts from within the External Action Service, previously Council Secretariat and Commission) and a number of Member States developed more specific training sessions for future CSDP staff. In 2010, the EU decided that standard training modules should be developed. These are expected to be ready for use in 2013.

Apart from CSDP staff in missions, obviously the planners in Head Quarters as well as the Heads of Mission and Operation Commanders have to sensitized on the gender

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9 EIDHR totals 472 Mio Euros from 2011-2013

10 The IFS has a budget of € 2.062 billion for 2007-2013, allocated as follows: short-term component: €1,487 million (72% of the total); long-term component: €484 million (23% of the total). The remaining funds are allocated for administrative expenses.

aspects of their work. To that end, regular training sessions and meetings with experts have been set held and attempts are made to brief new Heads of Mission prior to their deployment.

One of the biggest contributions to mainstreaming has however been the decision to start deploying Human Rights and Gender Advisors to CSDP missions and operations. As shown in the graph below, starting with the EU Monitoring Mission in Aceh in 2005, this has now become common practice. Today, almost all CSDP missions and operations have a human rights and gender advisor (often the position is double hatted) or – in the case of training missions – include specialized trainers on these issues as part of the curriculum (e.g. EUTM Somalia, EUTM Mali).<sup>11</sup>

The work of these human rights and gender advisors varies depending on the mandate of the missions/operations they work for. The point of departure of the work is typically the international human rights obligations and the national legal framework and institutions of the host state. Examples include the following:

- EUFOR Tchad: provided training, developed a comprehensive structure for monitoring and reporting, set up protection system around IDP camps;
- EUPOL Afghanistan: set up a hotline for female police officers under threat;
- EULEX Iraq: trained 450 female police/justice/penitentiary staff, improved detention facilities separating women and children from men;
- EUPOL COPPS: installed a Gender Award, set up a pilot Female Police Corps Unit, established a cross-Ministerial coordination mechanism on gender;
- EULEX Kosovo: stepped up investigation and prosecution of war rapes as well as the fight against trafficking, a Human Rights Panel was established in view of the executive mandate of the mission;
- EUPOL RD Congo: a team of experts on sexual violence was deployed in the East, gender training and advice is provided to police and military;
- EUMM Georgia: the gender advisor contributes to monitoring, training and reporting;
- EUTM Somalia: training of soldiers includes human rights and gender aspects.

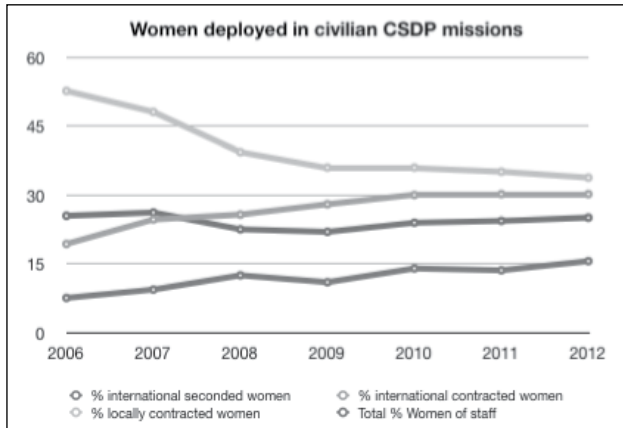
Another indicator to measure to what extent the EU is implementing UNSCR 1325 is by analyzing whether over time more women have participated in CSDP missions (see figure 1 below). Thus far, these data have been compiled for civilian missions only, from 2006 onwards. Although over the past 6 years, on average, the number of women has almost remained constant, the number of internationally deployed women has more than doubled (from 7,6% in 2006 to 15,6% in 2012). This indicates that more female police officers, judges and other rule of law experts have worked for EU civilian missions across the globe. The EU compares favorably to female expert staff in UN missions in this regard.

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11 At the moment EUAVSEC South Sudan does not have a human rights/ gender advisor. For statistics, see Hazelzet 2012, in “Human Rights in EU Crisis Management Operations: A Duty to Respect and to Protect?”, Aurel Sari and Ramses A. Wessel (eds), *CLEER Working Papers* 2012/6, pages 11-20.



**Figure 1** – Women deployed in civilian CSDP missions (data compiled by author on the basis of statistics provided by EEAS/Civilian Planning and Conduct Capability).



### ***Humanitarian Assistance and Development Co-operation***

A third instrument through which the EU is mainstreaming gender, in addition from diplomacy and security, is through development co-operation and humanitarian assistance. It is through these instruments that the EU is funding projects that aim to make a difference on the ground and where the EU and its Member States have potentially large leverage over beneficiaries.

In 2007, the European Consensus on Humanitarian Aid was adopted which indicated the particular importance of gender mainstreaming. That same year, a Communication and Council Conclusions were adopted by Ministers on Gender Equality and Women’s Empowerment in Development Cooperation.

An EU Action Plan on Gender Equality and Women’s Empowerment in Development was adopted for the years 2010-2015. The most recent report on progress was finalized in December 2012.

Examples of projects financed by the EU with a specific gender focus include the safe distribution of food following natural disasters, financing of advocacy tools, protection and support of victims in DRC, training of African Union troops in the UN Mission to Sudan as well as the financing of special fire wood patrols to protect female refugees.

Over time, the recognition of the nexus between security and development has clearly grown within EU institutions. This is evidenced by the European External Action Services’ objective to ensure a “comprehensive approach” across EU policies and instruments to any given situation. The nexus between security, development and human rights could still be further strengthened.<sup>12</sup>

12 See Hazelzet 2012 in Sari ad Wessel.

## Challenges

### *Is the EU Making a Difference?*

The EU's publicly stated and repeated commitment to UNSCR 1325 and its successor resolutions is clear, and it has been followed by action at various levels: diplomacy, security, development and humanitarian assistance.

There are certain limits to what can be done in the area of CSDP as the activities of such missions depend on their mandates. The majority of these missions and operations focus on training and advise – particularly in the domain of justice and security sector reform – rather than on protection. Therefore, mainstreaming of gender aspects has to be tailored to the tasks of the mission/operation.

The fact that the EU now has gender advisors in almost all its missions is a great sign of its commitment and these experts are making a difference on the ground as the examples show. That said, their position - as well as that of their counterparts at Headquarters - could be strengthened at a strategic level as well as in terms of human resources dedicated to this task. The fact that the latest report by the UN Secretary General on the implementation of the various UN resolutions on Women, Peace and Security lists parties to conflict that use sexual and gender based violence as a tactic of war in various countries where the EU is deploying CSDP missions (*e.g.* Mali, Libya) underscores the importance of ensuring that expertise is included at the appropriate level.<sup>13</sup>

Strong coalitions have helped to advance gender mainstreaming both at Headquarters and on the ground. A recent innovation that has started to bear fruit on the ground has been the result of the EU Memorandum of Understanding with UN Women. Projects have focused on sharing best practice between the UN, the EU and countries across the world in for instance drafting national action plans (*e.g.* Kosovo, Liberia and Timor Leste). The network of NGOs brought together by the European Peacebuilding Liaison Office (EPLO) has been very active in providing additional expertise and insights to EU policy makers. There is still more to learn across international organizations (UN, NATO, OSCE, others), NGOs and others.

In terms of mediation - an important pillar of the resolutions on Women, Peace and Security – the EU has been financing the gender advisor in the UN mediation team. Some – particularly women groups from the Balkans – have argued that more could be done in this respect about including gender advisors (not just women) in EU mediation teams.

An important geographical area where the impact on the ground of the work on women, peace and security remains to be closely watched is Afghanistan, Iraq and the countries in transition following the Arab Spring. Whereas women human rights defenders have been at the forefront of transition, women's rights could disturbingly easily be used as currencies in peace talks or post-transition arrangements as well as constitutional reform.

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13 October 2012

### ***A Number of Challenges Stand Out***

There is still a wide-spread perception or misunderstanding that gender is a women's issue and that human rights are a "soft" security issue - not core to security and defense. When trying to counter this perception, for instance through training, it is difficult to broaden the audience and preach beyond the converted - especially if such training is not mandatory. It is unclear how many of the over 5300 currently deployed staff members in 15 CSDP missions and operations were trained on gender. Of those that were, the question is whether they were prepared for what they encountered. Although we noted a doubling of female staff deployed to civilian missions, the figures for the military operations are not known but they are certainly lower. The question is what steps could be taken by the EU as well as by its Member States to increase female participation in CSDP.

There is no lack of instruments in place at the EU to help address gender mainstreaming; but it remains a challenge to actually deliver on this potential. The next indicators report is due mid-2013 which would help to start identifying trends, gaps and best practice.

Finally, increasing public representation of women is an important focus of the work on Women, Peace and Security. Also here, the EU could make more headway. For instance, although the EEAS's first head is a woman as is one of her deputies, only 19% of EU Heads of Delegation are women and there are no female Heads of Mission/ Operation Commanders of CSDP missions/operations.<sup>14</sup> The first two female EU Special Representatives are in office today.

### ***Way Ahead: 1325 + 25***

Thanks to persistent lobbying work by women organizations and individuals across the globe over 12 years, today UNSCR 1325 is one of most well-known UNSCRs. Does the EU stand out as an example for championing this resolution? It has the instruments, political will and guidelines in place to make a difference in practice. This article sought to show examples of best practice as well as identify gaps and challenges. In 2012, the EU won the Nobel Peace Prize – this comes with responsibility. There were no women around the table when the EU was created, today there are.

This article addressed only gender mainstreaming in the EU's foreign and security policy, particularly in the field of security and defense. Yet, gender based violence is a universal issue, that occurs also within the EU.<sup>15</sup>

If we imagine the year 2025, the year in which UNSCR 1325 will be 25 years old. We are half way, so there is still a lot that could be done to accomplish the objectives set out in the resolutions on Women, Peace and Security. Perhaps by 2025, we will speak of "Gender", Peace and Security" highlighting the fact that these themes concern women

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14 Only one of the very first civilian CSDP missions had a female Head of Mission, namely EUJUST Themis in Georgia. All other missions were headed by men.

15 The European Institute for Democracy and Human Rights aims at publishing a report on this in 2013.

and men alike. Perhaps by 2025, we will see a changing role of peace mediators, peace negotiators, peace builders and peace keepers - both with more women amongst them and with more men aware of the gender aspects of their work. We can train, monitor and advise justice, police and military for another 12 years, if we do it in a gender-blind manner, it will not be sustainable. Let's thus hope that the remaining time will be time well-spent so that in 2025 there will be many reasons to celebrate the anniversary of UNSCR 1325.

# Gender Based Crimes as “Tools of War” in Armed Conflicts<sup>1</sup>

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*“I do not fear the shells and bombs that may fall on my house. They do not ask for my name. I fear the foot soldiers who break into my house and kill and wound in a very personal way and commit atrocities in front of my children”<sup>2</sup>.*

*“In the darkness of war, women were excluded from protection of the law and abandoned. Their bodies were permitted to all, without impunity”<sup>3</sup>.*

## Setting the Scene

*“The least condemned war crime”.*

Radhika Coomaraswamy<sup>4</sup>

Since the humanity wages wars, sexual violence has been there. For many generations of combatants, acts of sexual violence in armed conflicts<sup>5</sup> were largely ignored,

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1 This essay is an update of a study presented as a lecture delivered by the author, in June 2012, at CESED-EN (Madrid) to the Gender in Operations Course organized under the aegis of the European Security Defense College.

2 A Muslim woman (Bosnia-Herzegovina) – Prosecutor v. Kupreskic, case N.º IT-95-16-T (ICTY, 14 January 2000) - Transcript 12970 to 12971.

3 Alona Hagay-Frey (2009). *Sex and Gender Crimes in the New International Law*. The Hague: Martinus Nijhoff Publishers, p. xiii.

4 United Nations (1994). The United Nations Special Rapporteur on Violence against Women, Its Causes and Consequences, 263, U.N. Doc. E/CN.4/1995/42 (Nov 22).

5 Nowadays, two main legal definitions of armed conflicts are at stake. The first was provided by the United

tolerated, blanketed, consider as a symbolic side effect, a mark of victory, and sometimes even taken as a “bonus or a compensation” for regular soldiers and mercenaries. For many years it has been perceived as essential to preserving the troops’ morale. Sometimes, it was perceived as “part of the game”. In fact, only in 1945 rape was recognized as an international crime<sup>6</sup>, despite of the fact that the crime elements remained indeterminate until 1998<sup>7</sup>. In this context women were considered property of unrestricted access. Likewise, for many generations, the international criminal law turned a blind eye to the accountability of perpetrators of sexual crimes in armed conflicts. Consequently, the purpose of this essay is to study how the International Humanitarian Law (IHL), the Law of Armed Conflicts (LOAC) and the International Criminal Law (ICL) are equipped to fight against impunity of gender-based crimes in armed conflicts each time they are perpetrated as a tool of war, while gender-based violence has recently emerged as a salient topic in the human security dimension. Recognizing that gender-based crimes in armed conflicts are neither a legal concept, nor a largely accepted and consensual designation,

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Nations International Law Commission in the report on the effects of armed conflicts on treaties: an “armed conflict” means a state of war or a conflict which involves armed operations which by their nature or extent are likely to affect the operation of treaties between State parties to the armed conflict or between State parties to the armed conflict and third States, regardless of a formal declaration of war or other declaration by any or all of the parties to the armed conflict. The same report mentions the following: contemporary armed conflicts have blurred the distinction between international and internal armed conflicts. The number of civil wars has increased. In addition, many of these “civil wars” include “external elements”, such as support and involvement by other States in varying degrees, supplying arms, providing training facilities and funds, and so forth. Internal armed conflicts could affect the operation of treaties as much as, if not more than, international armed conflicts. The second definition was delivered by the Jurisprudence of International ad hoc tribunals in the following cases: ICTY Duško Tadić (1996) - “... an armed conflict exists whenever there is a resort to armed force between States or protracted armed violence between governmental authorities and organized armed groups or between such groups within a State; and ICTR Jean-Paul Akayesu (1998) - 619. ...The Appeals Chamber in the Duško Tadić decision on Jurisdiction held “that an armed conflict exists whenever there is [...] protracted armed violence between governmental authorities and organized armed groups or between such groups within a State. International humanitarian law applies from the initiation of such armed conflicts and extends beyond the cessation of hostilities until [...] in the case of internal conflicts, a peaceful settlement is reached”.

6 Rape as an international crime was introduced as a crime against humanity through the Control Council Law 10 in 1945: Article II, 1.(c) Crimes Against Humanity - Atrocities and offenses, including but not limited to murder, extermination, enslavement, deportation, imprisonment, torture, rape, or other inhumane acts committed against any civilian population, or persecutions on political, racial or religious grounds whether or not in violation of the domestic laws of the country where perpetrated - Berlin, 20 December 1945. Later the IV GC of 1949 (article 27) and the Additional Protocols of 1977 included rape as an international war crime. In 1993 and 1994 both ad hoc tribunals incorporated the crime of rape.

7 Historical precedent set by the ICTR’s judgment in the Jean-Paul Akayesu case (1998). §688. The Tribunal defines rape as a physical invasion of a sexual nature, committed on a person under circumstances which are coercive. The Tribunal considers sexual violence, which includes rape, as any act of a sexual nature which is committed on a person under circumstances which are coercive. Sexual violence is not limited to physical invasion of the human body ... §731. ... Rapes resulted in physical and psychological destruction of Tutsi women, their families and their communities. Sexual violence was an integral part of the process of destruction, specifically targeting Tutsi women and specifically contributing to their destruction and to the destruction of the Tutsi group as a whole.

this study attempts to discover whether, currently, International Humanitarian Law and International Criminal Law incorporate the notion of gender-based violence as a tool of war, as a legal stand included into a larger concept of war crimes, as a constitutive act with respect to genocide<sup>8</sup> and as a crime against humanity.

As mentioned by Alex Obote-Odora sex-based crimes are not easily identifiable<sup>9</sup>, like gunshot wounds or amputated limbs. Likewise, this sort of violence tends to protract armed conflicts, while it is likely to produce an unacceptable level of human suffering and, of utmost importance, is being spread day-by-day as the cheapest weapon to produce the largest scars of human outrage and indignity.

Alona Hagay-Frey refers to the history of sex-based crimes in three different phases: the *Era of Silence*, the *Era of Honor* and a *new direction*. The first Era stood for more than 200 years and the sex crimes in time of conflict were “perceived as lesser crimes and perhaps even excused, as compared to other crimes against the rules of war... as the CCL 10 authorized the prosecution of any war criminal, an opportunity was created to bring many rapists to justice. After the conclusion of Nuremberg and Tokyo Trials (major and subsequent trials) the allied forces began the “*lesser war crimes*” accountability. These trials were performed in national military courts, governed by CCL 10. Yet the crime of rape was not included in even one indictment”<sup>10</sup>. Nowhere in the IMT Charter could the crime of “rape” or any other crime of sexual nature be found... in the last two weeks of the WWII, 100.000 rapes were committed in Berlin alone... all the victims – women, men and children – were ordered to remove their clothing during the march to their death, but it was the women who were selected for an additional humiliation – sexual violence<sup>11</sup>. The second Era started with the signature of Geneva Conventions in 1949, in which sex crimes were recognized. But the “honor paradigm” introduced as a standard to analyze sexual offences “perpetuated the historical patriarchal baggage that sex offences carry as inferior crimes, as crimes of property, torts and plunder, and as crimes against society’s honor, rather than crimes against the body and dignity of the woman who has been attacked”<sup>12</sup>. Finally the third Era, the new direction has began with the establishment of the *ad hoc* tribunals for former Yugoslavia and Rwanda and the entry into force of the Rome Statute. Sex crimes are no longer a matter of honor but recognized as “physical and psychological injuries”<sup>13</sup>.

This essay acknowledges the existence of relevant issues related to the biological

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8 Prosecutor v. Jean-Paul Akayesu, Judgement, Trial Chamber (2 September 1998), Case No. ICTR-96-4-T §507 and §508. The incorporation of the crime of rape into the realm of Genocide represents a significant advance in international jurisprudence. Nicholas A. Jones (2010). *The Courts of Genocide*. London: Routledge, p. 143.

9 ICTR (2005). Rape and Sexual Violence in International Law. *ICTR Contribution*, p. 140.

10 Alona Hagay-Frey (2009). *Op. Cit.*, pp. 66-67.

11 Kelly Dawn Askin (1997). *War Crimes against Women: Prosecution in International War Crimes Tribunals*. The Hague: Martinus Nijhoff Publishers, pp. 52-56.

12 Alona Hagay-Frey (2009). *Op. Cit.*, p. 77.

13 Alona Hagay-Frey (2009). *Op. Cit.*, p. 107.

sex of each individual such as sexual orientation, gender, sexual and gender identity<sup>14</sup>, and establishes a departing point. Nevertheless, it is important to differentiate between the various forms of sexual violence, each one with different dynamics. The following table illustrates and details the parity between the three types of crimes mentioned before, bearing in mind the framework definition of sexual violence. In fact, our common reference is the general definition of sexual violence provided by the Special Rapporteur on *systematic*<sup>15</sup> rape, sexual slavery and slavery-like practices during armed conflict. Sexual violence was defined as “*any violence, physical or psychological, carried out through sexual means or by targeting sexuality*”, thus including “*both physical and psychological attacks directed at a person’s sexual characteristics, such as forcing a person to strip naked in public, mutilating a person’s genitals, or slicing off a woman’s breasts’ as well as situations in which two victims are forced to perform sexual acts on one another or to harm one another in a sexual manner*”<sup>16</sup>. Additionally, the Statute of the International Criminal Court provides (Article 7(1)(g)) that “[r]ape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence” is a crime against humanity. It is clear, then, that sexual violence includes but is not limited to rape, sexual slavery, enforced prostitution, forced pregnancy and enforced sterilization<sup>17</sup>. In fact, our point of departure distinguishes three types of biological sex-related crimes in the context of armed conflicts. Actually, International Humanitarian Law (IHL), Law of Armed Conflicts (LOAC) and International Criminal Law (ICL) apparently organize criminal acts dealing with biological sex-related violence in three different groups as the following table illustrates:

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14 Sex – In a dichotomous scheme, the designation of a person at birth as either “male” or “female” based on their anatomy (genitalia and/or reproductive organs) and/or biology (chromosomes and/or hormones). Sometimes “sex” and “gender” are used interchangeably. For clarity, it is better to distinguish sex, gender identity, and gender expression from each other. Gender identity – A person’s innate, deeply-felt psychological identification as a man, woman, or something else, which may or may not correspond to the person’s external body or assigned sex at birth (i.e., the sex listed on the birth certificate). “Sexual identity” should not be used as a synonym for, or as inclusive of, “gender identity”. Sexual orientation – A person’s enduring physical, romantic, emotional, and/or spiritual attraction to another person. May be lesbian, gay, heterosexual, bisexual, pansexual, polysexual, or asexual. Sexual orientation is distinct from sex, gender identity, and gender expression. A person’s sexual orientation should not be assumed based on the perceived sex of that person’s partner(s). For example, a man who identifies himself as heterosexual may have sexual relationships with men and women. “Affectional orientation” is sometimes used as a more encompassing term. Gender or Gender role – Refers to the traditional or stereotypical behavioral differences between men and women, as defined by the culture in which they live, in terms of, among other things, their gender expressions, the careers they pursue, and their duties within a family. *Glossary of Gender and Transgender Terms*, 2010, page 3-11.

15 The word “systematic” stands for something neat, orderly, organized, regular, methodical, coherent, and systematized.

16 Final report submitted by Ms Gay J McDougall, Special Rapporteur, Contemporary forms of slavery: systematic rape, sexual slavery and slavery-like practices during armed conflict, E/CN.4/Sub.2/1998/13, §21 – 22.

17 Prosecutor v. Brima, Kamara and Kanu, Case SCSL-04-16-PT, Decision on prosecution request for leave to amend the indictment (6 May 2004), §8, §15 (Forced marriage is included in this category).



**GROUPS OF CRIMES BASED ON SEXUAL, BIOLOGICAL SEX, AND GENDER VIOLENCE**

	CONCEPT	METHODS OF VIOLENCE	RELATION WITH THE ARMED CONFLICT AND HARM EXTENSION	
Group I - Sexual Violence (SV)	Involving isolated, and non-systematic criminal acts, perpetrated by individuals (or small groups of individuals) belonging to regular armed forces or to armed groups directly participating in an armed conflict. This sort of crime tends to occur randomly based on a single or individual initiative.	War crime of sexual violence	It was traditionally seen as related to uncontrolled sexual instincts resulting from a long individual lack of sexual satisfaction. They have a link with the armed conflict but are neither systematic nor organized as such. They generally take place using the armed conflict as a blanket to hide the individual criminal behavior.	It has a link with the armed conflict. The commission of such crimes neither intent to directly and effectively contribute to military action, nor impacts out of the limited circle of the victim(s) direct personal relations.
		War crime of rape		
		War crime of outrages upon personal dignity		
		War crime of sexual slavery		
Group II - Biological Sex-based Violence (BSBV)	This kind of criminal violence displays a minimal level of organization and it exploits a biological feature of an individual to produce a result relevant to the armed conflict or as part of a widespread attack. This sort of crime tends to occur in an organization framework.	War crime of murder – Biological Sex Selective Massacres	Perpetrated with the intent to reduce the adversary’s ability to wage wars, by destroying an important source of their potential combat power, which is the non-combatant male (men, children, youth, and elders) population. It has a link with the armed conflict, being also systematic and organized.	It has a link with the armed conflict and is systematic and organized. In the case of crimes against humanity they are widespread or systematic.
		War crime of enforced sterilization & enforced sterilization as a crime against humanity	Contribution to control or destroy an identified group. Male and female sterilization.	
		War crime of enforced prostitution & enforced prostitution as a crime against humanity	The perpetrator or another person obtained or expected to obtain pecuniary or other advantage in exchange for or in connection with the acts of a sexual nature.	
		War crime of forced pregnancy & forced pregnancy as a crime against humanity	Biological sex specific crime. Affecting the ethnic composition of any population or carrying out other grave violations of IHL. It is also an instrument to increase domination over an identified group.	
Group III - Gender-based Violence (GBV)	Gender-based crimes in armed conflicts are perpetrated against men, women, children and elders, as a result of an organized and systematic exploitation of socially constructed roles, to produce an intended effect, <i>as a tool of war</i> , which directly contributes to military action of one of the warring factions or are widespread or systematic.	War crime of rape & rape as a crime against humanity	Might also be perpetrated with the intent of collecting information as torture <sup>18</sup> . Likewise, rape of women might be performed as psychological torture of men <sup>19</sup>	The usage of individuals with the purpose of a direct contribution to military action of significant scale. It has a link with the armed conflict and is systematic, organized or largely spread. In the case of crimes against humanity they are widespread or systematic <sup>20</sup> .
		War crime of outrages upon personal dignity	The perpetrator humiliated, degraded or otherwise violated the dignity of one or more persons. The physical harm or contact is not a requirement in this type of crime.	
		War crime of sexual slavery & sexual slavery <sup>21</sup> as a crime against humanity	The perpetrator exercised any or all of the powers attaching to the right of ownership... and caused such person or persons to engage in one or more acts of a sexual nature.	
		War crime of mutilation	Disfiguring the person or persons, or by permanently disabling or removing an organ or appendage with the intent of preventing an individual of sexual fulfillment. Consent is not a defense to this crime.	
		War crime of enforced prostitution & enforced prostitution as a crime against humanity	The perpetrator or another person obtained or expected to obtain pecuniary or other advantage in exchange for or in connection with the acts of a sexual nature.	
		War crime of sexual violence & sexual violence as a crime against humanity	The perpetrator uses sexual violence to exercise power and domination.	
		War crime of using, conscripting or enlisting children	The perpetrator conscripted or enlisted one or more persons into an armed force or group or used one or more persons to participate actively in hostilities.	

## Group I

The first group comprises all acts of ordinary sexual violence (SV) involving isolated and non-systematic criminal acts perpetrated by individuals (or small groups of individuals) belonging to regular armed forces or to armed groups<sup>22</sup> directly participating in an armed conflict. This type of sexual violence is related to the sexual orientation of the perpetrators, and it was traditionally seen as a manifestation of uncontrolled sexual instincts resulting from a long individual lack of sexual satisfaction. If there exists any form of organization its purpose is strictly limited to the perpetration of an act of sexual intercourse for the sake of sexual satisfaction. No other effects are intended. This first group includes the crimes established by the provisions of the Geneva Conventions of 1949 and their Additional Protocols of 1977, namely article 12 (GC I, II); article 14 (GC, III); article 27 (GC, IV); article 75(2)(b), article 76 (AP, I); and article 4(2)(e) (AP, II). The commission of such crimes neither intends to directly and effectively contribute to military action<sup>23</sup>, nor impacts out of the limited circle of the victim(s) direct personal relations.

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18 Article 8 (2) (a) (ii)-1 defines the war crime of torture (ICC) imposes the purpose of obtaining information or a confession, punishment, intimidation or coercion...

