

Chapter Two

Armed Conflicts and the Security of Women

Ali Jarbawi and Asem Khalil

ARMED CONFLICTS AND THE SECURITY OF WOMEN

Since the dawn of time, humankind has been situated in a dialectical conflict between good and evil. Humanity has always sought to achieve the values of justice, security, safety and stability for all human beings, both within their own communities as well as with other communities. All people are equal and deserve to live in dignity and in a manner that safeguards their full and integral humanity, without discrimination or prejudice. However, due to limited resources, these values of humanity have and continue to clash with the needs of both societies themselves and the relationships between societies, resulting in a perpetual struggle to take control of as many resources as possible. The bitter but real result of such a struggle has been the division of humans into contentious and hostile nations, classes and groups. As some groups have appropriated a larger portion of resources than others, opportunities and capacities have been disproportionately distributed. Instead of all members of the human family achieving justice, equality, security and safety, some groups have arguably achieved these values at the expense of others, thereby consolidating discrepancies, discrimination and exploitation, creating a parallel track of fortunate and vulnerable and marginalised groups.

The combination of historical male hegemony with the dominance of need-driven conflict, rather than a drive towards reconciliation stemming from the rule of law, has controlled human relations, resulting in vulnerable status for women. Although women have a low status in peacetime, it further deteriorates during and after armed conflicts, whether the conflict is internal or between states. Armed conflicts cause catastrophic social problems, not least the suffering, exploitation, and countless human rights breaches of vulnerable and marginalised groups.

With growing awareness of grave rights breaches against women, particularly in armed conflicts, as well as enhanced public exposure of these breaches in the media, and increasing international concern for the expedient termination of such suffering, the 20th century witnessed a transformation the status of human rights in general, and women's rights in particular. This transformation was not only restricted to defining and clarifying concepts, but also brought to bear a distinct shift in priorities and norms. For example, controls have been applied during armed conflicts, such as the protection of groups who refrain from use of arms. States have also been encouraged to take positive measures in peacetime as in wartime. These measures have sought to positively protect by promoting freedom from need and fear, and establishing the dignity of life.*

* These efforts culminated in UN Security Council Resolution 1325 of 2000, which is highlighted later in this paper.

This transformation in human rights has also covered women's status. This interest in human rights is no longer limited to protecting women in armed conflict, but extends to promote women's role and to strengthen their status in society in peacetime, to facilitate the preservation of civil peace and societal stability. It should also be noted that the shift in human rights reflects consolidation of the relation between international human rights law and international humanitarian law; the enforcement of the latter in armed conflict does not exempt states from their duties derived from the former (Abresch, 2005: 2).

This paper sheds light on the status of women during and after armed conflicts. It explores how international law deals with this reality in light of the developing concept of human security. The paper also highlights that achievement of women's security is no longer restricted to provision of necessary protection and aid, but is also a fundamental, expedient condition to bring about the societal stability. Women's security is now a compelling societal and international issue that serves peace and security on the general human level. The paper concludes that the empowerment and promotion of women's status establishes national security in respective states. Indeed, the attainment of human security is a prerequisite to states' achievement of national security, and promotes a state of peace, stability and security at the international level (Aolàin, 2006: 847).

ON THE RELATION OF NATIONAL AND STATE SECURITY TO HUMAN SECURITY*

Modern states were constituted in the 17th century and later developed into nationalistic states based on international relations and the system of states. Ever since, the concept of national security has been closely associated with state security. Essentially, a state's national security (including its components) is attained by achievement of state security; that is, the preservation of a state's existence, entity and stability is based on the fact that it is the most important, central structure that regulates internal and external relations. In relation to the state, the concept of national security developed along two distinct and largely contrary paths derived from the discrepant political theories and differing visions of Thomas Hobbes and John Locke on the regulation of human nature through the state (Commission on Human Security, 2003: 2-19).

Hobbes' conviction is that voluntary cooperation between human beings is impossible is due to self-seeking individuality and personal interests outweighing collective ones. This led to a theory of statehood aimed to contain constant conflict in society, and to replace anarchy with security and stability. Hobbes justifies the absolute power of the state to regulate society and individuals, theorising that the authoritarian state is necessary to prevent social disintegration based on human weakness. According to Hobbes, the state is the means towards establishing security for both individuals and society. From this perspective, national security and state security is assured through the compliance of subjects to the demands of the state, and putting in place a vertical, top-bottom relation, starting from the head of state and ending with the individual. (Al-Ghali, 1997: 78-79; Schedler, 1997: 165-170; Martel, 2000; Martinich, 1996: 273-283).