19 R. Charli Carpenter (2006). *Gender-Based Violence against Men and Boys*. London: SAGE, p. 96.

20 International Crime Court Status, Article 7(1) (g). “[r]ape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence” is a crime against humanity.

21 Sexual slavery and enforced prostitution though at first sight seemingly specific in practice to women, may well turn out to be inflicted on men as well were further investigation undertaken. Sandesh Sivakumaran (2007). “Sexual Violence against Men in Armed Conflict”. *The European Journal of International Law* n.º 2, p. 263.22 The additional Protocols I and II to the Geneva Conventions recognize (article 43 1. – API) organized armed forces, groups and units which are under a command responsible to that Party for the conduct of its subordinates... subject to an internal disciplinary system which, inter alia, shall enforce compliance with the rules of international law applicable in armed conflict. Likewise the AP II (article 1 1.) recognizes the scope of application to its armed forces and dissident armed forces or other organized armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement this Protocol.

23 The expression “directly and effectively contribute to military action” is understood in the context of GBV and recalling the definition of military objective provided by the article 52 of the AP I. In fact, article 52(2) (AP I) sets out two cumulative conditions for an object to constitute a military objective: (A) that it makes an effective contribution to the military action of the enemy by virtue of its nature, location, purpose or use, and (B) that its capture, destruction or neutralization provides the attacking party with a definite military advantage... The first part of the test established in article 52(2) is itself divided into two components: that the objective makes an effective contribution to military action; and that this contribution be linked to the nature, location, purpose or use of the objective in question. It has been written that the “requirement of effective contribution relates to military action in general, and [that there need not be a] ‘direct connection’ with specific combat operations.” Alexandra Boivin (2006). “The Legal Regime Applicable to Targeting Military Objectives in the Context of Contemporary Warfare.” *Research Paper Series/Collection des Travaux de Recherche* n.º 2, p. 15 and 18. Furthermore, the effective contribution calls for the “existence of a proximate nexus to military action”, Y. Dinstein (2004). *The Conduct of Hostilities under the Law of International Armed Conflict*. Cambridge: Cambridge University Press, p. 87. The Trial Chamber understands that such an object shall not be attacked when it is not reasonable to believe, in the circumstances of the person contemplating the attack, including the information available to the latter, that the object is being used to make an effective contribution to military action - ICTY, Prosecutor v. Galić, IT-98-29-T, Judgment of 5 December 2003, §51. Nevertheless, the expression “effective contribution” is used with some degree of flexibility that might

According to Alona Hagay-Frey<sup>24</sup> International Law sees it as an attack o honor and that fact gave sex crimes an inferior status. In fact the notion of gender-based violence also exists in this group due to the fact the notion of honor and chastity reinforces the position of women as property of men. However, nowadays International Law recognizes these crimes as crimes against the body and the dignity of women as such. Furthermore, the organization requirement as not parity when compared with gender crimes.

## Group II

The second group includes Biological Sex-Based Violence or violence based on biological sex (BSBV), also known as selective massacres. This kind of criminal violence displays a minimal level of organization with the intent to reduce the adversary's ability to wage the war, by destroying an important source of their potential combat power, which is the non-combatant male (men, children, youth, and elders) population. It exploits a biological sex feature of an individual to produce a result relevant to the conflict. This second group consists of the crimes established by the Geneva Conventions of 1949 and their Additional Protocols of 1977, namely, article 51 (GC, I), 32 (GC, IV), article 72(2)(a)(i) (AP, I).

## Group III

Finally, the third group deals with gender-based violence (GBV). Gender-based crimes in armed conflicts are perpetrated against men, women, children and elders, as a result of an organized and systematic exploitation of socially constructed roles, to produce an intended substantial effect<sup>25</sup>, as a method of war (using humans as tools of war), which directly contributes to military action of one of the warring factions. This sort of violence in neither incidental nor randomly perpetrated. In certain cases, it might be used as widespread, systematic or as a constitutive act with respect to genocide. Nevertheless, GBV in armed conflicts goes further beyond SV and BSBV in terms of requirements. We shall resume this issue later on.

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include "indirectly but effectively support and sustain the enemy's war-fighting capability" as mentioned by A.R. Thomas and James C. Duncan (eds) (1999). "Annotated Supplement to The Commander's Handbook on the Law of Naval Operations." *Naval War College's International Law Studies*, §8.1.1. As mentioned by Marco Sassòli, "to include "war-sustaining capability" means to abandon the limitation to military objectives, and to admit attacks on political, financial (e.g. the main export industry, the stock market or taxation authorities) and psychological targets, as long as they influence the possibility or the decision (which are two different things) of the enemy to continue the war". Marco Sassòli (2003). "Legitimate Targets of Attacks under International Humanitarian Law." *Background Paper prepared for the Informal High-Level Expert Meeting on the Reaffirmation and Development of International Humanitarian Law*: Cambridge: Cambridge University Press.

24 Alona Hagay-Frey (2009), *Sex and Gender Crimes in the new International Law*, Martinus Nijhoff Publishers, page xii.

25 Humiliations, abuse, cruelty, injury, unfit for marriage, glorify the attackers, and raise the moral stigmatization...

26 Available at <http://www.who.int/gender/whatisgender/en/index.html>; <http://www.med.monash.edu.au/gendermed/sexandgender.html>

## Gender-based Violence in Armed Conflicts

*“Gender crimes are the cheapest weapon and the most available ammunition... they are crimes of domination... committed to shatter resistance... and the capacity to lead...”*

Procurator Moreno O. Campo (Verbal indictment in Jean-Pierre Bemba case)

Actors involved in the protection of non-combatants have recently begun to understand the need to fight against gender-based violence, both during an armed conflict and in post-conflict situations. As mentioned before, gender is not a fully accepted international legal concept. However, we need to define gender before we look into the concept of gender-based violence in armed conflicts. Thus, we will consider the definitions of the following perspectives: World Health Organization (WHO), Organization for Security and Cooperation in Europe (OSCE), United Nations (UN), Democratic Control of Armed Forces (DCAF), and theoretical perspectives and feminist views. Let's look for common grounds learning from their definitions.

Firstly, the World Health Organization defines gender as the result of socially constructed ideas about the behavior, actions, and roles a particular sex performs... The beliefs, values and attitudes taken up and exhibited by them is as per the agreeable norms of the society and the personal opinions of the person is not taken into the primary consideration of assignment of gender and imposition of gender roles as per the assigned gender. Thus, “sex” refers to the biological and physiological characteristics that define men and women and “gender” refers to the socially constructed roles, behaviors, activities, and attributes that a given society considers appropriate for men and women... or to put it another way: “male” and “female” are sex categories, while “masculine” and “feminine” are gender categories<sup>26</sup>. Secondly, gender refers to socially constructed roles<sup>27</sup> and relationships between men and women. Rather than being determined by biology, gender is learned. In other words, men and women are taught certain roles and appropriate behaviors according to their sex<sup>28</sup> and gender refers to the roles and relationships, personality traits, attitudes, behaviors and values that a society ascribes to men, women, boys and girls. Gender is not only about women. It is about the specific needs and concerns of girls, men, boys and marginalized groups<sup>29</sup>.

27 A role is the expected behavior associated with a status. Roles are performed according to social norms, shared rules that guide people's behavior in specific situations. Social norms determine the privileges and responsibilities a status possesses. Females and males, mothers and fathers, and daughters and sons are all statuses with different normative role requirements attached to them. The status of mother calls for expected roles involving love, nurturing, self-sacrifice, home-making, and availability. The status of father calls for expected roles of breadwinner, disciplinarian, home technology expert, and ultimate decision maker in the household. Society allows for a degree of flexibility in acting out roles, but in times of rapid social change, acceptable role limits are often in a state of flux, producing uncertainty about what appropriate role behavior should be. *The Sociology of Gender: Theoretical Perspectives and Feminist Frameworks, Key Concepts for the Sociology of Gender Distinguishing Sex and Gender*, page 2.

28 Kristin Valasek, “Security Sector Reform and Gender” in Megan Bastick and Kristin Valasek (ed.), *Gender and Security Sector Reform Toolkit*, Geneva: DCAF, OSCE/ODIHR, UN-INSTRAW, 2008, page 3.

29 Sector Security Reform Foundation Course, DCAF/ISSAT, Lesson 2, point 2.2, page 8.

Thirdly, sex refers to the biological characteristics distinguishing male and female. This definition emphasizes male and female differences in chromosomes, anatomy, hormones, reproductive systems, and other physiological components. Gender refers to those social, cultural, and psychological traits linked to males and females through particular social contexts<sup>30</sup>. Sex makes us male or female; gender makes us masculine or feminine. Sex is an ascribed status because a person is born with it, but gender is an achieved status because it must be learned<sup>31</sup>. Nevertheless, biology does not produce purely “male” or “female” human beings, especially in terms of psychology. Likewise, gender inequality itself is not damaging if it is used to promote well being through the enforcement of fundamental rights. The problem seems to be the intentional exploitation of social constructed inequalities to produce harm, and that leads to our main concern: gender-based violence in the context of an armed conflict.

<b>Biological Sex</b> Biological characteristics based on anatomy.	<b>Gender</b> Socially constructed roles, behaviors, activities and relations considered appropriate by a given society.
Physical and physiological differences and characteristics.	Social, cultural and psychological traits in a particular context. Subordination Status and discrimination.
Male & female.	Masculine & feminine.
Determined by biology.	Learned.
Ascribed status.	Achieved status.

Side-by-side with gender concept stands the gender-based violence notion. Again, neither the former nor the latter are largely well accepted legal concepts. However, we take as reference the following definition: Gender-based violence is “... [A]n umbrella term for any harmful act that is perpetrated against a person’s will, and that is based on socially ascribed (gender) differences between males and females,” which includes harmful acts based on sexual orientation or gender identity”<sup>32</sup>... “that has a negative impact on the physical or psychological health, development and identity of the person, and that

30 In the social sciences, the term ‘gender’ has been introduced to refer to differences between women and men without strictly biological connotations – socially constructed differences that correspond to the two sexes although they are not caused by biological sexual differences. Gender relations are the rules, traditions and social relationships in societies and cultures that determine what is considered ‘feminine’ and ‘masculine’, and how power is allocated between, and used differently by, women and men. Gender refers to a social construction of femininity and masculinity that varies over time and place and is enacted through learned, rather than innate, behavior. “Women’s Initiatives for Gender Justice”, (2005). *Gender in Practice*, p. 2.

31 The Sociology of Gender: Theoretical Perspectives and Feminist Frameworks, Key Concepts for the Sociology of Gender Distinguishing Sex and Gender, p. 4, available at [http://www.pearsonhighered.com/assets/hip/us/hip\\_us\\_pearsonhighered/samplechapter/0132448300.pdf](http://www.pearsonhighered.com/assets/hip/us/hip_us_pearsonhighered/samplechapter/0132448300.pdf)

32 Inter-Agency Standing Committee (2005). *Guidelines for Gender-Based Violence Interventions in Humanitarian*

is the result of gendered power inequities that exploit distinctions between males and females, among males, and among females<sup>33</sup>. Gender-based violence has also been defined by the Convention on the Elimination of all forms of Discrimination against Women Committee as: “violence that is directed at a person on the basis of gender or sex. It includes acts that inflict physical, mental or sexual harm or suffering, threat of such acts, coercion and other deprivations of liberty”. There are many definitions of GBV<sup>34</sup>. In the large majority of them, GBV in armed conflicts is associated with a systematic exploitation of socially learned roles in order to contribute directly to military action and eventually to obtaining military advantage, departing from a planned or at least an organized effect, in which are included but not limited to harmful sexual offences. Consequently, GBV in armed conflicts have a propensity to be perpetrated at large scale, mostly committed by dominating men<sup>35</sup>, against other men, women, children or elders in a weak position. Their actions of exploitation of social learned roles are likely to be based on taking the weak non combatants as trophies, objects, instruments, and goods. Their attitudes are massive, organized, systematic, and they constitute long lasting acts of humiliation, public shame, psychological degradation, physical pain, destruction, terror, and moral break down.

### Gender-based Crime Requirements

*“GBV crimes in the context of an armed conflict entail a double requirement”.*

Taking into consideration the definition of gender-based crimes it is important to establish the context of this sort of crimes. As aforesaid these acts might be perpetrated in the scope of an armed conflict as a war crime, as instruments of genocide<sup>36</sup> as acts of contribution to genocide, and as crimes against humanity out of the direct context of an armed conflict. The same base method or form of violence might be categorized as a different crime, depending upon the crime requirements at stake.

War crimes require a linkage to an armed conflict. As mentioned by the jurisprudence in Mucić et al. (IT-96-21) “Čelebići Camp” (Delalić) §193, 194, 195<sup>37</sup>, Duško Tadić Decision

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*Settings: Focusing on Prevention of and Response to Sexual Violence in Emergencies* (Field Test Version). Geneva: Inter-Agency Standing Committee. Miranda Gaanderse and Kristin Valasek (eds) (2011). *The Security Sector and Gender in West Africa: A Survey of Police, Defense, Justice and Penal Services in ECOWAS States*. Geneva: DCAF, p. 5.

33 Jeanne Ward (2002). *If Not Now, When: Addressing Gender-Based Violence in Refugee, Internally Displaced, and Post-Conflict Settings*. NY: Reproductive Health for Refugees Consortium, pp. 8-9.

34 Gender-based violence refers to violence targeted to persons because of their gender, or that affects them because of their special roles or responsibilities in the society (Benjamin and Khadija, 1998); the description ‘gender-based violence’ clarifies that reference is made to violence rooted in prescribed behaviors, norms and attitudes based upon gender (Lang, 2002); Gender-based violence is violence directed at an individual, male or female, based on his or her specific gender role in society (Human Rights Watch, 2002).

35 Or in an instant position of power which is driven by their chain of command.

36 Prosecutor v. Jean-Paul Akayesu, Judgement, Trial Chamber (2 September 1998), Case No. ICTR-96-4-T §507 and 508.

37 §193. It is axiomatic that not every serious crime committed during the armed conflict in Bosnia and Her-

on the Defense Motion for Interlocutory Appeal on Jurisdiction, 2 October, 1995 §70<sup>38</sup>, Opinion and Judgment, 7 May 1997, IT-94-1-T §573<sup>39</sup>, and 22 February 2001, Prosecutor v. Dragoljub Kunarac, Radomir Kovac and Zoran Vukovic §568<sup>40</sup>. In what concerns the crimes against humanity, the Trial Chamber, IT-94-1-T, 14 July 1997, Prosecutor v. Duško Tadić §73<sup>41</sup> and the ICC Statute elements of the crimes (article 7)<sup>42</sup>, clearly identify two important requirements: they need to be widespread or systematic. Finally, on the subject of the crime of genocide it is relevant to mention the genocide by causing serious bodily or mental harm (ICC Statute article 6 (b)), in which the perpetrator caused serious

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zegovina can be regarded as a violation of international humanitarian law. There must be an obvious link between the criminal act and the armed conflict. Clearly, if a relevant crime was committed in the course of fighting or the take-over of a town during an armed conflict, for example, this would be sufficient to render the offence a violation of international humanitarian law. Such a direct connection to actual hostilities is not, however, required in every situation. Once again, the Appeals Chamber has stated a view on the nature of this nexus between the acts of the accused and the armed conflict. §194. This re-emphasizes the view expressed above that there need not have been actual armed hostilities in the Konjic municipality in order for the norms of international humanitarian law to have been applicable. Nor is it required that fighting was taking place in the exact time-period when the acts alleged in the Indictment occurred. §195. This Trial Chamber shares the view of Trial Chamber 11 in the Tadić Judgment, where it stated that it is not necessary that a crime “be part of a policy or of a practice officially endorsed or tolerated by one of the parties to the conflict, or that the act be in actual furtherance of a policy associated with the conduct of war or in the actual interest of a party to the conflict”. Such a requirement would indeed serve to detract from the force of the concept of individual criminal responsibility.

38 §70. On the basis of the foregoing, we find that an armed conflict exists whenever there is a resort to armed force between States or protracted armed violence between governmental authorities and organized armed groups or between such groups within a State. International humanitarian law applies from the initiation of such armed conflicts and extends beyond the cessation of hostilities until a general conclusion of peace is reached; or, in the case of internal conflicts, a peaceful settlement is achieved. Until that moment, international humanitarian law continues to apply in the whole territory of the warring States or, in the case of internal conflicts, the whole territory under the control of a party, whether or not actual combat takes place there. Applying the foregoing concept of armed conflicts to this case, we hold that the alleged crimes were committed in the context of an armed conflict. Fighting among the various entities within the former Yugoslavia began in 1991, continued through the summer of 1992 when the alleged crimes are said to have been committed, and persists to this day. Notwithstanding various temporary cease-fire agreements, no general conclusion of peace has brought military operations in the region to a close. These hostilities exceed the intensity requirements applicable to both international and internal armed conflicts. There has been protracted, large-scale violence between the armed forces of different States and between governmental forces and organized insurgent groups. Even if substantial clashes were not occurring in the Prijedor region at the time and place the crimes allegedly were committed - a factual issue on which the Appeals Chamber does not pronounce - international humanitarian law applies. It is sufficient that the alleged crimes were closely related to the hostilities occurring in other parts of the territories controlled by the parties to the conflict. There is no doubt that the allegations at issue here bear the required relationship. The indictment states that in 1992 Bosnian Serbs took control of the Opština of Prijedor and established a prison camp in Omarska. It further alleges that crimes were committed against civilians inside and outside the Omarska prison camp as part of the Bosnian Serb take-over and consolidation of power in the Prijedor region, which was, in turn, part of the larger Bosnian Serb military campaign to obtain control over Bosnian territory. Appellant offers no contrary evidence but has admitted in oral argument that in the Prijedor region there were detention camps run not by the central authorities of Bosnia-Herzegovina but by Bosnian Serbs (Appeal Transcript; 8 September 1995, at 36-7). In light of the foregoing, we conclude that, for the purposes of applying international humanitarian law, the crimes alleged were committed in the context of an armed conflict.

bodily or mental harm to one or more persons, taking into consideration that this conduct may include, but is not necessarily restricted to, acts of torture, rape, sexual violence or inhuman or degrading treatment. As mentioned by Prosecutor v. Jean-Paul Akayesu, Case No. ICTR-96-4-t, 2 September 1998<sup>43</sup> rape and sexual violence... they are constitutive acts with respect to genocide in the same way as any other act as long as they were committed with the specific intent to destroy, in whole or in part, a particular group, targeted as such.

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39 §573 ... For an offence to be a violation of international humanitarian law, therefore, this Trial Chamber needs to be satisfied that each of the alleged acts was in fact closely related to the hostilities. It would be sufficient to prove that the crime was committed in the course of or as part of the hostilities in, or occupation of, an area controlled by one of the parties. It is not, however, necessary to show that armed conflict was occurring at the exact time and place of the proscribed acts alleged to have occurred, as the Appeals Chamber has indicated, nor is it necessary that the crime alleged takes place during combat, that it be part of a policy or of a practice officially endorsed or tolerated by one of the parties to the conflict, or that the act be in actual furtherance of a policy associated with the conduct of war or in the actual interest of a party to the conflict; the obligations of individuals under international humanitarian law are independent and apply without prejudice to any questions of the responsibility of States under international law. The only question, to be determined in the circumstances of each individual case, is whether the offences were closely related to the armed conflict as a whole.

40 §568. The Trial Chamber is also satisfied that the underlying crimes with which the Indictments were concerned were closely related to the armed conflict. Not only were the many underlying crimes made possible by the armed conflict, but they were very much a part of it. Muslim civilians were killed, raped or otherwise abused as a direct result of the armed conflict and because the armed conflict apparently offered blanket impunity to the perpetrators. It is irrelevant that the actual fighting had shifted from Foca town once it was safely in Serb hands to the surrounding areas by the time the events charged occurred, because the criterion of a nexus with the armed conflict under article 3 of the Statute does not require that the offences be directly committed whilst fighting is actually taking place, or at the scene of combat. Humanitarian law continues to apply in the whole of the territory under the control of one of the parties, whether or not actual combat continues at the place where the events in question took place. It is therefore sufficient that the crimes were closely related to the hostilities occurring in other parts of the territories controlled by the parties to the conflict. The requirement that the act be closely related to the armed conflict is satisfied if, as in the present case, the crimes are committed in the aftermath of the fighting, and until the cessation of combat activities in a certain region, and are committed in furtherance or take advantage of the situation created by the fighting. These requirements are squarely met by the offences under both Indictments, insofar as the Trial Chamber finds the evidence to be sufficient to establish those offences.

41 §73. A prohibited act committed as part of a crime against humanity, that is with awareness that the act formed part of a widespread or systematic attack on a civilian population is, all else being equal, a more serious offence than an ordinary war crime. This follows from the requirement that crimes against humanity be committed on a widespread or systematic scale, the quantity of the crimes having a qualitative impact on the nature of the offence which is seen as a crime against more than just the victims themselves but against humanity as a whole.

42 Page 5: Crimes against Humanity are among the most serious crimes of concern to the international community as a whole... The last two elements for each crime against humanity describe the context in which the conduct must take place. These elements clarify the requisite participation in and knowledge of a widespread or systematic attack against a civilian population.

43 §731. With regard, particularly, to the acts described in paragraphs 12(A) and 12(B) of the Indictment, that is, rape and sexual violence, the Chamber wishes to underscore the fact that in its opinion, they constitute genocide in the same way as any other act as long as they were committed with the specific intent to destroy, in whole or in part, a particular group, targeted as such. Indeed, rape and sexual violence certainly constitute infliction of serious bodily and mental harm on the victims and are even, according to the Chamber, one of the worst ways of inflict harm on the victim as he or she suffers both bodily and



CRIME REQUIREMENTS		
War Crimes	Linkage to an ongoing armed conflict	<ul style="list-style-type: none"> <li>• The crime was committed in the course of or as part of the hostilities in, or occupation of, an area controlled by one of the parties;</li> <li>• The crimes were made possible by the armed conflict;</li> <li>• The act be closely related to the armed conflict... the crimes are committed in the aftermath of the fighting, and until the cessation of combat activities in a certain region;</li> <li>• The crimes were committed in furtherance or take advantage of the situation created by the fighting;</li> <li>• The acts were a direct result of the armed conflict and because the armed conflict apparently offered blanket impunity to the perpetrators.</li> </ul>
Crimes Against Humanity	Wide-spread or systematic	<ul style="list-style-type: none"> <li>• §644 (Duško Tadić)<sup>44</sup> – Instead the “population” element is intended to imply crimes of a collective nature and thus exclude single or isolated acts which, although possibly constituting war crimes or crimes against national penal legislation, do not rise to the level of crimes against humanity... Isolated offences did not fall within the notion of crimes against humanity. As a rule systematic mass action, particularly if it was authoritative, was necessary to transform a common crime, punishable only under municipal law, into a crime against humanity. Only crimes which either by their magnitude and savagery or by their large number or by the fact that a similar pattern was applied at different times and places endangered the international community...</li> <li>• §645 - ... attack against a relatively large victim group, as distinct from isolated or random acts against individuals;</li> <li>• §648. It is therefore the desire to exclude isolated or random acts from the notion of crimes against humanity... This requirement excludes an isolated inhumane act committed by a perpetrator acting on his own initiative and directed against a single victim.</li> <li>• §96 (Tihomir Blaškić)<sup>45</sup> as part of a widespread or systematic attack and not as just a random act of violence.</li> <li>• §101 “widespread” refers to the large-scale nature of the attack and the number of targeted persons, while the phrase “systematic” refers to the organized nature of the acts of violence and the improbability of their random occurrence. Patterns of crimes, in the sense of the non-accidental repetition of similar criminal conduct on a regular basis, are a common expression of such systematic occurrence. Only the attack, not the individual acts of the accused, must be widespread or systematic...</li> </ul>
Genocide	Against a group	<ul style="list-style-type: none"> <li>• (ICC Statute, elements of the crimes, article 6(b)) – The conduct took place in the context of a manifest pattern of similar conduct directed against that group or was conduct that could itself effect such destruction...</li> <li>• (ICC Statute, elements of the crimes, article 6(b)) – The perpetrator intended to destroy, in whole or in part, that national, ethnical, racial or religious group, as such...</li> </ul>

Consequently, GBV crimes in the context of an armed conflict entail a double requirement. On the one hand, they require a link with the conflict, or display a widespread or systematic character, or they are perpetrated as a contribution to destroy a group; on the other hand, they are required a minimal level of organization to carry out acts of exploitation of social learned roles to obtain a relevant contribution to military action or to achieve a campaign objective. GBV crimes are neither a result of a single individual

initiative, nor accidental or occasional capable of producing harm, based on sexual desire. GBV crimes are motivated on the grounds of constructed stereotypes shared among a group of people, and perpetrated in a systematic manner.

### **A Possible Legal Meaning to the Expression “Tool of War”**

*“It is critical as the bodies of women of all ages, races, religions, and ethnicities continue to be used as envelopes to send messages to the perceived enemy. The harm, silence and shame women experience in war is pervasive, but their redress is almost non-existent.”*

Elisabeth Rehn and Ellen Sirleaf Johnson<sup>46</sup>

LaShawn R. Jefferson mentioned in an article published in 2004<sup>47</sup> that “[M]ore than ten years after the commencement of wars in the former Yugoslavia, and almost a decade after the Rwandan genocide conflicts notorious for attacks on women and girls combatants continue to use sexual violence as a tactic of war to terrorize and control civilian populations”... “[S]ome theorists have posited that rape be classified as “asymmetric” warfare, which focuses less on gaining territory and more on inflicting trauma on the victim”. Both authors emphasized precisely the deliberate uses of sexual violence to produce terror and to control civilian population, and that seems to be an intentionally selected method of war, or at least a tool of war. Bulent Diken details as follows: “In war rape, the enemy soldier attacks a civilian (not a combatant), a woman (not another male soldier), and only indirectly with the aim of holding or taking a territory. The prime aim of war rape is to inflict trauma and thus to destroy family ties and group solidarity within the enemy camp”<sup>48</sup>... is to frighten and intimidate the opponent into submission<sup>49</sup>.

Likewise, by “recognizing that rape harms the personal dignity of the victim, the ICTR<sup>50</sup> in effect held that rape is a form of torture, and it broadened the recognition that

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mental harm. In light of all the evidence before it, the Chamber is satisfied that the acts of rape and sexual violence described above, were committed solely against Tutsi women, many of whom were subjected to the worst public humiliation, mutilated, and raped several times, often in public, in the Bureau Communal premises or in other public places, and often by more than one assailant. These rapes resulted in physical and psychological destruction of Tutsi women, their families and their communities. Sexual violence was an integral part of the process of destruction, specifically targeting Tutsi women and specifically contributing to their destruction and to the destruction of the Tutsi group as a whole.

44 Opinion and Judgment of 7 May 1997.

45 ICTY, Judgment of 29 July 2004.

46 Women, war and peace: the Independent experts’ assessment of the impact of armed conflict on women and women’s role in peace-building 149 (United Nations Development Fund for Women, 2002), <http://www.unifem.org/index.php>

47 In War as in Peace: Sexual Violence and Women’s Status, available at <http://www.hrw.org/legacy/wr2k4/15.htm>

48 Bulent Diken, *Becoming Abject: Rape as a Weapon of War*. Available at <http://www.staff.amu.edu.pl/~ewa/Diken%20and%20Lausten,%20Becoming%20Abject.pdf>

49 Claudia Card (1996). “Rape as a Weapon of War”. *Hypatia* n.º 4, p. 223.

50 Akayesu Judgment, 2 September 1998, §687. The Tribunal considers that rape is a form of aggression and that the central elements of the crime of rape cannot be captured in a mechanical description of objects and

there is no requirement for physical contact in order to prove a sexual assault. The Tribunal emphasized that, although the crime of rape is traditionally defined under State law as “non-consensual sexual intercourse” this definition is too narrow<sup>51</sup>. . . . Thus, the Akayesu Judgment significantly enhanced the potential for bringing criminal to justice for sex crimes under international law – not only because this is the first time that international law recognized “rape” as a form of genocide. It was also the first time that an international tribunal recognized the possibility of convicting an international sex criminal for the crime of rape and other sex offences that cause mental harm to the victims, and not just physical harm. Consequently, the decision formally recognized for the first time that gender crimes were used as a tool of war and terror and these crimes had an impact that was far more extensive in its impact than the effect on the immediate victims. In its decision, the tribunal recognized the impact of gender crimes on the victims’ families, their community, all of the groups involved in the conflict and the entire society”<sup>52</sup>.

As a general principle the international humanitarian law prohibits means and methods that cause superfluous injury or unnecessary suffering. As a result the selection of means (in the sense of the prohibition to employ weapons, projectiles and materials) and methods<sup>53</sup> (understood as attacks and other activities designed to adversely affect the enemy’s military operations or military capacity... In military terms, methods of warfare consist of the various general categories of operations, such as bombing, as well as the specific tactics used for attack, such as high altitude bombing<sup>54</sup>). Effectively, the expression “methods of warfare” presumes a certain level of organization, capable of identifying an objective, able to draw a plan, and having the resources to put the assets in motion to obtain an intentional consequence. In the light of AP I, article 35 sets the fundamental principles applicable to methods of warfare.

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body parts. The Tribunal also notes the cultural sensitivities involved in public discussion of intimate matters and recalls the painful reluctance and inability of witnesses to disclose graphic anatomical details of sexual violence they endured. The United Nations Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment does not catalogue specific acts in its definition of torture, focusing rather on the conceptual framework of state-sanctioned violence. The Tribunal finds this approach more useful in the context of international law. Like torture, rape is used for such purposes as intimidation, degradation, humiliation, discrimination, punishment, control or destruction of a person. Like torture, rape is a violation of personal dignity, and rape in fact constitutes torture when it is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.

51 Akayesu Judgment, 2 September 1998, §688. The Tribunal defines rape as a physical invasion of a sexual nature, committed on a person under circumstances which are coercive. The Tribunal considers sexual violence, which includes rape, as any act of a sexual nature which is committed on a person under circumstances which are coercive. Sexual violence is not limited to physical invasion of the human body and may include acts which do not involve penetration or even physical contact...

52 Alona Hagay-Frey (2009). *Op. Cit.*, p. 99.

53 Article 54 (AP I) prohibits the use of methods of warfare designed to endanger the survival of the civilian population. Paragraph 1 states the principle that ‘Starvation of civilians as a method of warfare is prohibited.’

54 *Manual on International Law applicable to air and missile warfare*, Bern, Program on Humanitarian Policy and Conflict Research at Harvard University, 15 May 2009, p. 5.

55 Such as the unlawful use of perfidy (article 37).

56 Such as the legal obligation to provide quarter (article 49).

57 Tactics is the employment of units in combat... 1-4. The tactical level of war is the level of war at which

Expressly, (article 35(1) mentions that the right of the parties to choose methods or means of warfare is not unlimited. Furthermore, (article 35(2) prohibits the employment of weapons... and methods of warfare of a nature to cause superfluous injury or unnecessary suffering. Additional Protocol I established a legal exclusion of certain activities<sup>55</sup> and a compulsory legal obligation of behavior addressed to combatants engaged in armed conflicts<sup>56</sup>. Both examples envisage avoiding unnecessary suffering when attempting to affect the enemy's ability to conduct operations. Therefore, the IHL establishes limits to methods of warfare.

Taking into consideration the context of GBV the expression "tool of war" is currently being associated with the use of gender violence to affect adversely the enemy's capacity to wage the war as an expression of the organized character of such acts of violence. Likewise, it is linked to the unlawful idea of willful and organized action employed as tactics<sup>57</sup> or a technique to produce an intended consequence as an effective contribution to military action, capable of providing the party with a definite military advantage. If we accept to equal the expression "tool of war" and the expression "means of warfare" in the context of GBV in armed conflicts, we also recognize the use of non-combatants as weapons, capable of producing harmful consequences, as a part of the implementation of a warfare method. Nicholas A. Jones emphasizes the widespread use of rape as a "tactic of destruction" within the context of armed conflict<sup>58</sup>. Gender-based violence, when used as method of warfare, more than a breach of the golden limits of violence in waging wars, namely the universal duty to protect non-combatants, it also represents the most brutal attempt to obtain a direct participation of non-combatants, seriously bodily and mentally harmed, to produce an effective contribution to military action. Taking as reference articles 57 and 35 (AP, I), GBV targets directly non-combatants and indirectly the opposing parties, produces unnecessary and avoidable suffering, is often widespread and generates long-term harming effects. Besides, as mentioned by EU/ESDP instruments, sexual violence when used and commissioned as a tactic of war (understood in the context of GBV) constitutes an important factor contributing to exacerbation of conflict situations and obstructs the restoration of enduring peace and security<sup>59</sup>.

### **The Evolution of Gender-based Crimes in Armed Conflicts and Customary Law**

*"The regret takes a long time to heal... I was like a wild best".*

Documentary "Weapon of War confessions of rape in Congo" (2009)<sup>60</sup>

The State practice established the prohibition of rape and other forms of sexual violence in armed conflicts as a norm of customary international law applicable in both

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battles and engagements are planned and executed to accomplish military objectives assigned to tactical units or task forces. *US Field Manual*, 3-90, page 1-1 and 1-4, 2001.

58 Nicholas A. Jones (2010). *The Courts of Genocide, Politics and the Rule of Law in Rwanda and Arusha*. London: Routledge, p. 143.

59 Implementation of UNSCR 1325 in the context of ESDP, 3 December 2008, page 3.

60 Available at <http://www.iwannawatch.net/2011/02/weapon-of-war-confessions-of-rape-in-congo-2009/>

61 Lieber Code (1863), article 44 - All wanton violence committed against persons in the invaded country, all

international and non-international armed conflicts. The prohibition of rape under international humanitarian law was already recognized in the *Lieber Code*<sup>61</sup>, side by side with numerous military manuals stating rape, enforced prostitution and indecent assault are prohibited and many of them specify that these acts are war crimes.

The legislation of many States provides that rape and other forms of sexual violence are war crimes. National case-law has confirmed that rape constitutes a war crime, as

Instrument	Legal reference	Content
Geneva Conventions (1949)	Article 3 common to all GC	• It does not explicitly mention rape or other forms of sexual violence, it prohibits “violence to life and person” including cruel treatment and torture and “outrages to personal dignity”.
	Article 12, GC I,II	• Wounded and Sick... Women shall be treated with all consideration due to their sex.
	Article 14, GC III	• The third Geneva Convention provides that prisoners of war are in all circumstances entitled to “respect for their persons and honor”... “Women shall be treated with all the regard due to their sex ...”
	Articles 24 and 27, GC IV Articles 76(1) and 77, AP I	Require the protection for women and children against rape, enforced prostitution or any other forms of indecent assault. • Children shall be the object of special respect and shall be protected against any form of indecent assault. • The Parties to the conflict shall take all feasible measures in order that children who have not attained the age of fifteen years do not take a direct part in hostilities and, in particular, they shall refrain from recruiting them into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years the Parties to the conflict shall endeavour to give priority to those who are oldest.
	Articles 75(2)(b), (5), AP II, 1977	• Establishes as a fundamental guarantee the prohibition of “outrages upon personal dignity”, and specifies that this prohibition covers in particular “humiliating and degrading treatment, enforced prostitution and any other form of indecent assault”.
	Article 4(2), and 4(3) AP II, 1977	• Establishes as a fundamental guarantee the prohibition of “outrages upon personal dignity”, and specifically adds “rape” to the provision of “humiliating and degrading treatment, enforced prostitution and any other form of indecent assault”.
Ad hoc Tribunals	Article 4(e) ICTR (War Crimes) Article 3(g) ICTR (Crimes Against Humanity) Article 5(g), ICTY (Crimes Against Humanity)	• 4(e) ICTR - Outrages upon personal dignity, in particular humiliating and degrading treatment, • 3(g) ICTR - Rape • 5(g) ICTY - Rape
Special Court for Sierra Leone	Article 2(g) (Crimes Against Humanity) Article 3(e) (War Crimes)	• 2(g). Rape, sexual slavery, enforced prostitution, forced pregnancy and any other form of sexual violence; • 3(e). Outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault;
International Criminal Court	Article 8(2)(b) (xxi), (xxii) and (e) (vi) (War Crimes) Article 7(1)(g) (Crimes Against Humanity)	• “Committing rape, sexual slavery, enforced prostitution, forced pregnancy... enforced sterilization or any other form of sexual violence” also constituting a grave breach of the Geneva Conventions or also constituting a serious violation of common article 3 of the Geneva Conventions constitutes as war crime in international and non-international armed conflicts respectively. • Committing outrages upon personal dignity, in particular humiliating and degrading treatment. • “Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization or any other form of sexual violence of comparable gravity”, constitutes a crime against humanity.
Violations of the prohibition of rape and other forms of sexual violence have been condemned by States and International Organizations.		• Namely: German, The Netherlands and United States; • UNSR <sup>62</sup> , UNGA and UN Commission on Human Rights; • European Parliament, Council of Europe and Gulf Cooperation Council; • Committee on the Elimination of Discrimination Against Women; • European Court of Human Rights and the Inter-American Commission on Human Rights.

early as 1946 in the Takashi Sakai case before the War Crimes Military Tribunal of the Chinese Ministry of National Defense. In the John Schultz case in 1952, the US Court of Military Appeals held that rape was a “crime universally recognized as properly punishable under the law of war”<sup>63</sup>. The table depicts the evolution of the most important instruments and the related national and international practice.

The domestic and international practice regarding the acts of outrages to personal dignity, rape, and other forms of sexual violence, seems to establish its general prohibition, a rule of customary nature, closed to the crimes included into Group I. In fact, through the analysis of table 4 allows to draw the conclusion that not only the measures of protection provided by the GC and by the AP are directed to children and women, but also that the blameworthy of the crimes are directly related to the protection from “indecent assault”<sup>64</sup> to the individual as such. Furthermore, the link to an armed conflict is established mainly based on the blanket of opportunity offered by the conflict. If complementarily we look at the methods of combat provisions of GC (article 54, GC I – Survival of Population, article 51, GC I – Terror, and article 40, AP I and H IV 23 – threat or order to take no prisoners), we find no reference of use of sexual related crimes to produce relevant effect as a contribution to military action. The turning point seems to be the Statute and jurisprudence of the ad hoc tribunals and the ICC.

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destruction of property not commanded by the authorized officer, all robbery, all pillage or sacking, even after taking a place by main force, all rape, wounding, maiming, or killing of such inhabitants, are prohibited under the penalty of death, or such other severe punishment as may seem adequate for the gravity of the offense. A soldier, officer or private, in the act of committing such violence, and disobeying a superior ordering him to abstain from it, may be lawfully killed on the spot by such superior; article 47 - Crimes punishable by all penal codes, such as arson, murder, maiming, assaults, highway robbery, theft, burglary, fraud, forgery, and rape, if committed by an American soldier in a hostile country against its inhabitants, are not only punishable as at home, but in all cases in which death is not inflicted, the severer punishment shall be preferred.

62 Specially the UNSC Resolution 1325 (2000) and the UNSC Resolution 1820 (2008). The UNSC Resolution 1820 (2008) - §1. stresses that sexual violence, when used or commissioned as a tactic of war in order to deliberately target civilians or as a part of a widespread or systematic attack against civilian populations, can significantly exacerbate situations of armed conflict and may impede the restoration of international peace and security, affirms in this regard that effective steps to prevent and respond to such acts of sexual violence can significantly contribute to the maintenance of international peace and security, and expresses its readiness, when considering situations on the agenda of the Council, to, where necessary, adopt appropriate steps to address widespread or systematic sexual violence; §4. notes that rape and other forms of sexual violence can constitute a war crime, a crime against humanity, or a constitutive act with respect to genocide, stresses the need for the exclusion of sexual violence crimes from amnesty provisions in the context of conflict resolution processes, and calls upon Member States to comply with their obligations for prosecuting persons responsible for such acts, to ensure that all victims of sexual violence, particularly women and girls, have equal protection under the law and equal access to justice, and stresses the importance of ending impunity for such acts as part of a comprehensive approach to seeking sustainable peace, justice, truth, and national reconciliation...

63 Jean-Marie Henckaerts and Louise Doswald-Beck (2009). *Customary International Law*, Volume I. Geneva: ICRC, pp. 323-326.

64 Understood as sexual assault.

65 Available at <http://www.icty.org/sid/10314>

66 §6. The definition of discrimination includes gender-based violence, that is, violence that is directed against

Conversely, the practice of the ad hoc and hybrid international tribunals indicates that “rape ceased to be perceived as the unrestrained sexual behavior of individuals and was recognized as a powerful tool of war, used to intimidate, persecute and terrorize the enemy”<sup>65</sup>. In line with this idea are standing several UNSCR, namely Resolution 1325 (2000) and UNSC Resolution 1820 (2008), recognizing that sexual violence is used or commissioned as a tactic of war in order to deliberately target civilians. Furthermore, article 21 of the Convention on the Elimination of All Forms of Discrimination against Women empowers the Committee on the Elimination of Discrimination against Women (CEDAW) to make suggestions and general recommendations based on the examination of reports and information received from States parties. Thus, the General Recommendation No. 19, violence against women<sup>66</sup> adopted the expression “gender based violence”, and acknowledged it as a form of discrimination that seriously inhibits women’s ability to enjoy rights and freedoms on a basis of equality with men... It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty.

The most recent international practice appears to be more and more gender sensitive. I would like to underline few examples:

- The provision of the crime of rape established by the CCL 10 (Control Council Law No. 10 – 1945) had been included in the crimes against humanity. In fact, only 50 years later it was finally included into the statutes of the ad hoc tribunals (1993 and 1994);
- Unfortunately, the crime of rape was included by the ad hoc tribunals in the category of crimes against humanity (article 5 (g)) and not as a war crime. In this context it is important to mention the Historical precedent set by the ICTR’s

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a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty. Gender-based violence may breach specific provisions of the Convention, regardless of whether those provisions expressly mention violence. §11. Traditional attitudes by which women are regarded as subordinate to men or as having stereotyped roles perpetuate widespread practices involving violence or coercion, such as family violence and abuse, forced marriage, dowry deaths, acid attacks and female circumcision. Such prejudices and practices may justify gender-based violence as a form of protection or control of women. The effect of such violence on the physical and mental integrity of women is to deprive them the equal enjoyment, exercise and knowledge of human rights and fundamental freedoms. While this comment addresses mainly actual or threatened violence the underlying consequences of these forms of gender-based violence help to maintain women in subordinate roles and contribute to the low level of political participation and to their lower level of education, skills and work opportunities. §12. These attitudes also contribute to the propagation of pornography and the depiction and other commercial exploitation of women as sexual objects, rather than as individuals. This in turn contributes to gender-based violence. Article 21 of the Convention on the Elimination of All Forms of Discrimination against Women empowers the Committee on the Elimination of Discrimination against Women (CEDAW) to make suggestions and general recommendations based on the examination of reports and information received from States parties. General Recommendation No. 19 (II Session, 1992), Violence against Women.

67 §686. ...extent to which acts of sexual violence constitute crimes against humanity under Article 3(g)... Tribunal must define rape, as there is no commonly accepted definition of the term in international law...

judgement in the Jean-Paul Akayesu case (ICTR-96-4-T, 1998)<sup>67</sup>, in terms of definition of the crime of rape and sexual violence as an integral part of the process of destruction of a group. Likewise in Prosecutor v. Muhimana, Case ICTR-95-1B-T Trial Chamber III re-expanded the definition of rape under international criminal law as an act of genocide and a crime against humanity<sup>68</sup>;

- The ad hoc tribunals and the hybrid or special tribunals have given an enormous contribution to the definition of sexual violence and GBV related crimes. Among them is the issue of consent in the case of rape. The following idea deserves to be underlined: in Prosecutor v. Kunarac, Case No. IT-96-23-T & IT-96-23/1-T, Judgment, ruled the following: §437–438 (22 February 2001) “...The specific elements of the crime of rape, which are neither set out in the Statute nor in international humanitarian law or human rights instruments, were the subject of consideration by the Trial Chamber in the Furundžija case. There the Trial Chamber noted that in the International Criminal Tribunal for Rwanda judgement in the Akayesu proceedings the Trial Chamber had defined rape as “a physical invasion of a sexual nature, committed under circumstances which are coercive”... The Trial Chamber found that, based on its review of the national legislation of a number of states, the *actus reus* of the crime of rape is: the sexual penetration, however slight (a) of the vagina or anus of the victim by the penis of the perpetrator or any other object used by the perpetrator; or (b) of the mouth of the victim by the penis of the perpetrator; by coercion or force or threat of force against the victim or a third person... The chamber went on (§460<sup>69</sup>) to say that consent

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§687. Like torture, rape is used for such purposes as intimidation, degradation, humiliation, discrimination, punishment, control or destruction of a person. Like torture, rape is a violation of personal dignity ... §688. The Court defines rape as a physical invasion of a sexual nature, committed on a person under circumstances which are coercive. The Tribunal considers sexual violence, which includes rape, as any act of a sexual nature which is committed on a person under circumstances which are coercive. Sexual violence is not limited to physical invasion of the human body ... §731. ...Rapes resulted in physical and psychological destruction of Tutsi women, their families and their communities. Sexual violence was an integral part of the process of destruction, specifically targeting Tutsi women and specifically contributing to their destruction and to the destruction of the Tutsi group as a whole; and also Prosecutor v. Musema ICTR-96-13-A, 2000, Judgment and Sentence, 226–229. The essence of rape is . . . the aggression that is expressed in a sexual manner under conditions of coercion... [T]here is a trend in national legislation to broaden the definition of rape and a “conceptual definition is preferable to a mechanical definition of rape” because it will “better accommodate evolving norms of criminal justice.” Prosecutor v. Semanza, Case ICTR-97-20-T, Judgment and Sentence. §346. The Chamber held that the *mens rea* of rape as a crime against humanity is the intent “to effect the prohibited sexual penetration with the knowledge that it occurs without the consent of the victim.”

68 Prosecutor v. Muhimana, Case ICTR-95-1B-T Trial Chamber III re-expanded the definition of rape under international criminal law, 15-21. The Chamber found the accused guilty of rape as both an act of genocide and a crime against humanity. In terms of genocide, the chamber found the accused to have personally targeted Tutsi civilians by shooting and raping Tutsi women with the intent to destroy the Tutsi people. Under the charge of rape as a crime against humanity, and in light of peculiar evidence showing the disembowelment of a victim by using a machete to cut her from her breasts to her genitals, the chamber reassessed its definition of rape.

69 §460. In light of the above considerations, the Trial Chamber understands that the *actus reus* of the crime



for these purposes must be voluntarily given (of the victim's free will), as assessed in the context of the surrounding circumstances. Furthermore, the charge of enslavement in Kunarac was coddled in the descriptions such as the women and girls being personal property, detained, and divided among men (§157).

- The provisions of the ICC statute included for the very first time this type of crimes<sup>70</sup>, namely rape, sexual slavery, enforced prostitution, enforced sterilization, forced pregnancy (which had been used in the Bosnia-Herzegovina as a method of ethnic modification of the population composition<sup>71</sup>) as a crime against humanity (article 7(1)(g)) and as a crime of war (articles 8(2)(b)(xxii) and 8(2)(e)(vi));
- The provisions of the ICC statute also included other forms of sexual violence, in which no physical contact is required to humiliate the victims. The expression “any other form of sexual violence of comparable gravity” included in article 7(g) in fine is an important achievement, bearing in mind crimes such as the use of nudity with the purpose of public humiliation;
- Furthermore, the provisions went even further by recognizing GBV related crimes in international and non-international armed conflicts;
- Finally, it is important to recall the words of Patricia Viseur-Sellers saying that the “ICC will expand sexual violence jurisprudence<sup>72</sup> even further”<sup>73</sup>, side-by side with the new mechanisms to support and protect sexual and GBV victims.

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

70 Paula Escarameia (2005). *Integração da Perspetiva de Género no Estatuto de Roma: Direitos Humanos das Mulheres*. Coimbra: Coimbra Editora, p. 54.

71 Women were enforced to be pregnant and then were detained to avoid intentional miscarriages.

72 Mr. Lubanga Dyilo was convicted of committing, as co-perpetrator, war crimes consisting of: Enlisting and conscripting of children under the age of 15 years into the Force Patriotique pour la Libération du Congo [Patriotic Force for the Liberation of Congo] (FPLC) and using them to participate actively in hostilities in the context of an armed conflict not of an international character, and Mr. Bemba is allegedly criminally responsible, as military commander: Two counts of crimes against humanity: murder (article 7(1)(a) of the Statute) and rape (article 7(1)(g) of the Statute); Three counts of war crime: murder (article 8(2)(c)(i) of the Statute); rape (article 8(2)(e)(vi) of the Statute); and pillaging (article 8(2)(e)(v) of the Statute).

73 Emerging Jurisprudence on Crimes of Sexual Violence, *America University International Law review*, 1998, Volume 13, issue 6 - There are many cases currently before the court that will expand sexual violence jurisprudence even further. The cases of Akeyesu, as I stated before, will construe sexual violence in terms of genocide. The case of Kayishemna looks at sexual violence that caused death. The case of Furundzija, which soon will be before the Yugoslav court, will look at the act of a commander charged with conducting an interrogation while the victim was being raped. In addition, with Mr. Kunarac, part of the Foca indictment, we will be able to look at an accused in a position of authority as a direct sexual assault perpetrator. The importance of our jurisprudence has not been lost on either the ICJ or the European Court for Human Rights; they have already cited to us. I believe that the judges at the Rwanda and Yugoslav Tribunals should be very proud of the work to date on sexual violence jurisprudence.

74 Cited in Ruth Ojiambo Ochieng, *The Consequence of Armed Conflicts to Women's Health; The Case of Africa*. Forum Barcelona, 2004

Consequently, assuming that these violations are war crimes and crimes against humanity, the most recent jurisprudence goes even further, recognizing their linkage to an armed conflict as a part of it (war crimes) and its widespread or systematic nature (crime against humanity). Besides, the recognition as a war crime the usage of the gender-based violence as a tactic of war, in order to deliberately target non-combatants, seems also to have started making room within the legal international practice, closer to crimes included into the after mentioned Group II and III.

### **Gender-based Violence in Armed Conflicts against Young Girls and Women**

*“During the war army men made my father sleep with me and when he refused they tied him up with ropes and put a pistol to his head and made him lie down on me. He tried to penetrate me but he could not as the army men pierced me down below with a pistol and he saw the blood and lost desire. They took my father aside and shot him with a bullet in his chest and he died”.*  
Woman from Kasana Parish, Northern Uganda<sup>74</sup>

The common and well-accepted definition of child soldiers<sup>75</sup> also includes girls recruited for sexual proposes and forced marriage – the so-called “bush wives”. This phenomenon creates a completely different problem when compared to the use of rape and other forms of sexual violence as a “tool of war” by the same armed groups. The latter emphasizes the extensive abuse of women, young girls, and even men not belonging to the armed group with a humiliating intent in order to destroy the morale of the enemy or to stop the regular pace of the reproduction process by harming the heart of factory of life: the families and their social roles. The immediate impact might be the psychological trauma but in the long term affects the reduction of labor force in dysfunctional communities, the acceptance by humiliation of a “superior group”, becomes a tactic of war. The goal is clearly and is addressed to cause indiscriminate losses and moral breakdown in the enemy ground, through the practice of horrendous acts of unlimited suffering. The former refers to process (forced or not) to bring young and juvenile girls into armed groups with the intent of using them to the “benefit” of the members of the armed group and the performance of the armed group as such, as a direct contribution to the military action. The purpose is to gain a situational advantage (mainly tactical) by reinforcing the combatants’ skills, to increase the numbers of bodies in arms, to save combat power, and to contribute to the “sexual satisfaction” of the regular soldiers<sup>76</sup>.

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75 Cape Town Principles and best practices (1997) – ‘Child soldier’ in this document is any person under 18 years of age who is part of any kind of regular or irregular armed force or armed group in any capacity, including but not limited to cooks, porters, messengers and anyone accompanying such groups, other than family members. The definition includes girls recruited for sexual purposes and for forced marriage. It does not, therefore, only refer to a child who is carrying or has carried arms. [http://www.unicef.org/emerg/files/Cape\\_Town\\_Principles\(1\).pdf](http://www.unicef.org/emerg/files/Cape_Town_Principles(1).pdf)

76 Francisco Leandro, Generic Guidelines for the Use of Force Against Child Soldiers in Peace Operations, *NATO Legal Gazette*, 27, p. 24.

In fact, in both situations one of the key elements of sexual violence is rape and other forms of sexual abuse. Although both men and women can be and are raped, causing severe injury for both, in terms of numbers rape is essentially (but not exclusively) a crime committed against women. Further, women suffer from particular after-effects in rape that are not shared by men<sup>77</sup>. Christine Chinkin<sup>78</sup> states that rape in war is not merely a matter of chance, of women victims being in the wrong place at the wrong time. Nor is it a question of sex<sup>79</sup>. It is rather a question of power and control which is ‘structured by male soldiers’ notions of their masculine privilege, by the strength of the military’s lines of command and by class and ethnic inequalities among women<sup>80</sup>. Rape has also been directed as an instrument of war<sup>81</sup>. In the former Yugoslavia rape has been “massive, organized and systematic”<sup>82</sup>. It was perceived by the Special Rapporteur appointed by the United Nations Commission on Human Rights not only as “an instrument of war” but as a method of ethnic cleansing “intended to humiliate, shame, degrade and terrify the entire ethnic group”<sup>83</sup>. Notions of power and dominance are present in constructions of chastity and virility. In some cultures, women are considered to represent the chastity of the family and the community. Accordingly, sexual violence against female members of a community is intended to suggest that the men of the community have failed in their duty to protect “their” women. This idea is sometimes stretched to the point of taking the victim to think that the only remedy is to love her rapist, due to her “inability” to marry somebody else. In this way, female rape is a form of communication between men. It reinforces the conquered status of masculine impotence<sup>84</sup>.