* For more on the relation between national security and human security, see (Jackson, 1957: 364-380), and Raskin, 1976: 198-220.

Contrary to Hobbes, Locke grounds his political philosophy on the possibility of achieving cooperation between humans based to their intrinsic goodness, thereby excluding the contradiction between achievement of individual and personal interests and society's collective interest. In light of increasing population and limited resources, individual interests may clash, thereby necessitating regulation and codification. Hence, citizens — not subjects as in Hobbes — endow some of their redeemable rights to the state to administer and manage their affairs. As such, the state is created not to exercise hegemony, but is bound to popular consent, which is dependent on good performance. To Locke, national security will be established by providing security to citizens, who authorise the state to rule over them by their own free though conditional will. Against this background, the security of the state stems from its citizens' permanent satisfaction with its performance, and their support of its policies. According to Locke's theory, from which the democratic nature of the state is derived, national security is a bottom-up phenomenon, starting from individual (the citizen) and ending up with the state.(Al-Ghali, 1997: 79-80; Schmidgen, 2007: 205-223).

For several centuries, the above contradictory perspectives have produced conflicting accounts of the legitimate existence of the authority of the state and justifications of its actions. Connected to this has been the ongoing controversy over the concept of national security. On the one hand, national security means protection of the state, as institutions and regime against external threats from other states, as well as against internal threats from subjects who attempt to undermine its components in order to achieve personal goals. Accordingly, the relation between the state and its subjects is permanently tense, disallowing the development of positive human security. On the other hand, national security is still deemed to be an inevitable outcome of the realisation of citizens' security in a state that respects their rights and freedoms and treats them in an equal and indiscriminate manner.

Over time, more weight has been given to the democratic approach over the authoritarian one, reaching a breakthrough at the end of the 20th century with the collapse of the Soviet Union. Apart from rejection of the authoritarianism of the state, other causes promoted the democratic approach. States of the new world have been composed of diverse migrant nationalities that — due to their migrant status — could promote the concept of citizenship, and accordingly shape the concept of national security. In contrast, drawing the borders of postcolonial states in Asia and Africa in line with colonial interests created varying and discrepant nationalities. Efforts made by these states over past decades to adjust their status by dominating over respective subjects have largely failed. Currently, many of these states suffer from internal disputes and armed conflicts, demonstrating that their national security will not be attained unless they treat their citizens equally, regardless of race and ethnicity.

The globalisation era, in which state sovereignty has been exposed and authoritarian powers increasingly criticised, has had a positive impact on the promotion of the connection between state and national security and human security (Commission on Human Security, 2003: 5). Such promotion is now particularly important because of increasing armed conflicts, which mostly convert into internal struggles and in which civilians are the most vulnerable victims. Therefore, the status of women has been of increasing concern in armed conflict; the suffering of women (as well as other vulnerable groups) demonstrates that the ongoing association of the concept of national security with state security has not been sufficient to protect these groups.

This shift in the concept of national security was accompanied by a development in the performance of international organisations, international law and the concept of international criminal liability. In the 1990s, the United Nations (UN) carried out more peacekeeping missions than ever before. The UN also contributed to innumerable negotiations aimed at endorsing international agreements that would eliminate certain new threats and promote regional cooperation to confront them (Commission on Human Security, 2003: 2). Also with the onset of the 21st century, the International Criminal Court was formed to monitor violations and crimes against humanity (Mitchell, 2005: 219); (Meier, 2004: 83) McCormack and Robertson, 1999: 635).

Although significant progress has been made in transforming the concept of national security from one focused on state security to one centred on human security, one should not assume that securing vulnerable groups' rights and preventing relevant violations is no longer needed. Infringements are numerous. Under the pretext of "human rights", wars continue to be waged and are presented as "humanitarian" (Khalil, 2006: 303). Therefore, violence against women in and after armed conflict should continually be examined and highlighted. (Young, 2003: 17-18).