We believe that each time an act of rape and other forms of sexual violence are a matter of chance or an act of satisfying the perpetrator’s sexual desire (based on his own biological sex), they belong to category of sexual violence (Group I). Even if these acts have a clear link to the conflict, the perpetrators are merely taking advantage of the situation created by the fighting or because the conflict offers a blanket of impunity. Most of the time, these sort of acts are neither widespread, nor systematic, and tend to be random and isolated criminal acts. Furthermore, on the contrary, if these acts are committed in the context of power and control, in a massive, organized and systematic way they might be included in the BSBV and GBV categories (Groups II and III).

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77 Christine Chinkin (1994). “Rape and Sexual Abuse of Women in International Law”. *EJIL* n.° 5, p. 326.

78 Christine Chinkin (1994). *Op. Cit.*, pp. 328-329.

79 Feminists have different views on whether rape should be analyzed primarily as a crime of violence or as a sex crime; R. Graycar and J. Morgan, *The Hidden Gender of Law*, 1990, pages 342-347. In armed conflict rape occurs in the overall context of violence; rape which may not be associated with violence...

80 Enloe, *The Gendered Gulf*, in C Peters, (ed.), *The ‘New World Order’ at Home and Abroad Collateral Damage*, 1992, pages 93-97.

81 This idea is also acknowledged by the documentary “weapon of war confessions of rape in Congo, 2009” in which the following sentence is pronounced: “prendre votre femme pour vous demoralizer”.

82 United Nations Security Council 820 (1993), A§6.

83 Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights. Report Pursuant to Commission Resolution 1992/S-1/1 of 14 August 1992, ECN.4/1993/50 (10 February 1993).

84 Sandesh Sivakumaran, Sexual Violence against Men in Armed Conflict, *The European Journal of International Law* Vol. 18 no. 2, *EJIL* 2007, page 268.

## Gender-based Violence in Armed Conflicts against Civilian Young Boys and Men

*“Male rape has been labelled ‘the forgotten method of torture’.*

UN OCHA Research Meeting<sup>85</sup>

Men are more vulnerable to getting killed. That’s a pretty big deal. Getting sick, getting raped, getting attacked are all pretty bad things but dead is dead and they are much more vulnerable to getting killed than women<sup>86</sup>. Dealing with gender-based violence against female juveniles and women in armed conflicts is inseparable from sexual forms of violence to which civilian young boys and men are specifically vulnerable. However, with rare exceptions, international efforts to address gender-based violence in conflict situations, and documents and reports advocating for and evaluating such efforts, have so far tended to focus primarily on the kinds of gender-based violence to which women are exposed. Although adult civilian men and older boys are sometimes acknowledged as victims of wartime sexual violence, as well as other forms of gender-based abuse, these kinds of harm have not generally been analyzed or discussed at length in efforts to counteract gender-based violence in conflict situations. “There is evidence indicating that sexual violence also takes place against men in armed conflict; indeed it takes place in nearly every armed conflict in which sexual violence is committed. What remains unknown is the precise extent to which this crime occurs<sup>87</sup>”. It seems that GBV against men and young boys in armed conflicts is frequent, is perpetrated by men and by women, is not yet well studied, is underreported, often is intentionally forgotten, and above all, is the least condemned type of crime among GBV. In addition, doctors, counselors, humanitarian workers and UN personnel present on the battle field are not fully prepared to recognize signs of male sexual violence. Men are not seen as being as susceptible to sexual violence as women; hence medical workers may not pay as much attention to detecting signs of sexual violence as they otherwise might<sup>88</sup>. Further, unlike in the case of sexual violence against women, medical workers may not be trained to look for signs of sexual abuse of men<sup>89</sup>.

Besides the use of children associated with armed forces or armed groups, GBV against men and young boys tend to be perceived as abuse and torture. Often, castration

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85 OCHOA (2008). *Use of Sexual Violence in Armed Conflict: Identifying gaps in Research to Inform More Effective Interventions*. UN OCHA Research Meeting – 26 June. Discussion Paper n.º 2, OCHA Policy Development and Studies Branch, 20 June, p. 1.

86 Programme Officer, US Office of Disaster Assistance, July 2002.

87 Sandesh Sivakumaran (2007). *Op. Cit.*, p. 255.

88 Van Tienhoven (1993). “Sexual Torture of Male Victims”. *Torture* n.º 4, p. 134; Oosterhoff et al. (2004). “Sexual Torture of Men in Croatia and Other Conflict Situations: An Open Secret”, 12(23) *Reproductive Health Matters*, pp. 75 and 68, citing Donnelly and Kenyon (1996). “Honey, we don’t do men”: Gender Stereotypes and the Provision of Services to Sexually Assaulted Males”, *Interpersonal Violence*, p. 441.

89 Oosterhoff et al. (2004). *Op. Cit.*, p. 74. The search for signs of abuse in women may sometimes go too far, see Engle (2005). “Feminism and its (Dis)contents: Criminalizing Wartime Rape in Bosnia and Herzegovina”. *AJIL* n.º 99, pp. 778, 794 – 5.

is seen as “mutilation” and rape as “torture”, a view that becomes apparent when reading reports of non-governmental and intergovernmental organizations. This may be due to, and also reinforces, the view that men cannot be subjected to sexual assault. However, in conflicts in which sexual violence has been properly investigated, male sexual violence has been recognized as regular and unexceptional, pervasive and widespread, although certainly not at the rate of sexual violence committed against women<sup>90</sup>.

UN OCHA<sup>91</sup> refers that male to male sexual violence in wartime, as being predominantly an expression of aggression, power and dominance over the enemy rather than an expression of satisfaction of the perpetrator’s sexual desire. Sexual violence often involves purposeful action aimed at maintaining supremacy through intimidation, abuse and repression... also with the intent to “emasculate” the enemy himself, and turn him into a de facto “female” through sexual cruelty. “Gender stereotyping suggests that men cannot be victims, only perpetrators... Victims are considered weak and helpless, while men are strong and powerful. On this basis, when sexual violence occurs against men, their masculine attributes are considered to have been taken away from them – they have been emasculated”<sup>92</sup>. The Peace and Security: Study submitted by the Secretary-General pursuant to Security Council Resolution 1325 (2000), emphasizes this particular aspect of the gender violence against men and young boys, which is the deliberate intention to produce harm that impacts beyond the circle of a single individual. Those deliberate acts of gender violence are not isolated or random acts of violence. As mentioned by Sandesh Sivakumaran, “certain factors signify power and dominance, primary among which is gender; others include sexuality, ethnicity, race and religion”<sup>93</sup>.

*Chapter II - Impact of Armed Conflict on Women and Girls, §59 - Men and adolescent boys are also subject to gender-based and sexual torture. The sexual abuse, torture and mutilation of male detainees or prisoners is often carried out to attack and destroy their sense of masculinity or manhood. Abuse and torture of female members of a man’s family in front of him is used to convey the message that he has failed in his role as protector. These forms of humiliation and violence take on powerful political and symbolic meanings. The deliberate initiation and endorsement of these acts by military commanders and political leaders underscores the significance of these acts as more than random assaults*<sup>94</sup>.

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90 Sandesh Sivakumaran (2007). *Op. Cit.*, pp. 256 and 259.

91 UN OCHA (2008). *Op. Cit.*, p. 1.

92 Sandesh Sivakumaran (2007). *Op. Cit.*, p. 270.

93 Ibid.

94 United Nations (2000). Women, Peace and Security: Study submitted by the Secretary-General pursuant to Security Council Resolution 1325, II, §59.

95 Duško Tadić was “the first international war crime trial involving charges of sexual violence”. Tadić was found guilty... sexual violence against men (forcing a detainee to bite the testicles of another detainee), and guilty of cruel treatment violation of the laws and customs of war and inhumane acts (crime against humanity). Prosecutor v. Duško Tadić, ICTY, IT-94-1-T, 7 May 1997, §198, §206. Incidents of sexual violence against men were examined in other cases before the Tribunal, including among others Češić, Mucić et al., Todorović and Simić.

96 The ICC Statute uses the word “enforced” and “forced” associated to different crimes: 8(2)(b)(xxii)-3 War crime of enforced prostitution, 8(2)(b)(xxii)-4 War crime of forced pregnancy, and 8(2)(b)(xxii)-5 War crime of enforced sterilization. Both terms mean imposed by force, but “enforced” typically means imposed by the

**TYPOLOGY OF ABUSES COMMITTED AGAINST MEN AND YOUNG BOYS IN ARMED CONFLICTS<sup>95</sup>**

<p><b>Rape</b> (and “rape plus”) The “plus” being HIV (AIDS), forced pregnancy<sup>96</sup> for women, or another consequence of rape, which may have been the very purpose for the rape in the first place<sup>97</sup></p>	<p>... Whether oral or anal, whether involving objects, the perpetrator or two victims... A number of different forms of male rape take place in armed conflict. Victims may be forced to perform fellatio on their perpetrators or on one another; perpetrators may anally rape victims themselves, using objects, or force victims to rape fellow victims. It has been noted that an appropriate name has not even been invented for this latter form of abuse, though it may be termed “enforced rape”<sup>98</sup>. It is included the enforced incest or enforced rape of female or other males<sup>99</sup>. Secondary victimization: rape of women as psychological torture of men<sup>100</sup></p>		<ul style="list-style-type: none"> <li>• The public act of humiliation and shame by exercising public sexual violence intends to develop more than physical harm but add a social stigma. This type of public sexual violence is also a way of communicating. Thus, the community is informed that their male members, their protectors, are unable to protect themselves;</li> <li>• ... Charged with sexual violence against Bosnian Serb civilians kept in a prison camp in Čelebići... Zdravko Mucić, the camp commander was found guilty of these and other crimes committed by his subordinates... The judges ruled that the purpose of the rapes was to obtain information, punish the women for their inability to provide information and to intimidate and coerce them<sup>101</sup>;</li> <li>• Throughout the night and early the next morning, stories about the rapes and killings spread through the crowd and the terror in the camp escalated .</li> <li>• The construction of masculinity is that of the ability to exert power over others, particularly by means of the use of force<sup>102</sup>.</li> <li>• The Trial Chamber is not, however, convinced beyond reasonable doubt that the murders, rapes, beatings and abuses committed against the refugees at Potocari were also an agreed upon objective among the members of the joint criminal enterprise. However, there is no doubt that these crimes were natural and foreseeable consequences of the ethnic cleansing campaign.<sup>104</sup></li> </ul>
<p><b>Castration</b> (and other forms of enforced sterilization)</p>	<p>The Review of the Indictments in the Karadžić, Mladić, and Tadić cases before ICTY all recognized the practice of castration<sup>105</sup>.</p>		
<p><b>Other forms of sexual mutilation or exploitation</b></p>	<p>Genital violence (Genitals beatings or the administration of electrical shocks to the genital area)</p> <p>Enforced nudity (Often accompanied by threats or mockery)</p>	<p>Sexual abuse of prisoners in detention often commences with enforced nudity, accompanied by verbal sexual threats, which adds to the humiliation. Other more serious forms of sexual violence such as beatings to the genitals and rape then follow<sup>106</sup>.</p>	
	<p>Enforced masturbation<sup>107</sup> (and other forms of sexual humiliation)</p>	<p>Groups of male detainees were forced to masturbate themselves while being photographed and videotaped<sup>108</sup>... are reports of victims having been forced to masturbate their captors<sup>109</sup>.</p>	

threat of the use of force or carried out by a third party using force, while “forced” simply means lacking victims spontaneity. The former emphasizes the passive intervention of the victim (enforced prostitution or enforced sterilization) and the latter the result of an action carried out by the victim which wasn’t called for (forced pregnancy). The Spanish version of the ICC Statute uses the expression “Forzada”, and the French version uses “forcée” for both situations. The German and the Portuguese version differentiate “forçada” and “à força”.

- 97 WHO, *Guidelines for Medico-Legal Care for Victims of Sexual Violence* (2003), §12 –16.
- 98 Sexual slavery and enforced prostitution though at first sight seemingly specific in practice to women, may well turn out to be inflicted on men as well... Sandesh Sivakumaran (2007). *Op. Cit.*, p. 263.
- 99 UN OCHOA (2008). *Op. Cit.*, p. 1.
- 100 R. Charli Carpenter (2006). *Op. Cit.*, p. 96.
- 101 Prosecutor v Zdravko Mucić, Hazim Delić and Esad Landžo, ICTY, IT-96-21-Abis, April 2003, §40 (3).
- 102 Prosecutor v. Radislav Krstic, ICTY, IT-95-33-T, 02 August 2001, §46.
- 103 Preliminary report submitted by the Special Rapporteur on violence against women, its causes and consequences, Ms Radhika Coomaraswamy, in accordance with Commission on Human Rights resolution 1994/45, UN Doc. E/CN.4/1995/42, §64.
- 104 Prosecutor v. Radislav Krstic, ICTY, IT-98-33-T, 02 August 2001, §616.
- 105 Prosecutor v. Radovan Karadžić and Ratko Mladić, Review of the Indictments Pursuant to Rule 61 of the Rules of Procedure and Evidence, IT-95-5-R61 and IT-95-18-R61, §13 and Prosecutor v. Duško Tadić , Opinion and Judgment, IT-94-1-T, §206.
- 106 Peel et al. (2000). The Sexual Abuse of Men in Detention in Sri Lanka, §2069 have been in torture photos too: The Abu Ghraib images are all too familiar to Irish republicans. *The Guardian*, 5 June 2004.

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<b>Emasculation</b> (individual and collective) <sup>110</sup>	<p><b>Feminization</b> The intention of the rape may be to “lower” the social status of the male survivor by “reducing” him to a “feminized male”... the most lethal gender roles in modern times<sup>111</sup>.</p>	<ul style="list-style-type: none"> <li>• Regardless of the actual gender of the perpetrator or victim, the characteristic of masculinity is attributed to the perpetrator and femininity to the victim<sup>112</sup>;</li> <li>• ...[o]ne male survivor of rape in armed conflict has stated that, while he was being raped, the perpetrators “kept saying” you’re no longer a man, you are going to become one of our women<sup>113</sup>.</li> <li>• “[i]t was made known unofficially by the authorities (Algeria) that men had been raped in detention, and should no longer have the status of adult males in the community”<sup>114</sup>.</li> </ul>
	<p><b>Homosexualization</b> Rape is about power and dominance and not sex, this would explain why the male rapist retains his heterosexual (powerful) status, while the male victim loses his heterosexual status and is considered homosexualized (made weak, effeminate).</p>	<ul style="list-style-type: none"> <li>• When reference is made to masculinity, the dominant construct is that of heterosexual masculinity. It is the heterosexual male that is the symbol of power.</li> <li>• The homosexual male is considered less masculine and more effeminate than the heterosexual male<sup>115</sup>.</li> <li>• During a rape, it is not uncommon for the victim to experience an erection or ejaculate, causing him to question his sexuality<sup>116</sup>.</li> <li>• This may be a particular worry for those victims of enforced rape who were forced to rape a male, as is often the case in time of conflict<sup>117</sup>.</li> <li>• However, when two male victims are forced to rape one another, the traditional power dynamic no longer applies<sup>118</sup>.</li> </ul>
	<p><b>Prevention of Procreation</b> Even if survivors come through the assault with their reproductive capabilities intact, they may experience psychological difficulties leading them to suffer from sexual and relationship difficulties<sup>119</sup>.</p>	<ul style="list-style-type: none"> <li>• Indeed, perpetrators themselves, at times, will explicitly express the intention of depriving the victim of their procreating capability, stating in the course of deliberately aiming beatings at testicles that, “you’ll never make Muslim children again”<sup>120</sup>... and while raping women that, “they will bear children of the perpetrator’s ethnicity ... they must become pregnant”<sup>121</sup>.</li> <li>• The linkage between the prevention of procreation on the part of both sexes would seem to be recognized by the Rome Statute of the International Criminal Court, which lists enforced sterilization as a crime against humanity, defined in the elements of crimes, in part, simply as the deprivation of “biological reproductive capacity”<sup>122</sup>.</li> </ul>

107 The forced masturbation of the victim and the perpetrator is considered to be one of the most common forms of sexual violence experienced by men. WHO (2003). *Guidelines for Medico-Legal Care for Victims of Sexual Violence*, §16.

108 The Taguba Report on Treatment of Abu Ghraib Prisoners in Iraq, available at <http://news.findlaw.com/hdocs/docs/iraq/tagubarpt.html> - Part One (Detainee Abuse): Findings, §6.

109 Peel et al. (2000). *Op. Cit.*, §2069.

110 “The castration of a man is considered to emasculate him, to deprive him of his power. The castration of a man may also represent the symbolic emasculation of the entire community. This is particularly pronounced in an ethnic conflict where “the castration of a single man of the ethnically defined enemy is symbolic appropriation of the masculinity of the whole group. Sexual humiliation of a man from another ethnicity is, thus, a proof not only that he is a lesser man, but also that his ethnicity is a lesser ethnicity.” 159 This is not particular to castration but is applicable to sexual violence more generally. Sexual violence against individual men of a particular group is thus a means of emasculating that entire group”. Quoted by Sandesh Sivakumaran (2007). *Op. Cit.*, pp. 274-275.

111 Susan Brownmiller (1976). *Against Our Will: Men, Women and Rape*. New York: Ballantine Books, pp. 79–80. Adrien Katherine Wing and Sylke Merchan (1994). “Rape, Ethnicity, and Culture: Spirit Injury from Bosnia to Black America”. *Columbia Human Rights Law Review* n.º 1, pp. 20-25; Kelly Dawn Askin (1997). *War Crimes against Women: Prosecution in International War Crimes Tribunals*. The Hague: Martin Nijhoff, pp. 267-270. J. Wagner (2005). “The Systematic Use of Rape as a Tool of War in Darfur: A Blueprint for International War Crimes Prosecutions”. *Georgetown Journal International Law* n.º 37, pp. 193, 205 and 213; Karen Engle (2005). “Feminism and its (Dis)contents: Criminalizing Wartime Rape in Bosnia and Herzegovina”. *AJIL* n.º 99, pp. 807-808; Theodor Meron (1998). *Bloody Constraint: War and Chivalry in Shakespeare*. Oxford: Oxford University Press, pp. 59-60.

112 B. Allen (1996). *Rape Warfare*. University of Minnesota Press. p. 27–28 and Report of Argentina’s National Commission on Disappeared People, cited in Skjelsbaek (2001). “Sexual Violence in Times of War: A New Challenge for Peace Operations?”. *International Peacekeeping*, §71.

113 Amnesty International (2004). *Democratic Republic of Congo: Mass Rape—Time for Remedies*. AI Index: AFR62/018/2004, p.19.

The following table summarizes the typology of the sexual abuses against men and young boys.

A glance over the above table seems to indicate that the different forms of exercising violence against males in the context of armed conflicts are particularly blameworthy. In fact, they are not only a mere expression of satisfying the perpetrator's sexual desire (crimes included in the Group I), but they represent much more than that. If truth is to be told, this sort of crimes is associated with a certain level of organization (such as detention facilities, public acts or contribution to genocide) and the perpetrator's intent to produce either an effect as contribution to the military action<sup>123</sup>, (by exploring a gender feature in which the sexual dimension used as a mean of exploitation), or part of a systematic and widespread campaign or even as a contribution to genocide. This type of violence is included in Group III.

### **The Organized Character of the Offences and Command Responsibility**

*"Rape is an effective weapon of war precisely because it relies on community held belief systems regarding the crime to create a breakdown of the community. It does this by fracturing individual and family networks and social and cultural connections".*

Gender in Practice<sup>124</sup>

On the one hand, the concept of gender draws the attention towards the impact of social and cultural differences on the relationships between women and men. Consequently, GBV in its different forms must be an expression of a serious offence, perpe-

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114 M. Peel (ed) (2004). *Op. Cit.*, p. 66.

115 R. Seifert (1994). *War and Rape: A Preliminary Analysis*. London: Sage, p. 60; J.S. Goldstein (2001). *War and Gender*. Cambridge: Cambridge University Press, p. 374.

116 American Medical Association, "Strategies for the Treatment and Prevention of Sexual Assault. Peel et al. (2000). "The Sexual Abuse of Men in Detention in Sri Lanka". *The Lancet* n.º 355, pp. 2069–2070.

117 M. Peel (ed) (2004). *Op. Cit.*, p. 66-67.

118 Sandesh Sivakumaran (2007). *Op. Cit.*, p. 272.

119 For a list of possible consequences see WHO (2003). *Guidelines for Medico-Legal Care for Victims of Sexual Violence*, p. 16.

120 Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugoslavia (Serbia and Montenegro)), §44D (c).

121 Final Report of the United Nations Commission of Experts, *supra* note 31, UN Doc. S/1994/674, page 59 – 60, §250(b).

122 International Criminal Court, Elements of Crimes, article 7(1)(g)-5, element 1: The perpetrator deprived one or more persons of biological reproductive capacity (the deprivation is not intended to include birth-control measures which have a non-permanent effect in practice).

123 To spread terror, stigma, as psychological torture, to obtain information, to spread diseases, to communicate power and dominance, to destroy individuals psychologically, to jeopardize the community and family bonds, destroy the reproductive capacity, etc.

124 *Women's Initiatives for Gender Justice* (2005), p. 16.



trated through the exploitation of these socially and culturally accepted roles to produce mental and physical damage or harm to living beings, in order to increase the efficacy and efficiency of the methods/tactics of warfare. In fact, “gender-based crimes and sexual violence originate in the pre-existing social, political and cultural context in which women and men live”<sup>125</sup>, and are perpetrated by those who explore pre-existing social, political and cultural context, as a method or as tool of war, in which non-combatants are used as weapons<sup>126</sup>. Thus, is the large and willful exploitation of gender features to produce “significant harm”, transforming systematically non-combatants in “human weapons”, that stands as a key attribute of GBV crimes.

The organized character of the gender-based crimes lies on the willful exploitation of the perception of social roles to produce significant harm at a large scale. The expression “organized” is understood in this context, as a group of people not randomly formed, acting in a concert, over a period of time, with the aim of producing (by committing, instigating or abetting)<sup>127</sup>, a significant harm of a large scale or as a contribution to the armed conflict. The ICTR jurisprudence mentioned the RTLM (radio television libre des mille collines) broadcasts and the newspaper Kangura (especially number 6) as instruments used to “encourage and facilitate” the use of violence<sup>128</sup>. Mentioned even further: “[w]ithout a firearm, machete or any physical weapon, he [Ferdinand Nahimana] caused the deaths of thousands of innocent civilians”<sup>129</sup>. Both statements display the existence a minimal level of long standing arrangements, capable of intentionally using instruments to produce harm by using people as weapons.

The intended effects or the “significant harm” produced by the use of GBV as a tool of war are many. Among them are the following: (1) rarely GBV is committed with a single objective, they tend to achieve dominance through the combination of fear and horror ; (2) GBV aims to increase or to save combat power, by using human being as instruments; (3) it supports the performance in logistics and intelligence related tasks; (4) it is an opportunity to exercise publicly a “superior” status and domination; (5) It is used to “gaming” by waging direct armed engagement of children and through that challenging moral standards; (6) GBV is a source of economical assets (women as property); it produces moral breakdown: fear, terror, humiliation and mental destruction; (7) it produces infertility and loss of virginity in order to make women unmarriageable in some societies; (8) it is used with the specific intent to destroy

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125 Women’s Initiatives for Gender Justice (2005). *Gender in Practice*, pp. 2 and 5.

126 The word “weapon” is employed in the context of an instrument used in order to inflict mental and physical damage or harm to living beings, or to increase the efficacy and efficiency of the tactics of warfare.

127 United Nations Convention against Transnational Organized Crime, General Assembly Resolution 55/25 2000, article 2(a).

128 Prosecutor v. Ferdinand Nahimana, Jean-Bosco Barayagwiza and Hassan Ngeze, Case No. ICTR-99-52-T, Judgement and Sentence, December 2003, §138.

129 Prosecutor v. Ferdinand Nahimana, Jean-Bosco Barayagwiza and Hassan Ngeze Case No. ICTR-99-52-T, Judgement and Sentence, December 2003, §1099.

women's reproductive competence in order to reduce the number of the opposing part individuals; (9) women or men sexually assaulted aiming to humiliate and having as a natural consequence the disembowelment of their community; (10) GBV is used to maintain and restore certain power balances; (11) it undermines the well-being and secure existence of a community; (12) it intentionally protracts the conflict even beyond the cessation of armed hostilities; (13) GBV is used as a contribution to cultural and ethnic destruction and to stigmatize the next generation; (14) it destroy group bonds, causing pervasive, and even deadly effects for women and young girls; (15) it exploits stigma upon rape victims and their children; (16) it exercises dominance by awarding an individual to another as prize or a trophy of war; (17) it spreads AIDS and other sexually-transmitted diseases; (18) it weakens family, marital, and communal relations and hampers the ability to reconstitute long term standing bonds.

On the other hand, the notion of command responsibility in international law has changed over the time, especially in regard to subjective elements of the crime (*mens rea*). Although, the objective elements established since the very beginning were based on the breach of the duty to effectively control the subordinates. Generally speaking, the doctrine establishes that commanders may be criminally responsible for failing to control their subordinates in the sense of repressing (to halt), preventing, or punishing the commission of crimes by subordinates. Moreover, today is largely accepted that command responsibility is neither a personal commission of a crime, nor an involvement intended to facilitate a crime, but an unacceptable failure of control to prevent or to repress the practice of a crime. In the concept of criminal command responsibility under international law, there isn't a contribution (by the commander) to the commission of the crime carried out by his subordinate. In fact, if such contribution exists, than the commander is responsible under the principle of individual responsibility<sup>130</sup>.

Joshua H. Joseph mentioned the following "... This note proposes that the solution lies not in punishing the soldiers who commit such heinous acts, but in making it easier to convict the military leaders who allow the violence to flourish. In some situations, it is apparent that military leaders have explicitly ordered their subordinates to commit rape and other forms of gender-based violence as part of a national policy of ethnic cleansing. In other situations, soldiers may have perpetrated such crimes without the express consent of their superiors"<sup>131</sup>. In fact, the author identifies two types of responsibility. The first is related to the perpetration by omission where "the military leaders who allow the violence to flourish... soldiers may have perpetrated such crimes without the consent of their superiors" and it is clearly the case of command responsibility. Therefore, this type of responsibility addresses to military commanders who

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130 Francisco Leandro (2012) *Responsabilidade dos Chefes Militares e dos Outros Superiores Hierárquicos*. Lisboa: Universidade Católica Editora.

131 Joshua H. Joseph (2006). "Rethinking Yamashita: Holding Military Leaders Accountable for Wartime Rape". *Bepress Legal Series*, Paper n.º 1404, p. 4.

neither physically perpetrated the crimes, nor were present at the crime scene, nor involved in the facilitation of the crimes, and did not necessarily order rape. The second is related to the perpetration by action<sup>132</sup> in which "... military leaders have explicitly ordered their subordinates", turned a blind eye to the preparations acts, refused to take in consideration the information provided or even to create the perception of his consent by their silent presence at the crime scene. These are visibly the case of individual responsibility of military commanders, on the grounds of their relation with the crime. Thus, the organized character of groups II and III crimes is internationally relevant to account criminals under the principle of individual responsibility and not to command responsibility, precisely due to the direct involvement in the commission of the crimes. The usage of GBV and BSBV as a method of war by subordinate soldiers, as they are a result of direct or implicit orders, or well accepted practices by the chain of command of regular armed forces or armed groups, doesn't relieve the commanders of their individual responsibility. In fact, commanders are criminally liable as authors or accomplices by the acts of their subordinates. On contrary, crimes within the scope of Group I, as they are the result of individual initiatives, are likely to be a result of the lack of control of subordinates under effective control of a superior. Finally, the following table depicts the parity of GBV in the context of war crimes and crimes against humanity. There are quite interesting differences and common aspects, especially in the crimes committed in the context of armed conflicts and those for which such requirement does not exist. However, it is the systematic, organized and intentional exploitation of socially learned and constructed roles, behaviors, activities, and attributes that once again constitutes the main feature of GBV. In fact, in both cases are serious breaches of international law, in both cases the scale of effects and the intentional exploitation of socially learned and constructed roles wouldn't be possible without a minimal level of organization. Indeed, GBV is referred as a form of violence characterized by the existence of a basic form of systematization or organization and consequently GBV is not a random or accidental form of violence.

In fact, only through organization or systematization is possible to exercise power and dominance in order to produce a relevant contribution to military action of a party to a conflict, to obtain a widespread perpetration, to use it as a method to ethnic modification, and to be used with intent to destroy, in whole or in part, a particular group<sup>133</sup>. Random perpetrations or criminal acts triggered by single or individual initiatives, do not amount a GBV crime in international law. They "merely" appear to be sexual violence in-

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132 The commander ordered, solicited, induced, aided, abetted or otherwise assisted.

133 To illustrate better the influence of gender in the crime of genocide, a new word has been invented. In fact, the term "gendercide" was conceived to emphasize the gender influence on genocide. The expression has been used by scholars, policy makers and organizations such as European Union. R. Charli Carpenter (2002). "Beyond 'Gendercide': Incorporating Gender into Comparative Genocide Studies". *International Journal of Human Rights* n.º 6, pp. 77-101. Mary Anne Warren (2012). *Gendercide: The Implications of Sex Selection*. Brussels: European Parliament - Directorate-general for External Policies. Available at <http://www.europarl.europa.eu/committees/en/studiesdownload.html?languageDocument=EN&file=73211>

FEATURES OF GENDER BASED VIOLENCE A TOOL OF WAR			
Features		War Crimes	Crimes Against Humanity
Serious Breaches	1	Yes, in international and non-international armed conflicts	Yes, but is a more serious offence than an ordinary war crime.
Scale of effects	2	In particular when committed as a part of plan or policy or as part of a large scale commission	Widespread or systematic attack directed against any civilian population
Linkage to the conflict	3	Yes	No
Intentional exploitation of socially learned and constructed roles		Yes, as a contribution to increase the efficacy and efficiency of the tactics of warfare.	Yes, but does not require the existence of an armed conflict.

cluded in the Group I. Nevertheless, as mentioned J. M. Smith in 2004, regardless the organized character of the crime and the dimension of the acts of perpetration, they always remain, in terms of responsibility, the sum of millions single criminal acts of GBV<sup>134</sup>.

### Key Final Remarks

*“Men and boys as well as women and girls are the victims of this targeting, but women, much more than men, suffer gender-based violence. Their bodies become a battleground over which opposing forces struggle. Women are raped as a way to humiliate the men they are related to, who are often forced to watch the assault. In societies where ethnicity is inherited through the male line, ‘enemy’ women are raped and forced to bear children. Women who are already pregnant are forced to miscarry through violent attacks. Women are kidnapped and used as sexual slaves to service troops, as well as to cook for them and carry their loads from camp to camp. They are purposely infected with HIV/AIDS, a slow, painful murder”.*

Elisabeth Rehn and Ellen Sirleaf Johnson (2006)<sup>135</sup>

Firstly, the expression sexual violence in the context of armed conflicts appears to be a framework expression in which crimes with a particular dynamics might be included. Initially, the dynamics of sexual violence was understood by IHL, LOAC and a good part of domestic law as a serious violation based on an individual blameworthy perpetration of an act, often exclusively associated to outrages to personal dignity through rape. Furthermore, IHL and LOAC were biological sex sensitive (such as the article 12 of GC, I and II) but not gender sensitive. Initially, the inclusion of rape in the category of crimes against humanity by the Council Control Law 10 and later the provisions of GC (article 27, GC IV) also appears to be biological sex sensitive and not gender sensitive. However, the modern provisions of the hybrid tribunals, the ad hoc tribunals, and the ICC statute included the requirement “linkage to the conflict” in the case of war crimes,

134 If you must remember, remember this... the Nazis did not kill six million Jews... nor the Interahamwe kill a million Tutsis, they killed one and then another, and then another... genocide is not a single act of murder, it is millions of acts of murder. A time to remember: Rwanda ten year after genocide. Kigali, Republic of Rwanda: The Aegis Trust.

135 Available at [http://www.stopvaw.org/sexual\\_assault\\_during\\_armed\\_conflict.html](http://www.stopvaw.org/sexual_assault_during_armed_conflict.html)

the requirement “widespread or systematic” in the case of crimes against humanity, and the requirement “specific intent to destroy, in whole or in part, a particular group”. These requirements are gender sensitive, taking into account, the systematic character of these crimes, as a result of willful exploitation of socially learned roles, to produce an effect impacting on the conflict.

Secondly, if we look at the gender-based violence concept as a willful exploitation of socially learned roles, to produce an effect impacting on the conflict, than non-combatants are used as “weapons” or means or instruments employed to inflict mental and physical damage to harm living beings, or to increase the efficacy and efficiency of the tactics of warfare. It is undeniable that rape is nearly endemic in modern warfare<sup>136</sup>, especially if we consider that “... the scale of rape and sexual violence appears to have expanded exponentially during the twentieth century”<sup>137</sup>. Alona Hagay-Frey emphasizes the context of rape as a tool of war as an act to produce an intended effect, which stays further than the act itself: “[W]hen the bullets are whizzing by and the survival is dependent on another person’s mercy, it is much harder to assume consent – the relationship of domination and subordination is perpetuated”<sup>138</sup>.

Thirdly, considering article 1 of the ICTY Statute and article 1 of the ICTR Statute which establishes the competence of each International Tribunal “to prosecute persons responsible for serious violations of international humanitarian law...”<sup>139</sup>; considering the ICTY article 3 (violations of the laws or customs of war), which establishes that the International Tribunal shall have the power to prosecute persons violating the laws or customs of war. Such violations shall include, but not be limited to...; considering the ICTR article 4 (Violations of Article 3 common to the Geneva Conventions and the Additional Protocol II) which establishes that the International Tribunal for Rwanda shall have the power to prosecute persons committing or ordering to be committed serious violations of Article 3 common to the Geneva Conventions of 12 August 1949... These violations shall include, but shall not be limited to...; considering article 8 of the ICC statute which defines war crimes using the following expressions: article 8(2)(a) Grave breaches of Geneva Conventions of 12 August 1949, namely, any of the following...; article 8(2)(b) Other serious violations of the laws and customs applicable in international conflict; article 8(2)(c) In the case of an armed conflict not of an international character, serious violations of article 3 common to the four Geneva Conventions of 12 August 1949, namely...; article 8(2)(e) Other serious violations of the laws and customs applicable in armed conflicts not of an international character; a single conclusion must be drawn: all of them have jurisdiction over “violations of the laws or customs of war” and these violations due to the character enumerative of the expressions “namely” and “but

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136 Joshua H. Joseph (2006). *Op. Cit.*, p. 7.

137 Susan Brownmiller (1975). *Op. Cit.*, p. 297.

138 Alona Hagay-Frey (2009). *Op. Cit.*, p. 52.

139 Statute of The International Tribunal for The Former Yugoslavia, adopted 25 May 1993 by Resolution 827, Amended 13 May 1998 by Resolution 1166, and as Amended 30 November 2000 by Resolution 1329.

not be limited to” are not restricted to the readings of the provisions listed. In fact, they might include jurisdiction over all types of employment of “weapons” and “methods of warfare” calculated to cause unnecessary suffering as prescribed by the fundamental principle defined by article 35(2) AP I. Consequently, any form of BSBV and GBV crimes, which are used as method of war employing non-combatants as weapons of war, can be brought before this type of internationals (or hybrid) courts as established within their jurisdiction.

Fourthly, the United Nations Security Council Resolution 1820 (2008) by stating the following: “1. Stresses that sexual violence, when used or commissioned as a tactic of war in order to deliberately target civilians or as a part of a widespread or systematic attack against civilian populations, can significantly exacerbate situations of armed conflict and may impede the restoration of international peace and security, affirms in this regard that effective steps to prevent and respond to such acts of sexual violence can significantly contribute to the maintenance of international peace and security, and expresses its readiness, when considering situations on the agenda of the Council, to, where necessary, adopt appropriate steps to address widespread or systematic sexual violence...” acknowledges not only the difference between sexual violence and sexual violence used as a tactic of war, but also the difference between sexual violence and the use of sexual violence as part of a widespread or systematic attack.

Fifthly, if we assume as mentioned by the jurisprudence at Duško Tadić (§73) that crimes against humanity are more serious offences than ordinary war crimes, than GBV related crimes included in the category of crimes against humanity, are especially blameworthy form of perpetration, even in situations where doesn't exist an armed conflict.

Finally, IHL, LOAC and ICL incorporate all three groups of crimes and methods of violence presented in this study. The differentiating factors appear to be the organized character of the perpetration with the intention to use non combatant as means of war, side-by-side with the fact that perpetration of GBV impacts far more extensive than the effect on the immediate victims. GBV crimes impacts effectively on the victims' families, their community, all of the groups involved in the conflict and the entire society. Thus, for example, crimes of sexual violence and enlisting children, need to be studied and criminalized not only as such, but also as “tools of war” taking into account their dimension of being a result of an organized extended harm.

Furthermore, women, men and juveniles might be victims of sexual violence and gender based violence. Both forms of violence are blameworthy. Both forms of violence are violations of international law. Both forms of violence are serious offences of ICL. Both forms of violence trigger individual criminal responsibility. However, rarely GBV in armed conflicts might be associated with command criminal responsibility, precisely due to the organized character of the perpetration. Actually, GBV crimes have a propensity to be associated to individual criminal responsibility of each commander.

All in all, the offences based on the notion of gender as a tool of war has been criminalized under international law and consequently, international criminal law is equipped to fight against impunity of GBV crimes related. These are good news to battle against

the evil installed in the mind of those commanders, capable of transforming victims who require to be protected, in weapons of long range harming effects, in which unbearable and gigantic human suffering is likely to remain for generations of innocent individuals. Nevertheless, the world would be a better place to live in, if the fundamental principles applicable to methods and means of warfare established by the Additional Protocol to Geneva Conventions would clearly associate GBV crimes to unlawful acts of superfluous injury or unnecessary suffering, each time human beings are used as weapons and tools of war. “Rape has become more than a deplorable side-effect of war, has become a weapon of war”<sup>140</sup>. GBV is likewise a framework expression, which encompasses organized and large scale forms of sexual violence in modern armed conflicts, leaving behind a deliberate legacy of an unbearable long standing human suffering. GBV is unacceptable and legally speaking it is not “part of the game”. GBV in armed conflicts has to stop immediately!

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140 Joshua H. Joseph (2006). *Op. Cit.*, p. 12.

# UNSCR 1325 National Implementation: Challenges Ahead<sup>1</sup>

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## **Introduction**

On October the 21st 2000, the Security Council of the United Nations approved unanimously the Resolution 1325 on Women, Peace and Security. The resolution recognizes the distinct way women, girls, men and boys experience war, peace and security and highlights the disproportion of women towards men involved in peace as well as in conflict prevention and resolution processes. The document was followed by three other resolutions: UNSCR 1820 (2008), UNSCR 1888 (2009), and UNSCR 1889 (2009), constituting an international regime and agenda for gender, peace and security.

Despite being international law, the UNSCR 1325 is not covered by Chapter VII of the UN Charter, i.e., its implementation cannot be enforced nor can its non-compliance be penalized. The success of its implementation on the ground is, therefore, dependent on the political will of those involved in wars and peace processes. Since national governments perform a prominent role within conflict resolution, peacebuilding and reconstruction processes – as parties to armed conflict, contributors of peacekeeping troops, members of the UN Security Council, UN members and donors – national governments are a central actor as far as the implementation and supervision of practices and policies related to UNSCR 1325 are concerned. Consequently, the national level of the implementation process is critical to successfully address women and peace and

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1 This work was developed within the Project “Women, Peace and Security: the implementation of the UNSCR 1325 in Portugal”, coordinated by Tatiana Moura and Teresa Cunha, hosted by the Association for Justice and Peace and the Centre for Social Studies of the University of Coimbra.



security issues as framed within the UNSCR 1325. Bearing this need in mind, the UN Secretary-General's Report (2004) invited the member states to prepare National Action Plans (NAP) in order to take strong steps towards the implementation of UNSCR 1325.

Being part of the EU – where a comprehensive political and legal framework was set to implement the Resolution and whose member integrate the majority of countries adopting NAP – as well as of the UN, Portugal has adopted a NAP to better translate the policies and the ideas expressed in the Resolution 1325 into its reality and practices.

This article intends to present the Portuguese NAP and identify the challenges that lie ahead. For that purpose, it is divided into three parts. The first part presents the UNSCR 1325, the second part explains the Portuguese NAP, and the third part discusses it based on the possibilities and limitations of the UNSCR 1325 text/contents and Portugal's own specificities - a democratic country, formally at peace and having a clear tradition of participation in peacekeeping and peacebuilding missions.

### **The Resolution 1325**

Unanimously approved in October 2000, under the Namibian Presidency, the Resolution 1325 established an international framework policy for issues regarding women, peace and security, setting an international agenda and framework on the topic (OSAGI, 2007). Its international mandate assumes as its main goal to take into account the specific gender conditions and circumstances women and girls experience in war and post-war scenarios; and to promote a more active and equal role for women in processes of conflict prevention and management as well as in peace building dynamics. On the basis of this international mandate and reference lies the belief that women, girls, men and boys experience war, peace and security distinctively from each other and perform different roles in contexts of armed violence and peace keeping or consolidation processes. The resolution does not claim strictly for simple equality but it takes one step further, by calling for the recognition of the distinct experiences women and girl have on war and peace contexts – which are also a result of the ideological inequalities that separate men and women - and to act upon them. It demands a radical change in the habits, procedures and mentalities of all people involved in the implementation of the resolution in both perspectives: top-down and bottom-up.

Being built on earlier resolutions and conventions,<sup>2</sup> the UNSCR 1325 is the corollary of a long gender sensitization and demand/advocacy/lobbying process and represents a historical landmark within the international agenda for gender, peace and security not only for its mandate but also because it represents the acknowledgement of both the

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2 Resolution 1325 builds on earlier resolutions and conventions, such as Resolutions 1208 (1998), 1261 (1999), 1265 (1999), 1296 (2000) and 1314 (2000); the Windhoek Declaration and Namibia Plan of Action (S/2000/693), Beijing Declaration and Platform for Action (A/52//231), 23rd Special Session of the General Assembly of the United Nations (A-S23/10/), Geneva Conventions of 1949, the Additional Protocols of 1977, the Refugee Convention of 1951 and Protocol of 1967, CEDAW of 1979 and the Optional Protocol of 1999, the BPA of 1995, the UN Convention on the Rights of the Child in 1989 and the two Optional Protocols of 2000, the Rome Statute of the International Criminal Court.

governmental and non-governmental sectors (*e.g.* NGO, academia, social movements) of the need to take into account the specificities of gender concerning peace, conflict, violence and security. This confers even more strength to the document (Cohn, et al, 2004).

The resolution's eighteen points focuses on three main axes: recognition; claim and action which can be translated into the three supporting points of UNSCR 1325. The first – a crosscutting one – refers to acknowledgment of the specific impact armed conflicts have on women and girls and the unique contribution women can make to peacebuilding. The second craves for the increased protection and prosecution of crimes against women and girls during war and urges for women's active involvement, participation and representation at higher-level decision-making positions within local, national and international platforms regarding peace security and (armed) conflict areas. The last outlines specific actions to be taken by the Secretary-General, the Security Council, UN departments and member states to mainstream gender into peace and security policies and practices (*e.g.* training of specialized agents, creation of guidelines).

The United Nations have developed the Resolution's content by approving three different other Resolutions – UNSCR 1820, 1888 and 1889 – and releasing, since 2004, a Secretary-General Report exposing and reflecting on the updated implementation status of the Resolution (with a special focus on the UN work). According to Fritz (2010), these four documents have helped to clarify and deepen the commitment to a concrete international agenda for women, peace and security.

### **National Action Plans**

Although the UNSCR 1325 is international law, it is not covered by Chapter VII of the UN Charter and its implementation cannot, hence, be enforced nor can its non-compliance be penalized. The success of its implementation on the ground is directly dependent on the political will of those involved in war and peace processes – *e.g.* the UN system, member-states, and parties to conflict. Since national governments perform a prominent role within conflict resolution, peacebuilding and reconstruction processes – as parties to armed conflict, contributors of peacekeeping troops, members of the UN Security Council, UN members and donors - they emerge as crucial actors concerning the implementation and supervision of practices and policies related to the UNSCR 1325.

Among the different ways in which countries have operationalized the resolution 1325, there are two distinct approaches that can be highlighted: the integrative approach, which can have three different expressions - to include provisions of the Resolution on National legislation (*e.g.* Israel, Serbia, Colombia, Fiji); mainstream gender perspective into different aspects of their peace and conflict policies (*e.g.* Argentina); combine the implementation of multiple resolutions on the topic in a joint plan (*e.g.* Uganda) ; the national action plans (NAP) approach (UN and IA, 2010), which has been the most frequent option so far (Barnes, 2010) and the one strongly emphasized by the UN.

On the 13<sup>th</sup> October 2004, the UN Secretary-General's report invited the mem-

ber states to prepare NAPs<sup>3</sup> in order to take strong steps at national level towards the implementation of the UNSCR 1325 since it is a way of facilitating the Resolution content to the local actors, promoting local discussions on it and allowing the Resolution to acquire importance in terms of foreign policy (UN INSTRAW, 2006). Specifically, according to the UN Secretary-General (2008), the development of NAP is an opportunity to initiate strategic actions, identify priorities, allocate resources, determine responsibilities and set deadlines to guide and evaluate the implementation of the Resolution. In order to be successful, NAP should include: political will from the part of the originator (national government and implementing organizations); participatory and transparent drafting process (Barnes and Lyytikäinen, 2008), giving particular consideration to potentially marginalized groups; formulation of clear and realistic objectives, timeframes, initiatives, responsibilities, functions, monitoring and evaluation mechanisms; provision of appropriate financial and human resources; effective and systemic monitoring and evaluation of the implementation of action plans using defined success indicators by leading originators and civil society players (Vilhelmas, 2010). However, it is important to bear in mind that NAPs have the potential of being an effective tool for the implementation of the spirit of UNSCR 1325 only if a comprehensive process is undertaken and as long as it is recognized as a means to an end rather than an end in themselves (Luciak, 2008).

### **Portuguese National Action Plan**

The Portuguese NAP was approved for the period 2009-2013 by the resolution of the Council of Ministers (71/2009) (Conselho de Ministros, 2009a) on the 25th August 2009, just before UNSCRs 1888 and 1889. It was drawn within the context of the Portuguese application for non-permanent membership of the Security Council of the United Nations and it is the result of a working group coordinated by the National Mechanism for Equality – Commission for Citizenship and Gender Equality, a government body under the direct supervision of the Presidency of the Council of Ministers and assisted by a Consultative Council (integrating public consultations – as widely suggested), in which all relevant ministries are represented (including the Ministry of Foreign Affairs, the Presidency of the Ministries Council, Ministry of Defense, Ministry of Internal Affairs and Ministry of Justice) (Conselho de Ministros, 2009b).

The Portuguese NAP (2009-2013) starts by framing itself within the wider international agenda on Women, Peace and Security and, specifically, the UNSCR 1325. It

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3 In ideal terms, an action plan is a written document that deals with the “what”, “how”, “who” and “when” of implementation. Strategic actions, resources, priorities and responsibilities should, therefore, be identified (EPLQ, 2010). While the original resolution – 1325 – and the resolutions that followed (1820, 1888 and 1889) did not require national action plans to be developed, the UNSCR 1889 (2009) welcomed “the efforts of Member States in implementing resolution 1325 (2000) at the national level, including the development of national action plans”, which are regarded as “an opportunity to kick off strategic actions, identify priorities, and determine responsibilities and deadlines to orient and evaluate the implementation” (SG Report, 2008).

explicitly acknowledges the need to strength women's participation and representation in the sectors of security (peacekeeping missions, security system reform), justice, development aid, as well as to reinforce the protection of women and girls in conflict and post-conflict areas. Along with 1325 recommendations, the document expresses concerns for both a governmental and civil society dialogue and a national international and European legislative framework.

Specifically, the Portuguese NAP identifies five strategic objectives (Conselho de Ministros, 2009b) to be pursued:

- (1) To increase the participation of women and integrate gender equality into every phase of peacebuilding, including all levels of decision-making;
- (2) To promote capacity-building of those involved in peacebuilding and development aid efforts on gender equality and gender-based violence and other 'woman peace and security' aspects;
- (3) To promote and protect the respect for the human rights of women and girls in areas of conflict and post-conflict, regarding the need for the prevention and elimination of gender-based violence against women and the promotion of women empowerment;
- (4) To deepen and raise awareness of women, peace and security, including training and raising awareness of decision-making entities and public opinion;
- (5) To ensure the participation of civil society in the implementation of the UNSCR 1325 and the Portuguese NAP.

Constituting the references to assess and monitor implementation, these five strategic goals are deployed into different specific goals, activities and indicators identified along the NAP.

### **Assessing Portuguese NAP**

The Portuguese NAP has been assessed by different actors both at governmental - e.g. the Report of the Portuguese Government (Governo de Portugal, 2012) issued in 2012, the EPLO Report (2010) – and non-governmental level (e.g. Portuguese Platform for Women's Rights (Plataforma Portuguesa para os Direitos das Mulheres, 2010), Observatory on Gender and Armed Violence and International Action Network on Small Arms (OgiVA and IANSA, 2008). Being a national action plan of an international document, the Portuguese NAP integrates logically much of the latter's possibilities and limitations. However, despite being a ramification of UNSCR 1325, Portuguese NAP also has its own specificities both content wise and at the operational level.

### ***Content***

Portuguese NAP not only follows the Resolution 1325 text but also goes a step further by stemming from the governments' interpretation of the Resolution as "extending beyond armed conflicts and humanitarian aid to include the promotion of policy coherence at a national level concerning issues such as disarmament and weapons control, public security and the elimination of gender-based violence". It is, hence, a particularly

comprehensive and groundbreaking plan. However, expectations of this comprehensive interpretation of the Resolution 1325 text are not met when analyzing the Portuguese NAP closely. From a content and policy perspective, three interlinked elements should be considered:

- (1) Disregard of domestic gender-based violence – The Portuguese NAP focuses much more on war and post-war contexts than domestic gender-based violence. This happens not only due to the fact that Portugal has been domestically at peace for long decades but also to an artificial line that is usually drawn between war and peace scenarios as if no continuum could be established between these two poles. The relation between peace and war is not one of opposition and detachment, but of connectedness (Scheper-Hughes & Bourgois, 2004). In wartime, violence corresponds to the hyperconcentration of daily and publicly consented crimes. Violence and discrimination appear as a normal pattern for social, political and economic relations. In turn, formal peace scenarios also witness high levels of daily violence and discrimination (sometimes based on the same prejudices and structural and cultural problems as the ones generating and fueling war violence), but they are less visible and usually unrecognized or dismissed as less important. Intimidations, insecurities and threats experienced by women and girls are common to all the various contexts – war, post-war and formal peace. Attentive and effective response to these domestic violent expressions and their international links would benefit from a broader interpretation and implementation of the Resolution 1325. In this sense, in addition to considering the Resolution 1325 in the field of foreign policy, Portugal should be aware of the continuum of violence in their own domestic context, contemplating gender-based group/organised and armed violence when drawing both prevention and combat strategies towards gender-based violence (OGIVA and IANSA, 2008). This need is highly recognized by academics and non-governmental organizations.<sup>4</sup> However, there is still much resistance on the governmental side<sup>5</sup> who believes that by focusing on the domestic sphere of gender-based violence the NAP would lose its force since the plan would try to address two different realities – the domestic and the international, the civil realm and the security forces and political representatives sphere – hence widening the target area and losing its strength.
- (2) Small arms – Intimidations, threats and insecurities experienced by women and girls resulting from the spread and misuse of firearms are common to war, post-war and formal peace. Therefore, Portugal, within its domestic context, should create prevention and combat strategies in this sector. The Observatory on Gender and Armed Violence of the Centre for Social Studies (University of Coimbra) and the International Action Network on Small Arms (OGiVA

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4 Interviews to NGO representatives working on gender issues in Portugal (April to June 2012).

5 Interviews to governmental and former governmental representatives in Portugal (April to June, 2012).

and IANSA, 2008) draw specific recommendations for the Portuguese NAP concerning small arms. According to these two institutions, at international level, Portugal should carry out increasing bilateral efforts to promote and contribute to the development of appropriate policies, strategies and legislation to prevent gun violence, including domestic armed violence, and to protect its victims. At the same time, it should ensure gender mainstreaming concurrently in development programs and projects, strengthening pre-existing measures regarding security sector reform and DDR programs. In line with this, and as far as the multilateral level is concerned, Portugal should deepen its commitments to comprehensive measures of arms control, including the support for an international treaty on arms trade (ATT – Arms Trade Treaty), the Program of Action of the United Nations to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons, as well as their conferences/regional declarations. At national and local level, Portuguese government should support research, policies and programs intending to reduce and prevent armed violence (regarding small arms supply and demand). Another crucial aspect to consider is to improve national legislation on possession and use of, including the introduction of a more clearly defined and restricted criteria that preclude the granting of licenses to people with a history of violence at home or in community, and considering the motivations for applying for a license, the context and the likelihood of small arms misuse (*Ibidem*).

- (3) Femininities and masculinities – Patriarchy is intimately connected to the gender-based violence during war and formal peace time. As such, efforts to balance the participation of women in war and peace processes and to prevent and combat gender-based violence should also aim at deconstructing the hegemonic notion of masculinity. The term refers to a particular idealized image of masculinity correspondent to an independent, risk-taking, aggressive, technology-driven, rational man (Barrett, 2001). This image stems from a hierarchical perception of gender identities and encourages men to dominate other males and subordinate females, hence contributing to the normalization and legitimation of the subservient position of women and violence towards them. Therefore, Portuguese PNA should include the need to deconstruct the dominant and hegemonic notion of masculinity in order to improve the long-term efficiency of the plan and to contribute to full implementation of the Resolution 1325 in Portugal.