VIOLENCE AGAINST WOMEN DURING AND AFTER ARMED CONFLICTS

In general, violence against women is exploitation of an unbalanced, unequal relation between two (or more) parties, allowing the stronger party to deliberately injure the weaker without fear of possible retaliation or deterrence. To prevent and stop such injury, external intervention is needed. Across a variety of communities, and for a variety of reasons, women constitute a vulnerable group and are individually and collectively subjected to various forms of violence. Women are abused because they are members of a vulnerable group or have special needs, and primarily because they are intrinsically women. In other words, women are subject to violence and assault due to discrimination on gender grounds. Violence targeting women is any act of gender-based violence that results in — or is likely to result in — physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life in times of peace or in times of war (Abu Al-Qumsan, 2008: 35). This form of violence is a widespread phenomenon around the world. As Boutros Boutros Ghali, former secretary general of the UN, emphasised in his speech before the Fourth World Conference on Women in Beijing in 1995, violence against women is an international problem and thus in need of international denouncement (Adams, 2007: 57).

In times of peace, women are subject to various forms of violence, in particular: domestic violence (including beating and rape); violence in society (including prostitution and forced labour); and violence by the state, whether structural (discriminatory legislation) or through condoning those who commit so-called "honour" crimes. Many believe that such violence is exacerbated during and after armed conflicts, whether the conflict takes place between states or internally within the state. These conflicts naturally produce hostile environments and patterns of behaviour and help spread a military culture, which legitimises the violation of controls regulating societal and international life in peacetime (Amnesty International, 2004: 5-6). Therefore, civilians become more vulnerable, and liable to violations by military personnel and members of armed groups. Women are more prone to these violations not only

because they are women, but also in light of discriminatory treatment originally in place (Bennoune, 2006/2007: 368).

According to the remarks of Kofi Annan, former UN secretary general, before the Inter-Agency Videoconference for a World Free of Violence Against Women, held in New York on 8 March 1999: “Violence against women is perhaps the most shameful human rights violation. And it is perhaps the most pervasive. It knows no boundaries of geography, culture or wealth. As long as it continues, we cannot claim to be making real progress towards equality, development and peace. We have made some advances. States have adopted international instruments prohibiting violence against women ... Governments have passed national laws banning all forms of violence against women. They have introduced more effective protection services; they have mounted campaigns to drive home the point that no act of violence against a woman can or should be tolerated.” (Adams, 2007: 57).

It should also be noted that targeting women as a group does not necessarily derive a default conclusion that each woman is subject to the same violations and same degree of violence and suffering, whereby a general and acceptable addressing of the issue can be possible. Women’s backgrounds, conditions, abilities, experiences, violence imposed on them and resulting suffering differ from case to case, as well as from woman to woman. This means that each abused woman’s particular conditions need to be heeded. One should not make generalisations and stereotypes, which may conceal identification not only of individual suffering caused to each woman by these collective grave violations, but also of the collective suffering of women as a group (ICRC, 2003: 13).

Although an absolute majority of women affected by armed conflicts are civilians, a number of women take part in these conflicts as combatants; that is, as part of the forces involved in hostilities in a direct manner, or within reserve units or military support and logistics units. Particularly when an armed conflict takes place between hostile parties within a state, women’s involvement might be compulsory.* Since internal armed conflicts have been increasing in comparison with conventional wars between states, discriminating combatant and civilian groups is declining. This means that more women are taking part in hostilities in internal conflicts, and that civilian women are subjected to even more suffering and violence (Lindsey, 2003: 11-12).

According to international human rights organisations, female combatants are not only subjected to harsher living and mental conditions than those imposed on male combatants in wartime, but also to a special kind of violence and abuse by enemy combatants as well as by comrades.** Especially in internal conflicts, female combatants may be exploited by male

* In World War II, the role of women involved in armed conflicts was most visible as part of the reserve, in logistics and support units in the German and British forces. Totalling eight per cent of troops involved in the war, women also participated in the Soviet forces. Ever since, women have played an increasingly active role in the armed forces. In addition, women take part in ethnic conflicts, in which whole tribes or groups are parties to a conflict. In these cases, women help and support combatants. Whilst some are obliged to do so, women are sometimes forced to have sex with soldiers. This was the case with the so-called “pleasure girls”; Korean and Chinese women whom the Japanese army exploited in World War II. In Palestine, women have also taken part in armed resistance. See (Holt, 2003: 29; Lindsey, 2003: 11-12).