### ***Operational***

Since the NAP started to be implemented, the presence of women in security forces has not significantly changed (Governo de Portugal, 2012). However, within today's sharp financial crisis context, the fact that women's presence has not decreased can be regarded as positive point of the NAP. Also, there has been a great investment in training going along the guidelines of the 1325 principles. However, , six areas should be considered in order to improve the Plan from an operational point of view:

- Budget – There is a lack of specific budget towards the NAP which emerges as a clear limitation concerning the effectiveness of its implementation (Governo de Portugal, 2011).<sup>6</sup>
- Monitoring – lack of efficient mechanisms for monitoring the activities carried out within the NAP (EPLO, 2010).
- Staff selection – Civil servants who are developing the NAP usually have no background or were not previously sensitized towards gender, peace and security issues. Hence, despite strong dedication to the topic during the time the NAP is being drawn and assessed, the knowledge of this nominated staff on women, peace and security cannot develop to the stage where new, deep and groundbreaking interpretations of gender reality come across, allowing for more effective and creative policies to be adopted.<sup>7</sup> Consultancy, in the short-term, and civil servants gender training in the long-term would be crucial to overcome this gap.
- Timeline and indicators – The Portuguese NAP does not provide any programmatic timeline or sequence of actions to develop (Governo de Portugal, 2012). According to Fritz (2011), one of the most important aspects of a plan is including specific timelines since they are central elements for both implementation and evaluation. The set up of a rigorous timeline as well as the identification of concrete goals and indicators should be considered to improve the Portuguese PNA.
- Coordination and communication – The implementation and assessment of the Portuguese NAP is responsibility of four key Ministries – Foreign Affairs, Justice, Defense, Internal Affairs. A coordination unit that would monitor and coordinate all national efforts to put the Portuguese National Plan into practice is highly recommended in order to optimize ministries' efforts. Also, a specific team allocated to the implementation of the UNSCR 1325 within each Ministry and department should be set up.<sup>8</sup> This would give visibility and strength to the NAP instead of being diluted among different bureaucratic ministerial procedures. Another element that would promote a more efficient NAP design and implementation would be better internal procedures providing coordination between the different implementing agents. The Portuguese NAP does not mention the specific number of formal meetings there should be and communication among the different ministries is good. Nonetheless, it could be improved. In order to put that forward, Fritz (2011) recommends that how and how often participants will communicate with each other and the public should be added to all NAP in order to optimize efforts. Better communication and coordination procedures and strategy would also encourage a more holistic approach to the Resolution 1325.

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6 Interviews to governmental representatives and former governmental representatives in Portugal (April to June, 2012)

7 Interviews to former governmental representatives and non-governmental representatives in Portugal and the UK (April to June, 2012).

8 Interviews to governmental representatives and former governmental representatives in Portugal (April to June, 2012).

In fact, despite the existence of a NAP, there is a tendency to each ministry follow its own gender policy that, in the end, flows into the NAP but does not integrate the in-depth and ambition of the UNSCR 1325.

- Allocation of responsibilities – There is no mention to responsible departments for each goal and activity. In order to increase efficiency and accountability, the Portuguese NAP should not leave any blanks regarding implementation and each agent should be identified.
- Civil society participation – The Portuguese National Action Plan identifies the need for civil society to participate in the process of this resolution's implementation, but does not identify the specific mechanisms of this intervention. The participation of the whole civil society is very important for a deep implementation of the Resolution. Therefore, this point should not be disregarded.
- External communication – Most of Portuguese citizens as well as technical staff professionally dealing with women, gender and security issues don't know the Resolution 1325 or the Portuguese Action Plan. Better communication strategies should be implemented,<sup>9</sup> since external communication is the way the Plan is introduced to society. A main challenge to overcome in the implementation of UNSCR 1325 continues to be the lack of knowledge about its existence and content (Fritz, 2008; Gumru and Fritz, 2009). So, indicating in a plan that the general public will be informed about (1) the relevant UNSCRs and a country's NAP and (2) the kinds of specific advertising tools that will be used (e.g., NGO network campaign, radio scripts, hotline number, website) supports the implementation and evaluation processes.
- Training – Gender sensitization should be included in all professional and informal school training curricula and not only within institutional (security forces) circles.
- Resistance – There is an institutional resistance from the part of governmental authorities regarding the need for the Resolution 1325. It is widely believed that gender policies in Portugal were already an on-going process and that the Resolution only duplicated the gender efforts: the Resolution did not reinforce gender policies in Portugal nor has it raised awareness on gender-based violence or discrimination. This can be a symptom of resistance towards a new and groundbreaking instrument or of lack of understanding of the comprehensive framework and mission the Resolution entails.

### **Conclusion: Challenges Ahead**

The creation and implementation of NAPs is a new and still evolving process. Portuguese NAP is no exception – it can be considered a 'living ongoing document'. By being a democratic, at peace, semi-peripheral country with large tradition in peacekeeping missions, Portugal gathers some characteristics to be a putative successful case in the implementation of the NAP at the national level. However, and despite being groundbreaking

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9 Interviews to representatives of NGO working on gender issues in Portugal (April to June, 2012).



when compared to different other National Action Plans, the Portuguese NAP has still a long way to go. Aforementioned operational and content wise improvements must be considered in order to assure a full implementation of UNSCR 1325 in Portugal. However, all of these distinct gaps converge into two main and deeper challenges which are, in turn, on the basis of those insufficiencies: first, to make the NAP a goal in itself and not a means to an end, i.e., to perceive the NAP as a comprehensive valuable normative reference and not as a bargaining tool for international political advantage and integration (this would imply a deeper political knowledge on the triangular relation “women, peace and security” and a more dedicated and efficient communication, training and assessment strategy and subsequent procedures); second, to uphold visibility for gender issues as well as allocate resources in today’s context of severe financial crisis.

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# Jornalismo de Paz: Cobrindo e Descobrindo a Violência de Género nos Conflitos Internacionais

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Em 2004, o Relatório da ONU *A More Secure World: Our Shared Responsibility – Report of the High-level Panel on Threats, Challenges and Change* apresentou um balanço sobre um novo cenário de instabilidade geopolítica, definindo todo um novo conceito de ameaça transnacional e apontando, a partir daí, para novas vias de resposta aos desafios do início do século XX.<sup>1</sup> Contudo, já desde a década de 90 que a nova incerteza e o défice de orientação suscitava um intenso debate em todas as áreas do saber que veio proliferar depois do 11 de Setembro, incidindo exaustivamente sobre as condições e as consequências da globalização, o novo terrorismo, as ameaças ambientais e a urgência da formulação de uma nova estratégia para a paz. A vastíssima bibliografia sobre a temática reflecte bem o *zeitgeist* de uma época de transição e crise.<sup>2</sup>

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- 1 Vide <http://www.un.org/secureworld/> (consulta de 14.03.2013). É esta definição que orienta a nossa reflexão.
  - 2 Sem pretensão de querer sintetizar as inúmeras análises e teorias que avançaram com diagnósticos, ousaram prognósticos ou propuseram soluções, será talvez pertinente referir apenas algumas das reflexões que mais influenciaram o nosso trabalho. Assim, foram perspectivas tão díspares como as de Ernst-Otto Czempiel (1992), Arjun Appadurai (1996) ou Samuel Huntington (1996); Jürgen Habermas (2004), Ulrich Beck (2004) e Anne-Marie Slaughter (1997 e 2004); Joseph Nye (2004), John Ikenberry (2002 e 2004), Charles Kupchan (2001), Pierre Hassner (2003) ou John J. Mearsheimer (2001), Charles Krauthammer (2001), Wohlforth (1999) e Edgar Morin (2002) ou Soromenho-Marques (2010) que contribuíram, entre muitos outros, para o desenvolvimento do ponto de partida que aqui apresentamos. Para além destas, foram sobretudo as acepções de Wilfried von Bredow de um “mundo turbulento” (1994) ou de Wichard Woyke sobre um tempo de “complexidade e discontinuidade” (1995), bem como de Werner Link sobre um “mundo móvel de configurações flexíveis” (1998) que observam tanto tendências para a homogeneização e universalização, como para a diferenciação e, finalmente, de Adriano Moreira sobre um tempo de “anarquia madura” (2009) – em que a maior tarefa será a “governabilidade de um mundo” em que “todas as vozes devem ser ouvidas” mas que se oriente, ainda assim, pelo respeito dos Direitos Humanos como o “eixo da roda” (2009) – pareceram-nos produtivos para esta reflexão.

Contudo, não seria possível debater estas questões sem reflectirmos a importância dos media na nossa percepção dos conflitos e da própria transformação da conflitualidade. À tentativa de definição de uma nova ordem mundial sobrepõe-se já há muito uma “nova ordem mundial da informação” que altera radicalmente os nossos horizontes de conhecimento, de responsabilidade, de expectativa e de intervenção.

As novas tecnologias possibilitam hoje vias de percepção e de comunicação de informação sem precedentes. Contudo, no início do século XXI, a massificação da informação cria novas incertezas:

Por um lado, o aumento exponencial e a própria pluralidade da informação, não diminuem, mas expandem o sentimento de ignorância e imprevisibilidade. Assim, o receptor de informação enfrenta novos desafios de descodificação que o remetem para uma espécie de paradoxo do saber a que já Georg Simmel aludia quando falava na diferença entre “cultura objectiva” e “cultura subjectiva”<sup>3</sup>.

Por outro lado, o acesso a informação vasta, imediata e aparentemente plural, diversificada, participatória e “livre” não é tão “aberta” como se poderia esperar, não é isenta, nem apresenta respostas “objectivas” para o entendimento do mundo e a tomada de decisões / posições. As notícias continuam uma selecção de quem as escreve, edita ou publica e o acesso à informação continua a ser limitado e controlado. Tal como na época em que Adorno e Horkheimer denunciavam a “indústria da cultura”<sup>4</sup>, mantêm-se estruturas de poder com uma agenda (política, económica, cultural) e que influenciam acesso e divulgação de notícias.

No caso da informação sobre conflitos (domésticos ou internacionais), estas observações parecem-nos particularmente pertinentes, uma vez que as notícias sobre guerras ou sobre conflitos em ebulição implicam cobertura de actos de violência e terror e de sentimentos de medo e ódio. Pela sua intensidade e gravidade são “devoradoras” de atenção captando o maior interesse dos media. Todavia, também aqui, o que “é real” é o que aparece na televisão e nos jornais e inversamente o que aparece na televisão e nos jornais é percebido como “real”. A responsabilidade de quem escreve, edita ou publica a notícia é muito grande, pois pode vir a ter implicações sobre a vida ou a morte.

O papel das mulheres em conflitos armados depende particularmente de quem “cobre” a notícia, podendo muitas vezes “descobrir” as suas histórias. Isto não significa, no entanto, que o trabalho do jornalista deve limitar-se a consciencializar para o problema do aumento da intensidade da violência (física ou psicológica) que as mulheres sofrem em situação de conflito, mas que deve sobretudo transmitir que as mulheres são hoje - para além de vítimas frágeis e silenciosas de guerra - também agentes fundamentais da resolução de conflitos e da construção da paz. Com base nestas considerações chegámos a um conjunto de interrogações prévias que orientaram a nossa reflexão sobre a violência baseada no género em situações de conflito armado. Em primeiro lugar há que olhar de modo mais atento e crítico para o papel dos media na cobertura dos conflitos armados.

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3 Georg Simmel “Vom Wesen der Kultur” (1908).

4 Max Horkheimer e Theodor W. Adorno (1947).

Depois podemos analisar o contributo dos media para chamar atenção para o grave problema da violência contra mulheres - e que aumenta de forma visível e invisível durante conflitos armados. Por fim, devemos apontar para a importância das mulheres na resposta ao conflito armado e, mais precisamente, na construção da paz – e o papel do jornalismo não só na cobertura destas histórias, mas especialmente na “descoberta” (ou divulgação e promoção) desta faceta do *peacebuilding*.

Isto significa igualmente que devemos ousar ir mais longe e questionar-nos sobre os efeitos de uma notícia (ou de uma reportagem sobre um conflito) sobre essa mesma situação de conflito: Pode um determinado tipo de cobertura / de jornalismo influenciar directa e/ou indirectamente uma situação de conflito (incluindo o período de escalar do conflito e o pós conflito)? E, no caso da violência baseada no género, qual o contributo que podemos observar – ou mesmo esperar?

Temos de começar por submeter esta nossa agenda a algumas questões básicas que alertam já para a urgência de uma análise mais rigorosa do jornalismo dos conflitos armados. Devemos assim tentar descobrir:

- Que acontecimentos são objecto de cobertura nos media?
- Que “factos” e que “histórias” são apresentados a propósito desses acontecimentos?
- Que perspectivas são apresentadas e que vozes são ouvidas?
- Que perguntas são feitas?
- Por que são feitas e, sobretudo, para quê/quem?

Subjacente a estas questões, estão outras – que a elas se ligam inextricavelmente – e cuja resposta parece ainda mais propícia à nossa análise:

- Que acontecimentos (ou mesmo: que conflitos) não são objeto de cobertura?
- Que histórias não são contadas?
- Que vozes não são ouvidas?
- Que perguntas não são feitas?

Uma apreciação preliminar da cobertura de situações de conflito nos media faz-nos suspeitar que a mediatização da violência e do terror privilegia um tipo de jornalismo focado nos acontecimentos extremos e mais violentos, nas vozes “oficiais” e mais poderosas, construindo-se facilmente narrativas únicas que são quase sempre simplistas em torno do ódio e do sangue, tendo como protagonistas os bons e os maus e que só podem ter um único desfecho: vencer ou perder. Em vez de uma análise do contexto (político, histórico ou cultural) e de espaço para perspectivas diversas ou soluções alternativas, o conflito é-nos apresentado como mal inevitável (e cíclico, quase natural) que assume uma dimensão de espectáculo. O mais convencional “jornalismo de guerra” assume muitas vezes este foco pouco diferenciado que se desinteressa por iniciativas de pequenos passos por parte de pessoas comuns, silenciando estas vozes e estas “histórias” com consequências, por vezes, muito negativas para as possibilidades de resolução do conflito. Assim, o discurso centrado exclusivamente na violência potencia e perpetua a violência e torna outros discursos inaudíveis, limitando a percepção de posições e soluções alternativas. Para além disso, o fascínio pela violência

que se relata com alegada “neutralidade dos factos”, a redução do olhar apenas para um acontecimento-espectáculo (como se tivesse surgido do nada) e o tempo de antena apenas para as fontes oficiais leva a uma cobertura susceptível de ser instrumentalizada como “propaganda de guerra”.

Nestas narrativas de guerra, a voz das mulheres é geralmente inaudível. Contudo o silêncio significa aqui “silenciamento” e representa uma nova violência. Uma violação da possibilidade de expressão e, assim, de agir e de ser.

Mas se é esta a perspectiva do mais convencional “jornalismo de guerra”, temos de ter em conta que não estamos perante um *blueprint* de comunicação, pois há outras formas de cobrir um acontecimento e de “contar a história” descobrindo o que está geralmente invisível e dando visibilidade à perspectiva das mulheres num conflito armado.

Na óptica dos Estudos da Paz, o “Jornalismo de Paz” afirma-se como representação alternativa dos conflitos nos média, partindo de questões e critérios diferentes e por vezes mesmo opostos aos do “Jornalismo de Guerra”. É nas linhas deste tipo de jornalismo que se escreveram nos últimos anos muitas histórias de mulheres e enquanto alternativa crítica com cada vez mais expressão, esta orientação desafia a cobertura convencional ou *mainstream* de conflitos e lança novas pistas para a leitura do admirável novo mundo do século XXI.

Para a denúncia dos crimes cometidos contra mulheres em situação de conflito internacional o Jornalismo para a Paz tem um potencial simultaneamente crítico e desafiador.

### **O Potencial do “Jornalismo de Paz”**

De um modo genérico, o Jornalismo para a Paz (JP) afirma-se como concepção e perspectiva alternativa ao Jornalismo de Guerra (JG). Tem por objectivo dar visibilidade aos espaços vazios do JG e responder às questões que ficaram por fazer e esclarecer.

Uma das definições mais concisas é dada por Jake Lynch, Director do *Centre for Peace and Conflict Studies*, da Universidade de Sydney, e um dos principais promotores do Jornalismo de Paz:

*“Peace journalism is when editors and reporters make choices - of what stories to report and about how to report them - that create opportunities for society at large to consider and value non-violent response to conflict.”* (Lynch, 2008)

A partir destas palavras depreendemos, de imediato que o JP se fundamenta na concepção de que qualquer escrita sobre conflitos representa sempre uma escolha e que essa escolha é determinada por objectivos. A escolha do JP é olhar para “histórias alternativas” que não apontam para a violência, mas que possam ser vias para a resolução do conflito. O seu objectivo é justamente quebrar o ciclo de violência e contribuir para a paz consciencializando através da notícia ou da reportagem para actores diferentes no palco da guerra – neste caso, por exemplo, as mulheres - bem como para o seu potencial de superação de violência através da gestão pacífica de conflitos, da mediação e da conciliação.

De um ponto de vista teórico, o JP inscreve-se nos Estudos de Conflitos e da Paz utilizando conceitos e orientações desta área científica, motivo pelo qual será pertinente

esclarecer esta sua “matriz”: Os *Estudos da Paz* partem de um conceito crítico e dinâmico da paz. Em contraste com acepções clássicas da paz enquanto “estado final e perpétuo”, estático e perfeito que dependia essencialmente dos Deuses (ou só seria acessível a Deus), advoga-se aqui uma ideia política da paz: a paz deixa de ser entendida num sentido negativo como mera “ausência de guerra”, mas toma um significado próprio e muito mais abrangente. Depende dos Homens que têm o dever de a fundar, construir e garantir - e como tal, permanece imperfeita (ou inacabada) e sempre aberta a novos desafios e significações.

Face a uma teoria da paz convencional, Johan Galtung propôs nos anos 60 e 70 um “*estudo crítico da paz*” que levou a um alargamento dos conceitos de violência, por um, e de uma alteração do paradigma da paz, por outro lado.<sup>5</sup> Para Galtung, a ausência de guerra não seria uma definição aceitável de paz, uma vez que essa interpretação permitiria que classificássemos uma sociedade em que o mais forte oprime o mais fraco – que, temendo represálias não se poderia nem insurgir, nem defender, não havendo assim sinais de conflito – como pacífica e bem ordenada. Contudo, na sua acepção de paz pressupõe-se não só ordem, como ainda tranquilidade, segurança, liberdade e justiça<sup>6</sup>. Introduce-se assim o conceito de “*violência estrutural*” ao lado dos conceitos de violência directa e pessoal que altera o debate sobre a construção da paz. Os estudos críticos da paz alargam a própria ideia da paz e atribuem-lhe um papel interventivo na esfera política e social. A paz exige, pois, não só a eliminação ou ausência de *violência directa* (ou seja, estados de “guerra”, na sua expressão comum) ou de *violência pessoal* (exercida por um ditador ou um regime opressor), mas a eliminação da violência estrutural que se expressa como uma distribuição desequilibrada de poder e de recursos.

Esta visão da construção da paz é partilhada por Dieter Senghaas, um dos mais importantes teorizadores da paz, que entende a justiça social, a igualdade de oportunidades, o funcionamento transparente das instituições políticas bem como o equilíbrio de poder como factores essenciais à consolidação da paz. Apenas uma sociedade solidária poderá resolver os conflitos emergentes de um modo mais pacífico e prevenir, assim, a explosão da agressividade como forma de mal-estar e de expressão extrema de sentimentos de injustiça e desespero. Trata-se, nas suas palavras, de conseguir “civilizar” os conflitos (Senghaas, 1971).

Nesta tradição, a paz torna-se simultaneamente *princípio, processo e produto* de uma gestão de conflitos não violenta. E sublinhe-se, não se trata de ambicionar um mundo sem conflitos, mas a transformação da gestão dos conflitos e, em última instância, o estabelecimento (por leis) de um regulamento de gestão de conflitos sem violência ao nível mundial.

Para o JP isto significa que assume descomplexadamente o seu normativismo quando propõe uma agenda de trabalho orientada num “dever ser” que deseja alcançar, no-

5 Vide Galtung (1969 e 1982). Veja-se aqui também Senghaas (1971)

6 Há aqui uma nítida referência a uma visão cristã de paz que apela simultaneamente a “*iustitia, securitas, tranquillitas, caritas*”. Mas Galtung vai mais longe ligando a paz à realização plena do “potencial humano”. Vide Galtung (1971).

meadamente um papel (interventivo) na pacificação do “mundo” (que se desdobra no Estado, na cidade ou no bairro) através de uma representação mais diferenciada das situações de conflito. Estamos perante um “jornalismo com causa”, um jornalismo militante que, nas palavras de Nadine Bilke, é um meio e um instrumento para “evitar guerras” (Bilke, 2008).

Estas orientações traduzem-se, como já vimos, numa percepção e interpretação alternativa dos conflitos. A situação de conflito em análise é observada de uma “macro-perspectiva” que se preocupa não apenas com um acontecimento ou um incidente em si, mas com todo o seu contexto (político, histórico, cultural etc.) e as possíveis causas, escutando a uma “micro-perspectiva” várias vezes, incluindo aquelas sem poder (aparente) e que são geralmente ignoradas (e silenciadas) e várias explicações, mesmo aquelas que são aparentemente marginais ou contrárias às nossas próprias certezas e expectativas.

É aqui que o Jornalismo para a Paz se torna um veículo precioso para “cobrir” e “descobrir” não só a violência contra mulheres que ocorre com maior intensidade e frequência durante conflitos armados internacionais, mas também o sistemático silenciamento do seu papel nos conflitos e na resolução dos mesmos. Este silenciamento é em si um acto de violência:

Em muitas culturas (incluindo a ocidental) – e durante muitos séculos – a mulher não foi considerada como “testemunha” fíável. A sua palavra não tinha qualquer valor judicial. Na prática, estava mesmo excluída da esfera política. A História está repleta de narrativas masculinas, dos feitos dos Homens e dos seus filhos - especialmente nas guerras, que glorificam a masculinidade que aí se torna sinónimo de poder e de violência – e que legitimam a dominação sobre as mulheres quer através de uma caracterização das mulheres como frágeis, dependentes, menores e por isso vítimas “naturais” (a mulher raptada, violada, abandonada), quer através de uma imagem construída de uma mulher agressora, dominadora “exóticas” ou “sobrenatural” (a Amazona ou a bruxa má) e que tem de ser eliminada.

Na actualidade, esta visão mais estereotipada de lendas e narrativas arcaicas está a mudar. Na medida em que cada vez mais mulheres participam na esfera económica e política, também as representações culturais tomam novas configurações. E há cada vez mais interesse em conhecer a perspectiva das mulheres em situação de conflito. Isso deve-se a vários aspetos: em primeiro lugar houve um aumento muito significativo de mulheres jornalistas. Até 1970 apenas 6% de correspondentes de guerra eram mulheres. Hoje mais de um terço são mulheres. Procuram o olhar de outras mulheres, entram nos seus lares (geralmente considerados periféricos dos palcos de guerra) e querem conhecer a sua voz. Muitas destas jornalistas sabem o que é “não ser ouvida” e, assim, estão provavelmente mais sensibilizadas para a denúncia e a crítica de crimes cometidos contra mulheres, bem como para a denúncia da situação difícil das mulheres durante conflitos. Mas não se trata (de um modo ainda paternalista) de expor os crimes e proteger as vítimas, este género jornalístico tem por objectivo apresentar o papel das mulheres na resolução de conflitos (*engendering*), deslocá-las da periferia para o centro da história, mostrá-las como atorras (e não meras atrizes), como participantes ativas e indispensáveis da construção da paz.



A Resolução do Conselho de Segurança da ONU 1325 e a aplicação por parte da NATO desta nova medida é um importante exemplo, como o papel das mulheres pode ser crucial para o *peacebuilding*, não só para vencer a paz, mas essencialmente para ganhar a paz.

De um ponto de vista prático (ou metodológico), o JP define orientações muito específicas que devem guiar o trabalho do jornalista e que se formulam basicamente em oposição ao “tradicional” JG. Apesar de não concordarmos com todos os critérios referidos no seminal “Modelo de Galtung”<sup>7</sup>, a abordagem crítica dos seguintes pontos é incontornável para a nossa avaliação do JP enquanto resposta à violência baseada no género em situações de conflito.

Segundo Galtung, o JP cobre um conflito durante um período mais amplo, explorando a formação do conflito e analisando as motivações e causas de vários pontos de vistas, vários participantes, vários objectivos e várias questões. Tenta compreender os diferentes lados envolvidos e humanizá-los (recusando culpabilizações simplistas) e determina como problema – não uma ou outra parte – mas a própria violência. Neste sentido, entende-se como *peace/conflict orientated* em contraste com o JG que acusa de ser *war/violence orientated*.

Um outro critério de contraste é que se vê o JP como *people-oriented* em vez de “elite-oriented” como o JG. Para além de tentar dar visibilidade a todos aqueles que sofrem com os conflitos (especialmente as mulheres, as crianças, os idosos, os doentes), aponta atrocidades cometidas pelos vários lados envolvidos num conflito responsabilizando pessoas em concreto e foca particularmente o trabalho dos pacificadores, dando voz aqueles que propõem caminhos de resistência à violência e ao ódio e projecção a todos que se empenham na conciliação. Esta cobertura que pretende aumentar a percepção dos pequenos processos para a paz opõe-se à narrativa das “elites” que assenta muitas vezes na concepção de inimizades naturais, inevitáveis e intransponíveis sem qualquer possibilidade de resolução. Por esta razão, o JP é, na perspectiva de Galtung, *solution-oriented*, abrindo espaços (de representação) para o potencial criativo do trabalho da paz, divulgando sobretudo iniciativas e projectos de resolução de conflitos por vias não violentas como alternativa a um jornalismo que apenas se interessa por apresentar quem ganha e quem perde a guerra. Assim o JG é considerado como *victory-orientated*, por olhar unicamente para o dia do cessar-fogo ou a assinatura do Tratado de Paz, como se a paz fosse um produto “declarável” e “acabado” que surge no fim dos combates armados, logo que haja uma nova “ordem” de segurança - e que permanece assim até à próxima (e inevitável) guerra.

Neste enquadramento conceptual, o JG é acusado de perpetuar o ciclo de violência, o JP representa uma alternativa que aponta para a possibilidade (real) da resolução pacífica dos conflitos, destacando o potencial de “pacificação” que cada ser humano / sociedade tem quando a paz é entendida não como “estado perfeito”, mas como permanente processo e desafio de aperfeiçoamento.

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7 O quadro é traçado por Lynch (2008) a partir de um modelo mais alargado de Galtung (1998). A nossa recusa deste modelo prende-se em grande parte com o seu maniqueísmo e a sua redução do JG a um jornalismo “uniformizado” que é entendido linearmente como “propaganda”.

Na sequência das propostas de Johan Galtung, vários investigadores, conciliadores, “peace-workers” e jornalistas apresentaram recomendações concretas para o trabalho nos “campos de batalha”<sup>8</sup>.