** Nonetheless, recruited or combatant women are the exception rather than the rule. Women’s involvement in hostilities is viewed as incompatible with femininity. Even if encouraged by society to enlist in the army (the Israeli army for example), women are seen as relief for soldiers who are away from home for a long period of time. See (Gardam and Jarvis, 2000: 40).

comrades or captors to deliver services traditionally seen as the preserve of women, such as cleaning and laundry. Without taking into any account their will, female combatants may also be forced to deliver sexual services to men. Often women are raped not only by their captors, but also by their male comrades.* Adding more concern and anguish to such violence is the fact that such known and documented abuses are viewed by several authorities within respective states, and worldwide, as a matter that can be overlooked as part of the “difficulties” associated women’s participation in the military profession.

When combatant women are captured, detention conditions are largely harsh, subjecting them to horrendous suffering. In armed conflicts, detention centres are established on the assumption that they will hold men in custody. Those who design them do not take into account special needs of female detainees. Most often, women are held in narrow wards arbitrarily designated to them in detention centres, which are originally designed for men. Largely overcrowded, these confined wards lack proper physical conditions to preserve women’s dignity and privacy. Special hygiene facilities, including appropriate and separate toilets, are also missing. As female gaolers are unavailable, male wardens watch over female prisoners. In most cases, female detainees lack supplies necessary for personal hygiene, or other needs in case they are breastfeeding or are expectant mothers. Furthermore, officers in charge of detention facilities do not respect detained mothers’ rights to see their children. Female detainees are also subject to a severe psychological pressure due to threats of sexual violence and rape during interrogation in order to force confessions. In short, female detainees’ detention experience is entirely arduous in physical and psychological terms.**

Armed conflicts have a huge negative impact on civilian women as well. Most often, civilians are attacked during armed conflicts; they are deliberately killed, caused to be killed, or allowed to be killed.*** According to available statistics, civilian casualties are nine times more likely to be killed than combatants (Benjamin, 2003: 169). Sometimes, women are targeted and deliberately killed not only by enemy forces, but also by “friendly forces” allegedly because women carry out tasks deemed by such forces to contravene social customs and conventions.****

* Amnesty International reports cases of targeted sexual violence and exploitation against young recruited women in several countries, including Angola, Burundi, Cambodia, Liberia, Mozambique, Peru, Rwanda, Sierra Leone and Uganda. (See Amnesty International, 2004: 7).

** According to a report released by the Palestinian Ministry of Detainees and Released Detainees on 17 April 2008, Israeli authorities have arrested over 9,750 Palestinian women since the State of Israel was established. Of these, 97 detainees — one per cent of the total number of Palestinian political prisoners — are still held in custody. According to the human rights group Al-Haq, detained women suffer from declining prison conditions, which are such that they are unsuitable for women’s hygiene requirements, most notably childbirth. In addition, interrogators abuse women and threaten to assault their families if they do not collaborate with the Israeli authorities. Attended by male wardens, detained Palestinian women are often subjected to humiliating physical searches. See (Al-Haq, 2005: 230-232).

*** According to certain reports, 238 Palestinian women (excluding those under 15 years of age) have been killed, and hundreds others injured, by the indiscriminate use of force against civilians by Israeli occupation forces during the second Intifada. See (Holt, 2003: 28). Other reports state that a large number of women gave birth at Israeli checkpoints set up throughout the occupied Palestinian territories. According to official reports issued by the Palestinian Ministry of Health, over 68 expectant mothers could not reach hospitals, forcing them to deliver their babies at checkpoints. As a result, four mothers died while 34 miscarriages have been reported. For more information, see (UNFPA, 2005: 10; OHCHR, 2005: 2 and OCHA, 2007: 4).

**** According to Amnesty International, insecurity in Iraq forced countless women to abandon public activities. Armed groups have targeted women, either as victims of violence against civilians or as victims of abduction and murder. Such violence is most normally associated with threats against female activists working for women’s rights organisations, and female political leaders. See (Amnesty International, 2005: 24-26).

Armed conflicts may also fragment social structures within the respective society, further debilitating women, marginalising their status and consolidating gender-based inequality. Such a situation may also be associated with increasing violence against women, within both the family and society.*

Even if not killed in armed conflict, women's suffering is severe and harsh. The distress women undergo occurs at more than one level. Whilst women's traditional sphere is to preserve the family's welfare, the man's traditional role is as the primary source of income. In internal armed conflicts, women carry out conventional functions of taking care of their family, as well as domestic and extra-domestic (mostly agricultural) activities, whilst men become involved in the ongoing combat. When this happens, women find themselves alone and in charge of running all the affairs of their families, without any help from the traditional head of the household and protector. Hence, women must shoulder a weighty responsibility for providing sustenance and protecting their families under exceptional and unbearable conditions, a responsibility they are mostly unprepared to meet.**

Due to this new heavy burden, women become both mentally and physically exhausted. On the one hand, women are worried for their husbands, and perhaps children, who fight or disappear without the women knowing their fate. Given that the battlefield in internal armed conflicts might affect the whole country, women also have to be worried for other family members. On the other hand, women are physically tired because they have to carry increased burdens both inside and outside the home.*** As many are unqualified and untrained, women may well be forced into the labour market to perform marginal and laborious work, which can often times also be humiliating and degrading. Some women work as prostitutes, in order to make a living (Benjamin, 2003: 154). In general, this fatigue debilitates women's ability to look after themselves, resulting in deteriorating health conditions in circumstances where necessary healthcare services are lacking.

A number of men involved in armed conflict do not come back home, either because they are killed or disappear. In these cases, women's sole responsibility for the family moves from

* Domestic violence is common in numerous societies. See (Adams, 2007: 70-71). However, statistics report rising violence against women in societies that have witnessed — or are still undergoing — armed conflicts. In the Palestinian territories, for example, reports released by the Palestinian Central Bureau of Statistics (PCBS) in 2005 state that 62 per cent of single women were subject to psychological violence, 23 per cent to physical violence, and 11 per cent to sexual abuse at least once before marriage (PCBS, 2006: 23-24). Other reports have shown a correlation between violence inflicted on Palestinian men by Israeli occupation forces (especially interrogation techniques), and men's violence against female relatives at home. Furthermore, the complete closure imposed on the occupied Palestinian territories and escalating unemployment have forced men to stay longer in their houses, which has resulted in increasing violence against women. See (Rehn and Sirleaf, 2002: 15).

** According to one human rights activist, a Palestinian Gazan woman said: "Only 50 dollars would help me buy a cage for rabbits and solve my problems. Then, I will often visit you to ask for legal and psychological aid." See (The Humanitarian, 2007: 15). According to a Somali woman who suffers from the calamities of armed conflict in her motherland, "I know that humanitarian organisations, which work here, distribute food supplies. I am not thinking of the future, but of the present time — the food that I must secure for my children tomorrow. Empty bowls do not know hope." (Parke, 2007-08: 24)

*** According to Widad Halawani, whose husband was abducted in September 1982 during the Lebanese Civil War and remains disappeared, "My calamity was doubled as Adnan's disappearance was combined with losing his salary. A compelling need pushed me to find an additional job. Along with my salary, revenue of the extra work would meet my family's essential needs ... Hours of the day have no longer been sufficient to do all my tasks. I always wish they were longer. I work overnight and all day long!" Widad Halawani, "Justice is a Right for All Persons in the Face of Any Tyrant". (Halawany, 2007/2008: 14).

a temporary to a permanent state.* In the cases of men who are missing, women become mentally pressurised, as their lives turn into a state of constant alert. Moreover, family members of those missing are often confronted with legal difficulties, making their daily lives more complex.**

Further to the problems of the missing and dead, armed conflicts are a major cause of internal and external civilian displacement. Currently, over 40 million displaced persons and refugees are dispersed both within and outside of their home countries. Of these, 80 per cent are women and children — the most vulnerable groups (Amnesty International, 2004: 14). Women suffer various forms of displacement-driven problems, including loss of home, property and relatives, and separation from their families.*** As they flee from hostilities to safe areas, women not only suffer from fear, fatigue and exhaustion, but also are at risk of being raped or killed.**** Their journey back home is often no less harsh than their escape, and can be more severe.*****

Displaced people and refugees often experience wretched living conditions. In refugee camps or temporary residential sites, refugees suffer from overcrowding as well as a lack of essential services and facilities, including loss of privacy. Women are the most affected by the lack of basic services. If available, bathrooms are few and public. Potable water is also scarce along with electricity. The situation is especially bad in winter; rainwater leaks into tents, which also lack heating. In combination, these conditions cause the spread of epidemic diseases,

* A wife of a missing Iranian soldier asserts: “My husband wanted to go. His dignity did not allow that he stay at home and let his son go to the war alone. Thus, he went to the front. Ever since, we have heard nothing of him. I was forced to raise my four children on my own.” See “Stories about Painful Vacant Places”, (The Humanitarian, 2008: 14).