Consciente da importância e da influência da informação sobre conflitos o JP destaca o papel dos jornalistas (e mais precisamente dos editores) como *gate keepers* que permitem umas e não outras histórias. O objectivo do JP é precisamente alargar os portões (ainda muito estreitos) da informação (advogando um novo *gatekeeping*), que privilegia a notícia mais “acessível” ou mais fácil (que repercute geralmente a posição do lado mais poderoso ou influente) e que está demasiadamente preocupada em confirmar expectativas (alinhando num discurso sobre violência, sangue e terror, ao expor a “brutalidade” dos agressores e a “tragédia” das vítimas), como se a cobertura de uma situação de conflito fosse uma via de sentido único.<sup>9</sup>

A grande preocupação do JP em ouvir outras vozes e outras “histórias” também se prende com a consciência das implicações que uma notícia sobre uma determinada situação de conflito tem sobre o próprio conflito. De facto, a informação sobre um conflito pode contribuir para o escalar do conflito ou - como argumentam os defensores do JP - para o seu “descalar”. Do mesmo modo, pode suscitar interesse e simpatia em países terceiros (do público a quem a informação se destina) e levar a possíveis ajudas, sanções ou intervenções - ou não. A repercussão da notícia sobre o conflito pode ser, então, directa ou indirecta.

No JP este fenómeno é tematizado como *feedback-loop*. Os jornalistas que seguem as orientações do JP advogam consequentemente a divulgação de respostas pacíficas a situações de crise e conflito e privilegiam “narrativas de conciliação” na expectativa que estas possam apontar vias para manter a esperança e multiplicar os gestos da boa-vontade e de

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8 Veja-se aqui os serviços de informação do projecto TRANSCEND (<http://www.transcend.org/tms/about-peace-journalism/3-principles-and-guidelines-for-tms-writers/>) ou as recomendações de Jake Lynch e Annabel McGoldrick formuladas em “17 dicas para jornalistas” ([www.yavasgamats.org/docs/17%20Tips.ppt](http://www.yavasgamats.org/docs/17%20Tips.ppt)). Consultas de 31.10.2012.

9 A recusa da “narrativa única” é bem perceptível através do exemplo citado por Applebaum (2010) e que ilustra as possibilidades para o JP: *For example, prior to the presidential election of 2009 in Afghanistan, the counter-insurgency approach, advocated by US commander General McCrystal, contained elements of relationship building to a degree that is unusual among military approaches in Afghanistan. In the lead up to the Presidential election in Afghanistan in mid 2009, an unusual example of the relationship-sensitive approach to counter-insurgency was applied by US troops in the Nawa district, of Helmand province. However, the overwhelming majority of attention that Nawa district received in 2009, the year that this new strategy was first applied, was reports of violence there, principally in early-to-mid July, during intensified military operations. For example in 2009, seven out of ten articles in the 'Washington Post online', tagged under the key word "Nawa", focused almost exclusively on violence and US combat operations in the region, with similar ratios appearing in online coverage from the Guardian, the Independent, and the New York Times. In fact, relationship building has succeeded, in contrast to violent methods, in winning "hearts and minds" in Nawa, Afghanistan, but also on a larger scale in Iraq. The US military's promotion of these methods as successful may of course be a less than "objective" evaluation. However the military's promotion of relationship building as a legitimate tactic to attempt in addressing violence does contribute to the normative strength of non-violence responses to conflict. In acknowledging the importance of (at least being seen to) build cooperative relationships with local populations (over simply violently suppressing disagreement to military policy) the legitimacy of these non-violent responses to violence conflict is reinforced. And indeed researchers also note the importance of relationship building for 'vertical and horizontal integration' in peacebuilding to support the sustainability of institutional reform and in promoting 'peace with justice' and respect for human rights.*

boas-práticas, por mais ínfimas que sejam. É através do destaque dado a estas histórias que se poderá quebrar o ciclo de violência e combater a expectativa do “espectáculo do terror” que alimenta muitos grupos armados (governamentais ou não) quando lançam, por exemplo, ataques sangrentos precisamente num momento propício (e com o único objectivo de ser) a “serem a notícia” de abertura ou de primeira página de um jornal de informação. Como recorda mais uma vez Jake Lynch: “*it is not the influence of news on public opinion as such, but assumptions by parties to conflict about its likely or possible influence, that condition their behavior.*” (Lynch, 2008).<sup>10</sup>

Se a notícia centrada na violência fomenta sentimentos de vingança, ódio, incompreensão aumentando a escala de violência, a notícia sobre iniciativas para a paz, para a solução de um problema (concreto), para o perdão e a conciliação, não incentiva de imediato e de igual modo para uma “imitação” de boas práticas, nem leva directamente à prevenção ou ao fim de guerras, mas consciencializa para possibilidades de acção para além da violência e chama atenção para o potencial de escolha - mesmo numa situação de conflito (seja como actor ou espectador).

Neste sentido, podemos entender o JP como jornalismo de re-mediação. Como anota Lynch o JP afirma-se como “*remedial strategy and an attempt to supplement the news conventions to give peace a chance*” (Lynch, 2008). Rejeitando a cobertura *mainstream*, apresenta vozes, histórias e perspectivas plurais e alternativas que têm por objectivo transformar a notícia com o intuito de contribuir activa e assumidamente para a conciliação, para a prevenção de conflitos ou para a solidificação dos processos de paz. Como nos lembra Paul Lederach, um dos maiores estudiosos da paz e um verdadeiro *peacemaker*, no centro das narrativas de conflito, há sempre “grandes” pequenas histórias de coragem e de conciliação e é aí que nos devemos focar:

*“I have not experienced any situation in conflict, no matter how protracted or severe, from Central America to the Philippines to the Horn of Africa, where there have not been people who had a vision for peace, emerging often from their own experience of pain. Far too often, however, these same people are overlooked and disempowered either because they do not represent ‘official’ power, whether on the side of government (...) or (...) of the various militias, or because they are written off as biased and too personally affected by the conflict.”* (Lederach, 1997)

Tendo em conta esta agenda, o JP aposta particularmente no seu papel na cobertura de conflitos em regiões em situação de pré- ou pós-conflito e vê no *peacebuilding*, tal como Boutros Boutros-Ghali o definiu em 1992<sup>11</sup>, o seu maior campo de acção.

Se bem que ainda relativamente recente, tendo-se formalizado a partir das Conferências que Johan Galtung apresentou no Curso de Verão da Universidade de Taplow Court (no Reino Unido) em 1997 sobre “*Peace and Conflict Journalism*”, não se lhe podem negar raízes mais remotas, nomeadamente na Literatura de Paz que se afirmou com mais incidência desde o século XIX e que tinha nos jornais o seu principal meio de divulgação.

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10 Veja-se aqui, por exemplo, a conferência de Julia Bacha “Pay attention to nonviolence” [www.ted.com/talks/julia\\_bacha.html](http://www.ted.com/talks/julia_bacha.html)

11 Disponível em <http://www.un.org/en/peacebuilding/pbso/pbun.shtml>

Por fim, também devemos referir que este modelo de jornalismo tem a sua origem nos trabalhos de Centros de Estudos de Comunicação, como por exemplo, a *World Association for Christian Communication*.

Num momento de reflexão sobre as possibilidades de responder à violência baseada no gênero em situações de conflito internacional, será pertinente terminar com as palavras de uma mulher que pensou e agiu em tempos de guerra, em nome de tantas vozes silenciosas e silenciadas, que nos inspiram para enfrentar os difíceis desafios que a construção da paz nos exige. Estou a referir-me a Eleanor Roosevelt, uma “mulher de armas” que sabia que a paz é um processo longo, que requer persistência e muito trabalho, mas que deverá ser, cada vez mais, um horizonte possível: “*For it isn't enough to talk about peace. One must believe in it. And it isn't enough to believe in it. One must work at it.*” (1944).

A História deu-lhe razão. Não temos como não agir da mesma forma.

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# Building Capacity on Gender-based Violence in Integrated Missions

## Annemieke Verrijp De Los Santos

*Is currently seconded with the Spanish Ministry of Defence as a Strategic Coordinating Officer. In her capacities as Course Director of the Spanish-Dutch training initiative to create gender capacity in international operations, she upholds the comprehensive approach in which military, diplomats and other civilians including police obtain the necessary skills to effectively coordinate and interact with local women and men, to protect civilians, and to promote equal participation of men and women in conflict prevention, conflict resolution and peacebuilding. She worked for the Ministry of Foreign Affairs in The Hague, Netherlands where she was responsible for the coordination of the implementation of the Dutch National Action Plan “Taking a stand for women, peace and security” and for drafting the Dutch efforts in response to conflict-related sexual violence in the Democratic Republic of Congo.*

*“On the first day of a training course for military and civilian middle management in a peaceful Western European city, a male lieutenant-colonel made a remark on female gender advisors in a peacekeeping mission. A civilian woman sitting next to him disagreed with his statement, but shied away from reacting. She felt intimidated by his uniform. He was unaware of the impact his uniform on her, and unaware of her opinion. Both participants were to be deployed, in the same peacekeeping mission.”*

The comprehensive approach is all about mind-set. Gender is all about mind-set. It is an approach towards a situation, a conflict, the people engaged in the conflict, the people affected by the conflict. It is about two-way communication; trying to listen to the other, to understand how the other thinks and acts. It is about having an open attitude in interacting with others, be it the commander or head of mission, the local governor, or a traumatized man who had to watch his wife being brutally gang-raped by rebels.

And yes, the comprehensive approach is also about breaking the (perceived) barriers between participants in a course on gender in international missions and operations. Why? Because it is must to be able to work as an effective and united team. A team that consists of military and civilians, and that makes use of their broad range of skills and expertise. A mission in which all personnel can count on each other, and can act against the systemic violation of human rights. A team that will act and never look away.

So how do we do this? This paper discusses the experience of the bilateral Spanish-Dutch training initiative on building gender capacity in international missions and operations. This ESDC (European Security and Defense College) certified course builds on three principles for effectiveness: Knowledge as a preventive factor; Common interests and common goals; and obviously the comprehensive approach towards gender-based violence.

This course is one of the expressions of the firm commitment of both the Netherlands and Spain to implementing UN Security Council Resolution 1325 and follow-

ing resolutions on women, peace and security. Both countries have National Action Plans on 1325 in place.

### **Knowledge as a Preventive Factor**

The need for adequate gender training can hardly be overestimated, especially for missions and operations in conflict settings where sexual and gender-based violence (SGBV) is an issue. Unfortunately, it almost always is. Conflict-related rape and other forms of sexual violence used to be hidden and silent. Now it is front-page news, or is posted 'live' on YouTube or Facebook. Who doesn't recall the screams in the spring of 2011 of a Libyan woman who burst into the hotel housing the foreign press in Tripoli in an attempt to tell journalists that she had been raped and beaten by members of Colonel Muammar el-Qaddafi's militia? She had been raped by 15 men, was tied up, and they defecated and urinated on her. They took turns raping her and sodomizing her with rifles. Violence was used as a weapon with the intention to demoralize and destabilize. Rape is a cheap yet very effective weapon of war, which is used on a daily basis in today's conflicts. Mostly women and girls are targeted, but also men and boys fall victim of such atrocious acts.

Peacekeepers need to be well-prepared to recognize gender violence and to deal with both the victims as the perpetrators. Though the primary obligation to protect civilians affected by conflict lies with national governments and parties to the conflict, the international community can and must play a role to protect the civilian population and to address impunity. Contributing nations have a responsibility to ensure peacekeepers arrive well-equipped at the missions, be it peacekeeping, military or diplomatic. They should be sensitive towards local perceptions, security and other concerns, and be able to distinguish the ones identified by men and by women. Mission personnel should be sensitized to the valuable and constructive role women and men can play towards stabilizing volatile circumstances. A more comprehensive understanding of the circumstances can lead to bridging gaps between international standards and local perceptions.

In 2010, millions of men, women, and children were killed, raped, displaced, injured, or recruited by force in armed conflicts throughout the world. Whether caught in the crossfire or deliberately targeted, civilians too often suffer disproportionately as a result of conflict (OXFAM, 2011)

The first mission with a Protection of Civilians mandate was UNAMSIL, the UN Assistance Mission in Sierra Leone in 1999. More and more, peacekeeping operations are being tasked to protect civilian populations affected and traumatized by armed conflict, in particular women and children. Currently, UN missions in Sudan, Afghanistan and the DRC have Protection of Civilian components in their mandates.

The Dutch-Spanish ESDC course intends to provide practical skills to recognize signs of human rights violations, such as sexual violence, and to act in order to protect the civilian population. In very practical terms this means that by means of plenary sessions and scenarios knowledge and skills are provided to:

- Have a better understanding of the challenges and dilemmas facing military and civilian decision-makers in the field with regard to the protection of civilians and sexual violence, and what is required to address these matters;
- Promote the necessity to distinct the diverse security needs and perspectives of the local male and female population in a mission area as a essential element for increasing operational effectiveness and improving the overall security situation;

Knowledge in combination with an open mind-set becomes a powerful tool for change, and can contribute to conflict prevention.

### **Common Interests, Common Goals**

The lieutenant colonel and the civilian woman mentioned in the beginning of this paper saw each other later on in the day, both in jeans. Their different appearances broke down the walls, and they had the most interesting conversation. Sometimes, it can be as simple as that; a pair of jeans.

Nobel Prize winner Amartya Sen asserts in his book *Identity and Violence* (Sen, 2006) that stereotyping people with a singular identity leads to fatalism, resignation, and a sense of inevitability of violence. Far too much violence in the world today is fomented by the illusion that people are destined to a 'sectarian singularity', he claims. It partitions people and civilizations into twofold oppositions; it ignores the plural ways that people understand themselves. To understand a person according to Sen, one must consider *diverse differences* such as religion, nationality, class, community, culture, gender, profession, skin color, morals, politics, language, family of origin, and many more.

In conflicts - lingering or violent ones - those characteristics that that define the 'otherness', and supposedly separate 'us from them' and 'him from me' are what motivate people to prolong or even intensify the conflict. It goes without saying that these oppositions are exploited by those benefitting from the conflict. Therefore, finding common ground and common interests, is fundamental in peace negotiations. These common interests can be best identified if they are based on a comprehensive analysis of all interests of all parties involved, and of the needs and concerns of men and women, of people in power, and of people in poverty.

If we truly want peacekeeping missions and international operations to contribute to advancing our collective security, we have the responsibility to engage everyone. This goes for internal aspects of the missions such as its composition, but most certainly also for its external aspects in the preparation and implementation of the mission. Yet, active and inclusive engagement of women remains below the mark. Still less than 10% of peace negotiators are women, less than 3% are signatories to peace agreements. Moreover, in the past 20 years the proportion of deployed female uniformed personnel has only increased from 1% to a meager 4% (UNIFEM, 2010)



These numbers need to increase. Nonetheless, this is not merely a matter of numbers; inclusive engagement of both men and women is a precondition for enduring transitions towards sustainable peaceful, secure and stable societies.

Three reasons why women's participation can be added value to peacekeeping operations:

1. Sensitize the armed forces to operate with a broader, more human centred definition of security
2. Serve as role models for the local population
3. Have better access to certain segments of the local population

For achieving long-term stability it is paramount to take into account all human capital. The higher the level of participation of all citizens, men and women alike, the greater the opportunities for economically and politically thriving societies. This makes gender in fact a strong motor in our human society (Macaulay, 2009). Just as families, communities and societies as a whole can be destabilized by the systemic use of rape as a weapon of war; similarly post-conflict societies can come out stronger if they build on the social fabric of these same families and communities. This implies next to providing medical and psychosocial support and livelihood programmes, also dealing with complex issues such as stigma and exclusion of victims of rape, of children born out of rape. Furthermore, local structures can be used in reshaping the rule of law in matters as broad as prosecution, access to justice, policing, reconciliation, and renewed legislation.

#### **Building Gender Skills in Security Sector in (post)conflict situations: the case of the DRC**

The NGO Search for Common Ground has established 36 Civilian Protection Committees at Army Headquarters and inside brigades and battalions in five of the country's most troubled provinces of the Democratic Republic of Congo. They reach 25% of the Congolese military with training programs that use interactive tools to change the abusive behavior of soldiers. Programmes include sensitization sessions for soldiers that involve participatory theater and dialogue. To date, there have been 1,500,000 participants. Moreover, they have reached 600,000 Congolese soldiers and civilians with mobile cinema screenings at which films are demonstrated that communicate the need to prevent sexual violence. The films are followed by discussions led by trained military and civilian facilitators. This successful programme is now also being used for training of the Congolese police. According to Search for Common Ground, the Congolese rebel group M23 who deserted the army in April 2012 and took hold of the town of Goma in the Kivu province early November does not seem to be applying rape as a weapon of destabilization. This surprising fact may have been partially a result that many a rebel received training whilst still integrated in the Congolese army.

The Dutch-Spanish ESDC course aims for participants to:

- Recognize the different impact of conflicts on men and women, as well as opportunities and challenges for women to participate equally in conflict resolution, crisis management and reconstruction, and to translate this to operational planning and implementation.
- Promote the necessity to distinct the diverse security needs and perspectives of the local male and female population in a mission area as a essential element for increasing operational effectiveness and improving the overall security situation.

### **Comprehensive Approach to Conflict-related GBV**

*Widespread sexual and gender-based violence in conflict situations, the lack of effective institutional arrangements to protect women, and the continued under-representation of women in peace processes, remain serious impediments to building sustainable peace.*

Chicago Summit Declaration by Heads of State and Government, 20 May 2012

There is an increasing insight that gender is a strategic, effective and sound investment in a country's stability and security. But as stated in the start of this paper, it requires an open mind-set, often a different mind-set. It cannot be applied solely by deft diplomacy or military might. It requires "*A Comprehensive Approach*". Comprehensiveness is all about building on varying views and perspectives, from military, civilian, police and civil society actors. Joint missions require both civilian and military approaches, and need to make use of diverse operational and communication tools and diverse potential. Equally, a comprehensive approach to missions and operations requires both male and female views on complex situations, from different positions in society. These perspectives complement each other and together make for a more complete analysis of the conflict, and make for a more effective response.

In Afghanistan for example, this is becoming all the more evident when planning for withdrawal of international troops in 2014. In October Human Rights Watch stressed the need to outgoing US Secretary of State Hillary Clinton to elaborate a women's rights strategy with clear plans and commitments. "*The US and other countries have worked hard to create a security strategy for Afghanistan and have made plans to support the country's soldiers and police after the 2014 draw-down*" (Human Rights Watch, 2012). But eleven years after the end of Taliban rule, women have no such commitment. Afghan women need and deserve a strategy of their own for the protection of their rights in the perilous years ahead." This interface between civil society, diplomats and military (NATO in this case) is an effective tool to build bridges between the various actors. Security is not synonymous, nor limited to the security sector.

Human Rights Watch urges to:

- Continue to press the Afghan government at the highest political levels to proactively promote and protect women's rights and use women's rights as a key indicator for measuring development and security;
- Issue prompt public responses to Afghan government actions and statements that violate Afghanistan's domestic and international obligations to the rights of women and girls;
- Push for women-friendly leadership in key Afghan institutions;
- Ensure a central role for women in all Afghan peace-building processes;
- Press for enforcement of Afghanistan's Law on Elimination of Violence against Women.
- Make basic human rights for women a key US funding priority in Afghanistan;
- Ensure Afghanistan's security strategy focuses not just on support for military and police but also on security for women and girls; and
- Organize and promote broad international support for this strategy.

The Dutch-Spanish ESDC course aims for the students to:

- Understand the concept and aims of the Comprehensive Approach;
- Describe how the gender perspective and the comprehensive approach complement each other;
- Act effectively in a mixed working environment consisting of military, police and civilians.

### **Conclusion**

Over the past two years more than 200 military and civilian participants from over 25 countries and from various international organizations have taken the Spanish-Dutch course "*A Comprehensive Approach to Gender in Operations*". If each and every one of them has taken just as little as one remark, one moment, one story that touched them and put this in practice in their daily work, and the decisions they make, then we have reached our goal, and created 200 new change agents who will never look away!

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# Women in Kosovo and Gender Perspectives for Operational Effectiveness

## **Elisabeth Schleicher**

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Military operations in today's world require a diversity of qualifications and resources to ensure that peace and security are achieved and maintained. The complementary skills of both male and female personnel are essential for the operational effectiveness of NATO operations, especially in the light of the increasing complexity of civil-military interaction, public relations and intelligence gathering. NATO's operational effectiveness includes making a contribution to sustainable and lasting peace, within which gender is a decisive factor. The integration of the gender perspective to all aspects of NATO operations therefore can provide a key element to operational effectiveness.

The term gender refers to the social differences and social relations between men and women. The term gender therefore goes beyond merely the sex of the individual, to include the way relationships are socially constructed. A person's gender is learned through socialization and is heavily influenced by the culture of the society concerned. The gender of a person may result in different roles, responsibilities, opportunities, needs and constraints for men, women, boys and girls.

The last decade has witnessed significant changes in military peacekeeping operations, characterized by increasing demand for peacekeeping missions, a fluid operational environment and expanded peacekeeping mandates from the UN Security Council. Against this background, the performance of military tasks in multidimensional peacekeeping missions has increasingly come to require engagement with local populations. Identifying and responding to any differential impact of the work of military peacekeepers on different groups in the local population is, therefore, a necessary strategy for ensuring that the security concerns of men, women, boys and girls are adequately addressed throughout all phases of a peacekeeping mission.

NATO and its partners are taking concerted action to support implementation of United Nations Security Council Resolution (UNSCR) 1325 on “Women, Peace and Security”, which was adopted in October 2000. This resolution recognizes the disproportionate impact that war and conflicts have on women and children and calls for the inclusion of gender perspectives in peace negotiations, humanitarian planning, peacekeeping operations, post-conflict peacebuilding and governance.

NATO and its partners’ active commitment resulted in a formal NATO/Euro-Atlantic Partnership Council (EAPC) policy on implementing UNSCR 1325, first issued in December 2007. This policy, which was updated in June 2011, provides the overall framework for the implementation of UNSCR 1325 and related Resolutions by its partners.

As part of the policy, the NATO Military Authorities were tasked to develop practical proposals for the implementation of UNSCR 1325. This resulted in Bi-Strategic Command Directive 40-1 on “Integrating UNSCR 1325 and gender perspectives in the NATO Command Structure including measures for protection during armed conflict” which was issued on 2 September 2009.

While UNSCR 1325 is the legal authority for signatories, the Directive is core to integrating gender perspectives in NATO military organizations and operations. In addition, Heads of State and Government approved in November 2010 a concrete NATO Action Plan on mainstreaming UNSCR 1325 into NATO-led operations and missions.

A key achievement has been the appointment of a number of Gender Advisors both in the field and at several Allied commands. In November 2010, the Gender Advisor post in KFOR has been created.

There are a lot of misperceptions of what a Gender Advisor does. It is often useful to start with a negative definition, what the Gender Advisor does NOT do. The KFOR Gender Advisor is not responsible for internal relations within the force, internal equality matters, disciplinary issues, sexual harassment or equal opportunity matters. The Gender Advisor’s focus is external and is responsible for supporting the operation in its mandate and tasks by maximizing information gathering and dissemination. By making sure to address men and women and all the different groups in the society, the Gender Advisor is responsible to increase operational effectiveness and situational awareness.

The Gender Advisor does this by actively taking into account the different security needs of men and women in a society. Numerous studies show that men and women experience security in different ways due to the different roles, responsibilities and needs men and women have in their lives. They also experience insecurity in different ways. In line with KFOR’s mandate to continue to contribute to a safe and secure environment for all people in Kosovo, the KFOR Gender Advisor’s main task is to support the KFOR commander and key leaders in the planning, conduct and evaluation of operations by integrating a gender perspective into the planning and decision making processes.

A Gender Perspective is recognizing if and when an operation will affect men and women, boys and girls differently due to the different roles they have in society. In other

words, implementing a gender perspective means that, with every operation we do, we ask ourselves the question: How does this affect men, women, boys and girls? Also, as many societies in the world have a formal patriarchal structure which places much emphasis on the roles of men, we can easily overlook not only how our operations may impact women and children, but also, very importantly, we could overlook the influence of women.

A Gender Perspective can act as a Force Multiplier benefiting both, the local population and the operation. KFOR is convinced that a lasting peace in Kosovo will only be achieved by fully engaging all members of Kosovo society in the peace process. As women and minorities are often not represented, even proportionally, in formal or official positions, NATO and KFOR have established methods to reach out to them and create a dialogue to further the peace process in Kosovo.

As all peacekeeping missions must remain within their mandate, there will always be areas of concern that the mission is simply not mandated to address. Much of UNSCR 1325 and related resolutions are the mandate of other organizations in Kosovo, among them EULEX and the OSCE. KFOR makes a concerted effort to support these other organizations in achieving their mandates. KFOR may not have the lead in these important areas, but it does nonetheless take as active a role as possible in affecting positive change for all people in Kosovo.

KFOR's Gender Advisor is the primary liaison KFOR has with women's organizations in Kosovo, being responsible for developing relationships between KFOR and these groups and then trying to identify areas of mutual benefit.

The Gender Advisor ensures that KFOR's soldiers are trained in Gender Awareness. Much of the time of a Gender Advisor is dedicated to training on the benefits of reaching out to women in Kosovo and the how to perform this outreach.

Therefore, it is important that KFOR understands the role of women in Kosovo. As in any society, the roles women have in Kosovo are influenced by tradition and the changing expectations women have in the modern world. Below is an excerpt from my doctoral thesis, ("Positive Peace in Kosovo. A Dream Unfulfilled.", published by Peter Lang, Germany, 2012). The excerpt covers the role of women in Kosovo and their recent struggles and advances in the fields of economics, political participation, and security.