** “Um Firas was occupied with her daily concerns ... seven children in need of care, expenses and education ... A journey of suffering that is severer than all her past history has started ... All that has passed is by now sheer memories. What she witnesses every day is the bitter reality ... The austere woe is to obtain identification documents. Most of her children were born abroad without any such documents. It was a primitive life ... no documents ... no identity cards ... Today her children are not enumerated in the population census ... Without an identity ... she knocks at door after door ... Every door has a booth ... Each booth demands a paper from another ... and so forth in an endless cycle.” (Al-Maqhour, 2007-2008: 14).

*** According to a report on the current situation in Iraq, “Iraqis have lost fundamental security and safety in various daily life details. Roaming massacres slay scores of civilians. Sectarian categorisation of the population results in increasing displacement and forcible migration.” The report also estimates that approximately 100,000 Iraqi families have been displaced since February 2006. See (The Humanitarian, 2007: 6-9). According to other reports, over four million — the majority of whom are women and children — have been displaced in Iraq by August 2007. For more information on Iraqi refugees, see (Women’s Commission for Refugee Women and Children, 2007: 3-10; Fagen, 2007: 4; IDP Working Group, 2008: 1).

**** Jamilah, a Somali woman, relates her story of the tragic “Death Journey” where Somalis take to the sea to Yemen to escape war: “Smugglers have a sharpened iron spear, which they insert in the abdomen of any women who complains of or refuses their orders.” Jamilah goes on: “Astonished as I was, I cannot forget the tragic scene of two smugglers raping my sister Asma (20 years) before us. As we cried in protest against this crime, they stabbed her with the spear and threw her into the sea. I was in the company of my mother. Unconscious, she collapsed due to this horrible incident. Before she was raped, my sister complained of hunger, but she was attacked by human beasts, who took away her virginity and life before our eyes.” (ASharabi, 2008: 31).

***** On their journey back home west of Bahr Al-Ghazal in Sudan, after the war ended in the South, 5,000 refugees took a “journey in which they struggled against landmines, mosquitoes, Guinea worm disease, tsetse flies, swamps and predators. They were also forced to negotiate with insurgent militias and look for food when supplies were late. It was a mentally and physically exhausting journey to all returnees, most of whom were housewives. Planned to last 30 days, the ignominious journey took three and a half months. 66 persons died and 34 infants were born.” (Bashir, 2006: 19-20).

particularly amongst women who need special healthcare and attention.* Due to traditional values, men are privileged over and above women in the provision of healthcare services. There is also a preference to provide healthcare to children, meaning that women are the last to receive medical attention. As with healthcare, so with food. When there is a shortage of food supplies, food becomes a commodity, used by those who distribute it in refugee camps to blackmail and sexually abuse women (Al-Qadhi, 2008: 43). As women are forced to leave refugee camps in search of water, food or firewood, they can find themselves unknowingly walking through fields of landmines, resulting in death or loss of limbs (Benjamin, 2003: 151). Should these women survive, they may be raped.** And when the conflict ends, women are usually the last to be compensated for suffering by respective states (Gardam and Charlesworth, 2000: 148-166).

It seems clear that the most common form of violence against women in and after armed conflict is sexual abuse. This type of violence violates women's humanity, privacy, body and mental health. This gender-based violence takes various forms, including rape, pornography, imaging of sexual violence, sexual servitude, forcible marriage, sex-based detention, trafficking, forced prostitution, destruction of reproductive organs, performing medical tests on reproductive organs, pregnancy complications, delivery distortion, sterilisation due to the use of weapons containing various toxins, forced pregnancy, abortion or sterilisation, deliberate HIV/AIDS infection, forcing women to strip in public places, or sexual humiliation. This sexual abuse or sex-based violence that affects women may take place in various places and under diverse circumstances. It can occur at home, before family members, in public places, at military checkpoints, in prisons and detention camps, upon crossing borders, or in refugee camps. Despite the fact that enemy forces are most involved in this form of violence, statutory forces as well as non-statutory armed groups and militias are no exception to it. Moreover, members of international peacekeeping missions in areas of conflict, as well as international relief workers in refugee camps, have been implicated in this type of violence.(Bennoune, 2006/2007: 368; Gardam and Jarvis, 2000: 63-64).