### **Women in Kosovo**

Any description of the role of women in Kosovar society is complicated by the presence of two contradictory sets of influences. On the one hand are the traditional, patriarchal attitudes, particularly in rural areas, that often limit a woman's ability to gain an education or even choose her own marriage partner; on the other hand, there is now a powerful Western influence as a result of the international presence, the diaspora and the availability of international media. The impact of the latter, while important, remains concentrated in urban areas. Elsewhere the traditional influences prevail. A 2006 study found that about 93 per cent of Kosovo families are headed by a man, with most exceptions being households headed by widows. In many rural areas, women are effectively excluded from public life and "family voting". The same UN study found that in 76 per

cent of families it is the father who makes the important decisions, and, where this is not the case, mothers do not necessarily take charge. They are the decision makers in only seven per cent of all households while other members of the family have this role in 17 per cent.<sup>1</sup> Many traditions in Kosovo present serious obstacles to female emancipation, whether in the social, political or personal spheres. The average age of marriage for women is 26, and it is considered a matter of shame for the family if a female member is not married by the age of 30. Divorce remains rare, due to a combination of social and economic constraints. There was a sharp increase from a very low base between 2000 and 2003 when the annual divorce rate quadrupled from 325 to 1,385. Divorces subsequently increased steadily until 2008, when the number fell to 1,026 only to rise again to 1,555 in 2009.<sup>2</sup> Given Kosovo's inadequate social security net, women have poor prospects without family support. They have equal rights under the laws governing inheritance, but hardly ever claim them due to lack of information and low educational levels.<sup>3</sup> An interviewee quoted by the European Stability Initiative explained that the main reasons why so few women gain secondary education are poverty and the lack of any real prospect of even educated women earning a living. Families that are more affluent due to having members working abroad have not absorbed a different approach to education from the diaspora; largely because education does not increase a girl's social status. Indeed, the ability to emigrate can be seen as more desirable than education:

"A girl with papers is more valuable, she enjoys a higher social status, than a female doctor or engineer working here in Kosovo. There are few reasons here for girls to continue studying ... Some even quit and throw away their university degree even if they are only 2-3 exams away from finishing, if there is a chance to marry a person with papers. Education has lost its value."<sup>4</sup>

Two indicators used to assess gender inequalities in human development are the Gender-related Development Index (GDI) and the Gender Empowerment Measure (GEM). The GDI measures the degree of equality between men and women with reference to the same basic capabilities as measured by the Human Development Index in respect of the whole population. The GEM attempts to quantify gender inequality in the spheres of political and economic participation. While the GDI focuses on expansion of capabilities, the GEM is concerned with the use of those capabilities to take advantage of opportunities in life.<sup>5</sup> Although a slight increase in Kosovo's GDI can be seen between 2002 when it was calculated for the first time at 0.70 and 2009 when it had risen to 0.76, this score continues to show that women are substantially disadvantaged with Kosovo's GDI remaining the lowest in the Balkan region. Kosovo's GEM at 0.465 puts it in approximately 52nd place globally.<sup>6</sup>

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1 UNDP Kosovo (2006). *Youth - A New Generation for a New Kosovo*. Human Development Report, p. 22.

2 Statistical Office of Kosovo (2010). *Statistics of Divorces 2009*. Prishtina, p. 6.

3 ESI (2006). *Cutting the Lifeline: Migration, Families and the Future of Kosovo*. Berlin/Istanbul, p. 24.

4 *Ibid.*, p. 22.

5 UNDP: Human Development Indices. Available at <http://hdr.undp.org/en/humandev/hdi/>.

6 United Nations Development Fund for Women (UNIFEM): Regional Office for Central and Eastern Europe. Country Profiles. Kosovo. Available at <http://www.unifem.sk/index.cfm?module=project&page>

However, in contrast to the traditional role of women in the rural areas, there are a growing number of urban westernized women, emancipated and with the same opportunities as men.

During the 1990s, when Kosovo Albanians created their underground parallel system, women in Kosovo started to attain a more important, though still subordinated, social position. They were engaged in setting up the parallel structures, particularly in the education and health sectors, both areas traditionally dominated by women. In this period, the first women's movements and NGOs addressing women's issues developed in Kosovo. The number of women's organizations addressing areas such as violence against women and women's rights, health, education, economic position and empowerment increased significantly after the war. Today, more than 80 women's organizations of all ethnic groups and regions of Kosovo are associated with the Kosovo Women's Network, an important umbrella organization established in 2000 and a partner of the United Nations Development Fund for Women. However, the war also brought redefinitions of manhood and the role of men in society. Constructions of masculinity based on martyrdom, heroism and patriotism led to further consolidation of male influence and exclusion of women from sociopolitical areas.<sup>7</sup>

Clearly, the role of women in Kosovar society can vary dramatically according to circumstances. The challenge for policymakers is to take account of the whole picture and not assume that the traditional stereotype applies universally.<sup>8</sup>

### Shortcomings in Advancing the Role of Women

As the international community started its work of reconstruction and institution building in Kosovo, many women activists hoped that the reorganization of society would strengthen the position of women and bring about enhanced women's rights regulated by law. Women pinned their hopes on the international community and believed that now they would be treated as equal to men and be included in rebuilding Kosovo. However, these expectations have not been met. The international community chose to be guided by the traditional image of Kosovar women, and as a result they weakened the position of women even further. This can be explained by a simple lack of cultural knowledge and understanding of Kosovo on the part of those involved, especially at the very beginning of the mission but unfortunately often still today. For example, the traditional *kanoon*, a fifteenth century code of honor,<sup>9</sup> was considered by many international members to be still valid for every Kosovo Albanian and it was er-

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7 Helmut Kramer (2006). *Vedran Džibić: Die Kosovo Bilanz; Scheitert die Internationale Gemeinschaft?* Lit. Vienna (second edition), p. 115.

8 See Kvinna till Kvinna Foundation (2001). *Getting it Right? A Gender Approach to UNMIK Administration in Kosovo*. Stockholm, p. 10. Available at [http://www.kvinnatillkvinna.se/sites/default/files/File/Rapporter/getting\\_it\\_right.pdf](http://www.kvinnatillkvinna.se/sites/default/files/File/Rapporter/getting_it_right.pdf).

9 The *kanoon* is a set of laws developed in the fifteenth century by Lekë Dukagjini, who fought against the Ottoman Empire.



roneously believed to explain everything about Kosovo's society. It is true that before 1999, many Kosovo Albanians preferred to settle their problems according to the rules of the *kanoon* rather than to contact Serbian law and order institutions in which they lacked confidence. However, the *kanoon's* significance was eroded by the institutionalization of modern laws under the socialist system and it was further undermined by the new laws introduced by UNMIK. Although some extreme traditionalists, particularly in rural areas, still live according to the *kanoon*, this is far from the case for the general population, which regards it as a thing of the past. Unfortunately, many international representatives, even in key positions, still believe in the importance of the *kanoon* and argue that its dictates prevail throughout Kosovo.<sup>10</sup> These are mainly people who have never had personal contact with the local population or prefer to rely on mission briefings that are sometimes outdated or wrongly interpreted rather than to believe Kosovo Albanians who have been trying to explain the real position to them for the past ten years. This is not an isolated example. The same approach has been a consistent theme of the entire mission period and explains the international representatives' often limited understanding of what is really going on in Kosovo in many areas including the role of women.

As a result, the international community focused on the traditional picture of women and simply ignored the fact that there were emancipated women who wanted to be included in decision-making. This lack of sensitivity has caused increasing estrangement between the international community and the local female population, whose disappointed expectations have led first to lack of trust in the international organizations and later to active demonstrations against UNMIK.<sup>11</sup>

Igballe Rogova, Executive Director of the Kosovo Women's Network, sums up the disappointment experienced by emancipated Kosovo Albanian women:

"In Kosovo in the 1990s, women and men kept society together for ten years. Women and men operated schools and health clinics and provided social assistance under the Serbian oppression. Women and men were involved in politics together; together women and men kept the peaceful resistance; together women and men fought in the Kosovo Liberation Army. Then in 1999 UNMIK came and first of all divided men and women. No women were involved in the reconstruction process; no women were involved in the negotiation process. Many accuse my government for that but I think it was the model of UNMIK that came to Kosovo. We were divided by the same institution that adopted UN Security Council Resolution 1325."<sup>12</sup>

UNSCR 1325, passed on 31 October 2000, stresses the importance of full and equal participation by women in all efforts to maintain and promote peace and security, and the

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10 Author's own experience.

11 In an interview conducted by the author with the Executive Director of the Kosovo Women's Network, Igballe Rogova, she describes this lack of gender awareness and mentions various demonstrations, such as the March 2004 demonstration, that were organized due to discontent with UNMIK.

12 Statement of Igballe Rogova during the presentation "Kosovo after Independence. Is the EU's EULEX Mission Delivering on its Promises?" by the Renner-Institute on 27 November 2009 in Vienna.

need to increase their role in decision-making. However, one of the most obvious failures of UNMIK has been the lack of women's participation in the postwar political processes in Kosovo, as well as their exclusion from the highest levels of decision-making over the whole mission period. Within the UNMIK structure itself only a few senior positions have been held by women. There have been seven SRSGs in Kosovo but none of them was female. The same applies to the heads of the four UNMIK Pillars. Women were not only excluded in the postwar phase but continued to be excluded later on. The most telling example of what Igballe Rogova is complaining about is that the Kosovo Negotiation Team, which led the final status negotiations in Vienna, did not include any women.

These examples clearly show that it is not enough for the international community to establish institutions and pass laws and regulations. What matters are the individuals in those institutions and their readiness to implement those laws. The best laws – and this applies to all areas, not just where gender equality is involved – are of no value if those who are responsible for monitoring their implementation do not follow them themselves.

### **Achievements in Advancing the Role of Women**

Despite many shortcomings, Kosovo managed to create a solid basis of legislation and institutional mechanisms for the accomplishment of gender equality in Kosovo.<sup>13</sup> However, as noted above, there has been no satisfactory progress towards implementing this legislation. One of the most important steps to promote gender equality has been the development of the National Action Plan for the Achievement of Gender Equality in Kosovo, which was approved by the Government of Kosovo in April 2004. The approval of the National Action Plan led the way for the Law on Gender Equality, promulgated in June 2004, which includes provisions relating to the economy, political parties, property and employment. It provides for monitoring mechanisms and sanctions if the law is violated.

Due to these and other laws, significant progress has been made in improving female representation in Kosovo's institutions, particularly at the lower levels, but a lot remains to be done to reach the degree of female representation envisaged by the law on gender equality. Women in leading positions are still outnumbered by men by approximately ten to one.<sup>14</sup>

### **Political Representation of Women in Kosovo**

Women's participation in public offices and in decision-making processes in the Western Balkan countries is slowly increasing after a decrease in the 1990s following transition and armed conflicts in the region. During the 1990s, the number of women in parliament was between seven to 20 per cent. Nowadays, the average for Europe (excluding the Nordic countries) is 21.5 per cent while the regional average for the Western Balkans is 24.6% (Bos-

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13 For the institutional mechanisms see Kosovar Gender Studies Center: *Monitoring Security in Kosovo from a Gender Perspective*. p. 8. Available at <http://www.kgscenter.org/pdf/Monitoring%20Security%20in%20Kosovo%20from%20a%20gender%20Perspective%20%28english%29.pdf>.

14 *Ibid.* p. 8.

nia and Herzegovina 17.35 per cent, Croatia 21.4 per cent, FYROM 30.9 per cent, Kosovo 33.3 per cent, Montenegro 12.3 per cent and Serbia 32.4 per cent) according to the database of the Inter-Parliamentary Union on Women in National Parliaments.<sup>15</sup>

Given the depressing statistics on women's education, and the prevailing patriarchal attitudes, it is not surprising that women's participation in politics is low. One approach to increasing women's political involvement has been the introduction of quotas. Since 2002, following a decision by the Central Election Commission, all political parties in Kosovo must ensure that one-third of candidates in their election lists are women. However in May 2009, female politicians called for changes to bring the election laws into line with the gender equality law under which the quota should be at least 40 per cent.<sup>16</sup>

In the elections for the National Assembly in 2004, 27.5 per cent of elected members were women and 28 per cent of all seats in municipal assemblies were occupied by women.<sup>17</sup> In the November 2007 elections, women increased their numbers, winning 38 seats in the 120-seat Assembly, or 32 per cent.<sup>18</sup> (However, of the 205 candidates running for mayor in the 2009 municipal elections, only 11 were women.<sup>19</sup>)

Despite this progress, women are still under-represented at the highest decision-making levels and all parties are currently led by men.<sup>20</sup> As of November 2012, two out of 18 ministers are women – the Minister of European Integration and the Minister of Trade and Industry. 9.4% of the deputy mayors are women.

### **Representation of Women in the Security Sector in Kosovo**

The security sector in Kosovo has been recruiting women since its establishment. In normative terms, the recruitment of women reflects on progress towards gender equality. In operational terms, the recruitment of women into the Kosovo Security Force and the police services reflects on the increased recognition of the valuable contribution women make to ensure a safe and secure environment. Within transitional and post-conflict countries, the recruitment of women constitutes a part of the security sector reforms aiming at making the security sector more democratic, transparent, and accountable towards the human security needs of the ordinary civilians in general and of vulnerable groups.

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15 The Inter-Parliamentary Union's database on Women in National Parliaments. Available at <http://www.ipu.org/wmn-e/classif.htm>

16 Women MPs want Kosovo's election law changed. In: Southeast European Times. 26 May 2009. Available at [http://www.setimes.com/cocoon/setimes/xhtml/en\\_GB/newsbriefs/setimes/newsbriefs/2009/05/26/nb-01](http://www.setimes.com/cocoon/setimes/xhtml/en_GB/newsbriefs/setimes/newsbriefs/2009/05/26/nb-01).

17 UNIFEM: Regional Office for Central and Eastern Europe. Country Profiles. Kosovo.

18 Freedom House (2009). *Freedom in the World 2009*. Kosovo [Serbia].

19 European Network of Election Monitoring Organizations (ENEMO). International Observation Mission to Kosovo Municipal Elections 2009. 16 November, p. 7. Online via Internet: [http://www.enemo.eu/press/Preliminary\\_Statement\\_first\\_round\\_ENG.pdf](http://www.enemo.eu/press/Preliminary_Statement_first_round_ENG.pdf).

20 KIPRED: Strengthening Women's Citizenship in the Context of State-Building: Kosovo Security Sector and Decentralisation. July 2010. p. 9.

In the security sector, about 15 per cent of uniformed officers in the Kosovo Police are female, with ten per cent of female officers in decision-making positions. In the Kosovo Security Force about eight per cent are female.<sup>21</sup> The number of women in the Kosovo Police is quite remarkable and is further evidence that many Kosovar women do not correspond to the conventional traditionalist image.

The Kosovo Police has several structures through which it aims to address women's human rights and gender equality. The Human Rights and the Gender Equality Unit was established under the office of General Director in 2004. At municipal and regional level, in police stations Gender Focal Points and Domestic Violence Gender Focal Points are present which report to headquarters on gender-related issues. Fifty per cent of Gender Focal Points within police stations throughout Kosovo are led by women investigation officers who follow domestic violence cases until trial. The special investigations units on domestic violence and human trafficking were established in 2004, and since 2005 they are decentralized.

Kosovo has a high representation of women in the police services compared to other countries in the region and even when compared to many other European states. To strengthen the position of women within the police, the current President of Kosovo, then the Deputy Director of the Kosovo Police, took the initiative to suggest the founding of an association of women police. Since then, several consultations with women police in all regions of Kosovo resulted in the decision to establish such an Association. This decision is supported at the highest level within the Kosovo Police and its establishment will be supported by UN Women. The role of the Association will be to: create a venue for women in the police to identify and introduce measures to mitigate and overcome challenges they face in their daily work; identify ways to increase the number of women in higher and middle management positions within the police and foster conditions for career advancement by means of capacity building and raising awareness as to the operational value of women police officers; and to enable policewomen to share experiences and network with their counterparts in the region and internationally.

After 1999, women were for the first time employed in the Kosovo Protection Corps that served as a civilian emergency service agency. In 2009, there was a restructuring of the Kosovo Protection Corps to become the Kosovo Security Force. Representation of women in the Kosovo Security Force is 8.1 per cent. Representation of women in the structures of the Ministry of the Kosovo Security Force is 32.5 per cent and 6.4 per cent uniformed.<sup>22</sup>

On the other hand, women are not adequately involved in the judicial system. Currently, 30 per cent of prosecutors are women, and 29 per cent of chief municipal prosecutors are women. However, all chief district prosecutors are men. No known steps

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21 UNIFEM: Regional Office for Central and Eastern Europe. Country Profiles. Kosovo.

22 USAID. Women in Kosovo: A Snapshot of the Political, Security and Economic Position of Women. October 4-6, Prishtina.

have been taken towards establishing special chambers for rape, trafficking and domestic violence cases, however some municipal courts have judges specializing in domestic violence cases. The judicial system suffers from weaknesses that are particularly related to domestic violence and human trafficking cases. Judges and prosecutors are in need of training in gender equality and women's human rights.<sup>23</sup>

### **The Economic Situation of Women in Kosovo**

During the 1990s, Kosovo's economy was destroyed. As a post-conflict country that is also transitioning from a socialist to a free market economy, the rebuilding of a prosperous economy which ensures sustainable growth remains a challenge.

By adopting the Gender Equality Law and the Action Plan, the government has acknowledged the importance of investing in the empowerment of women as key to sustainable economic development and prosperity. This important legislative framework has resulted in a legal obligation on all public and private sector employers to provide equal rights and opportunities, and equal pay, for men and women. The law treats women equal to men in all economic, financial and social welfare programs thus stipulating the equal access to resources and economic opportunities.

The unemployment rate in Kosovo is 43 per cent whereas women's unemployment rate is about 57 per cent. The lack of women in the workforce actively perpetuates poverty at the household level.

Out of 47,401 private properties registered in Kosovo in 2011, it is estimated that eleven per cent are owned by women and as such, there is still a need to exploit the benefits of women's participation in private business. Women business owners state that the hardest barrier in setting up a business remains the start-up cost and access to resources. It is estimated that 92 per cent of the collateral assets needed to start businesses are registered to men, and the requirement to provide property as collateral severely hampers prospective female business owners. Subsequently, nearly three out of four women-owned start-ups have used their own capital to get business going.

Education remains a problem as young girls tend to drop out of higher level of education at a higher rate than their male counterparts. Based on data, 97.7 per cent of girls aged 10-14, and 74.6 per cent aged 15-19, attend school. There has been significant progress in women's school attendance, however lower rates of attendance remain in rural areas.

Women have been recognized as a largely untapped pool of entrepreneurial talent in Kosovo and the government of Kosovo is committed to improving the socioeconomic situation of women. Despite progress being made, there still remains a lot to be done to achieve this goal; it takes a governmental and social effort to jointly improve the wellbeing and the socio-economic position of girls and women.

Currently, only eleven per cent of firms in Kosovo have female owners and only three per cent of bank loans to startup businesses go to women. In order to change this, it is important to remove the barriers for women business owners, including le-

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23 UNIFEM: Regional Office for Central and Eastern Europe. Country Profiles. Kosovo.

gal and institutional barriers and cost of, and access to, finance. This includes ensuring implementation of the legislation which ensures equal participation of women in the economic sector.

The socio-economic position of women in Kosovo still needs to be improved. There have been attempts by the government to run training programs aimed at women, including programs allowing women without primary school certificates to acquire them. However, more needs to be done in terms of programs targeting the economic empowerment of women combined with a change in social conventions on gender roles and responsibilities with regard to work and family.<sup>24</sup>

Many of the above figures appear encouraging for those concerned with women's rights, but this is to a large extent superficial. As long as the integration of women into public life is more a matter of box ticking to comply with regulations rather than based on a genuine conviction of women's competencies on the part of decision makers, true gender equality cannot be said to have been achieved. And so far, this unfortunately seems to be true of the participation of women in all social, economic and political areas. To achieve equal participation of women in all areas of public life, it will be necessary to take account of gender issues, including those related to personal safety, in the process of policy development and strategic planning by the Kosovar authorities and institutions involved in security.<sup>25</sup>

### **Personal Security of Women**

Data and analyses of personal safety issues produced by the Kosovar Gender Studies Center show that women and girls in Kosovo are increasingly vulnerable, especially to domestic violence and human trafficking.<sup>26</sup> KFOR, OSCE, UNMIK and various NGO reports mainly deal with two forms of violence: interethnic and political. This can give the impression that these are the major aspects of violence in Kosovo today. However, violence against women is at least as common – if not even more common going by the statistics shown below – and might become even more prevalent in future. As Igballe Rogova, Executive Director of the Women's Network explains:

“Violence is growing in Kosovo and mostly it's violence against women and the reason that violence is growing is economic underdevelopment and unemployment. More and more people get angry and depressed because they have no jobs and then what they do is hit their loved ones. And depression is really growing in Kosovo and as a nation we are told do not react, do not complain, do not criticize, so we are sitting like zombies not expressing anger that something is happening and then we go and hit people in our family and express anger there.”<sup>27</sup>

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24 USAID. *Women in Kosovo: A Snapshot of the Political, Security and Economic Position of Women*. NDI. October 4-6 Prishtina.

25 Kosovar Gender Studies Center: *Monitoring Security in Kosovo from a Gender Perspective*, p. 4.

26 *Ibid*, p. 5.

27 Interview with Igballe Rogova, Executive Director of the Kosovo Women's Network. Vienna 27 November 2009.

Domestic violence against women was particularly prevalent during and immediately following the war but it remains a serious problem as does violence towards sexual minorities. Several UN studies indicate that when the war ended in 1999, 23 per cent of women had experienced domestic violence.<sup>28</sup> Rape, human trafficking, sexual slavery and prostitution were also serious issues affecting women in Kosovo during the war.

The report “Security Begins at Home”, published by the Agency for Gender Equality in the Prime Minister’s Office and the Kosovo Women’s Network, indicates that about 43 per cent of Kosovars – 46.4 per cent of all women and 39.6 per cent of all men – have experienced domestic violence in their lifetimes.<sup>29</sup> Only a small fraction of cases are reported, mainly because of shame and fear of ostracism by the family and community. As a result, most cases of domestic violence are never brought to justice so official data underestimate the importance of the problem and domestic violence is almost ignored in policy debates. Between 2002 and 2007, the Kosovo Police received 7,660 reports of domestic violence. Of those cases reported between 2005 and 2007, women were reported as the victims in 79 per cent of instances whereas in 2008 1,073 women reported cases of violence to the police (90 per cent of all cases) and, in 90 per cent of the cases, the perpetrator was a man.<sup>30</sup> From these figures it is difficult to conclude whether violence has increased or decreased but there is no question that the incidence is very high.

Unfortunately, the state has limited powers to protect the victims of domestic violence. In the absence of adequate public funding, support to victims and the provision of safe houses must come from Kosovo’s women’s rights groups. Public awareness of domestic violence also remains low.<sup>31</sup>

Additionally, women are victims of organized criminal groups that procure women for prostitution and trafficking. Kosovo serves as a source, a transit route and a destination for women and children trafficked for prostitution. There are considerable discrepancies between the international organizations’ accounts of the origins of the trafficked victims in the country. While UNDP reports that most come from Moldova (about 50 per cent), Romania (20 per cent) and Ukraine (about 13 per cent), with a smaller number from Kosovo itself, the European Commission indicates that most victims are internally trafficked (60 per cent) and only 20 per cent originate from Moldova.<sup>32</sup>

Poor economic conditions after the war, high unemployment, lack of education, the

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28 United Nations Development Group (2001). *Kosovo Common Assessment*. 2001. p. 56. Available at [http://www.undg.org/archive\\_docs/1729-Kosovo\\_CCA\\_-\\_2001.pdf](http://www.undg.org/archive_docs/1729-Kosovo_CCA_-_2001.pdf).

29 Agency for Gender Equality and Kosovo’s Women’s Network (2008). *Security Begins at Home: Research to Inform the First National Strategy and Action Plan against Domestic Violence in Kosovo*. Prishtina, p. 2.

30 UNIFEM: Regional Office for Central and Eastern Europe. *Country Profiles*. Kosovo.

31 Human Rights Watch (2008). *A Human Rights Agenda for a New Kosovo*. p. 2. Available at <http://www.hrw.org/sites/default/files/reports/kosovo0208.pdf>.

32 UNDP Kosovo (2006). *Youth. A New Generation for a New Kosovo*. Human Development Report, p. 24. Commission of the European Communities (2009). *Kosovo under UNSCR 1244/99 2009 Progress Report*. Brussels, p. 48.

presence of organized criminal groups, porous borders and a large international community, which provided a relatively affluent clientele for the trade, rank among the reasons for the growth of trafficking of women in Kosovo. With the downsizing of the international peacekeeping forces, the international community has subsequently declined in importance as potential customers and the sex industry has developed to serve a wider client base. Amnesty International estimates that the local community constitutes about 80 per cent of the clientele.<sup>33</sup>

There is no central database for recording cases of trafficking. Therefore statistics refer to the number of victims assisted by different international and national agencies. Between 1999 and 2007, about 658 trafficked persons were assisted, the majority female.<sup>34</sup> Children from disadvantaged backgrounds and in rural areas are particularly vulnerable to trafficking as well as forced labor.

According to the European Commission 2009 Progress Report on Kosovo, only limited progress in combating human trafficking has been achieved. The number of identified victims remains low and child trafficking for the purpose of forced begging is an increasing problem. Services for victims, including shelters and vocational training, depend largely on support from women's organizations. The poor record of investigation and prosecution of trafficking crimes by the Kosovo authorities remains a concern.<sup>35</sup>

As mentioned in several Kosovo Women's Network reports, domestic violence imposes a significant cost on society, in terms of expenses related to healthcare, policing, prosecution and social assistance to victims.<sup>36</sup> Consequently, fighting violence and abuse of women in Kosovo is a priority requiring a constant commitment from the authorities to support and extend the efforts of women's rights organizations, and to ensure that domestic violence is dealt with as a crime. Recommendations for tackling domestic violence include firstly, that violence against women should be addressed in the context of women's rights rather than merely as a welfare issue and secondly, that campaigns and education to heighten public awareness of the problem need to be intensified. Both of these are critically important to change public attitudes as well as to empower women to demand justice in all types of gender-based violence. A third recommendation is that adequate public funding should be provided to ensure that there is a safe house for victims of domestic violence in every municipality. Fourthly, existing laws should be implemented strictly and legal procedures should be revised. Fifthly, there should be training for police, prosecutors, judges and healthcare staff in how to deal with violence against women as a violation of human rights.<sup>37</sup>

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33 Amnesty International (2004). *So does it mean that we have the Rights? Protecting the Human Rights of Women and Girls Trafficked for Forced Prostitution in Kosovo*. London, p. 7.

34 UNIFEM: Regional Office for Central and Eastern Europe. Country Profiles. Kosovo.

35 Commission of the European Communities (2009). Kosovo under UNSCR 1244/99 2009 Progress Report. Brussels, p. 48.

36 Kosova Women's Network (2009). *More than Words on Paper? The Response of Justice Providers to Domestic Violence in Kosovo*. Prishtina, p. 9.

37 Human Rights Watch (2008). *A Human Rights Agenda for a New Kosovo*, p. 3.



Social inequality is often an important cause of social and political instability; therefore the issue needs to be addressed effectively by Kosovo's authorities. In particular, women's participation in the effort is essential to address not only problems specific to women, such as rape and domestic violence, but also to ensure that the whole population is represented in policy-making. Moreover, improving women's status will have a beneficial influence on social environments and ultimately accelerate the demographic transition.

## GENDER VIOLENCE IN ARMED CONFLICTS

Violence based on gender is considered the worst form of cruelty, that seriously inhibits the individual ability to enjoy rights and freedoms and seriously harms the transition from armed conflicts to peace. Moreover, it deeply affects women, girls, but also men and boys across the world, not only during armed conflicts but also long after the cessation of armed hostilities. Therefore, gender based violence undermines the link between security and development.

Portugal's National Defense Institute was the very first governmental defense organization belonging to a NATO country, that sought the collaboration of the academia and a comprehensive set of other actors, in an effort to understand this phenomena.

This volume is the result of an entire day of speeches, presentations, debates, discussions and exchanges between an international audience of academics, politicians, military officers, students, public officials, and representatives of non-governmental organizations.