Due attention should also be paid to civilian men who commit sexual assaults against women, including family members, in armed conflicts. Over prolonged intervals, many women are subject to sexual violence by their husbands after they return home from the battlefield. Still harsher is the pressure placed by family members, and society in general, on abused women, which forces them to endure the physical violence inflicted on them by their husbands, ostensibly to protect their children.

In armed conflict, women are sexually abused for several reasons. They are exploited to gratify men, including both combatants and civilians. In the turbulent conditions of war, men

* Jamal Jawad, an UNRWA school principal, describes the situation of Palestinian refugees who were displaced from the Nahr Al-Bared Refugee Camp and relocated to the UNRWA school for temporary residence: "About 160 families, approximately 950 persons, share 24 classrooms. Sometimes, 60 persons amass in a single classroom. Humanitarian conditions are difficult and heartbreaking ... We permanently monitor any epidemics, such as lice. Such diseases can easily spread among the displaced refugees in light of this large number of people." (Al-Qadhi, 2007: 6). Nicole Widesham describes women's suffering in Darfur as follows: "The war has caused immense suffering. Until now, women suffer consequences of this war. Violated women found themselves responsible for wounded, disunited families, while at the same time they were poor and needy due to displacement and violence." (Widesham, 2008: 27).

** In Darfur, women are raped outside refugee camps while they are looking for water or working on agricultural land. See (Human Rights Watch, 2008: 13).

can abuse and rape women at gunpoint. Further promoting such phenomena are offenders' common belief that gender-based violence is "justified" within the turmoil and stress of war and armed conflict and can be overlooked. This has resulted in offenders not being subject to severe punishment, if any penalty is imposed at all. In other words, perpetrators are secure in their belief that they can easily abuse women and not be punished. Additionally, women are sexually abused by enemy forces not only for sexual gratification but also to send a message of hatred to the women themselves, their families, people and culture. To most communities, dishonouring women means disgrace to that family, community and nation. In the culture of war, especially civil wars, the rape of women is considered a "victory" and major humiliation of the enemy. Moreover, women are sexually abused by enemy forces in revenge for similar assaults inflicted on their own women; that is, revenge for "stained honour". As such, women's bodies are converted into battlefields and areas of reciprocal attacks between combatants.*

Sexual violence is also used as a means to torture women and obtain information about their families and communities. Particularly in civil wars involving various racial, ethnic or religious groups, women are also subject to sexual abuse to achieve ethnic cleansing goals of forcing groups to evacuate certain areas or to change a given demographic equilibrium (Lindsey, 2003: 13). The stated objective of such abuse can also be to "produce enemy children". In the latter case, the sexual abuse of women becomes a military weapon or technique that aims to subordinate and defeat the enemy as well as degrade their morale.** More often than not, sexual violence against women is perpetrated under conditions of implicit approval by military leaderships (Campanaro, 2001: 2559). Under the notion that they bring disgrace to their families and communities, women are likely to suffer further once armed conflict comes to an end. In this case, women suffer twice over: once via the enemy and once via their own families and communities.

Gardam and Jarvis claim that women's experience of cruelty in the exceptional circumstances during and after armed conflicts opens up new horizons to them, empowering them and positively shaping the course of their lives. Accordingly, women who live such an experience become proficient in carrying responsibility and become independent decision-makers. This experience emancipates women from masculine hegemony and places them in the position of leadership and control within their own families, and in the surrounding society (Gardam and Jarvis, 2000: 30). Leaving the domestic domain, in which women are manipulated by men, for the public domain, in search of a source of income to sustain them and their families, endows women with a freedom in the decisions they make for their families. This may also gradually allow women to participate in public decision-making. Although this never justifies the pain and suffering inflicted on women in and after armed conflict (which is undoubtedly

* The rape phenomenon has traditionally been associated with armed conflict. Before and during the American Civil War, innumerable black women were raped by white masters. In the Chinese city of Nanking, Japanese forces raped and tortured over 20,000 Chinese women. In 1945, 120,000 to 900,000 women were raped in the area of Metropolitan Berlin. During World War II, 100,000 to 200,000 Korean women were raped and tortured in Japanese army encampments. In revenge of German armed forces' hostilities in Russia, Russian forces raped more than two million German women. In addition, US troops were charged with 86 cases of rape. Of these, 50 soldiers were found guilty. In 1971, Pakistani troops raped 200,000-400,000 Bangladeshi women, resulting in 25,000 pregnancies. See: (Nebesar, 1998: 149-150).

** Amnesty International documents testimonies of 250 women who were raped during the conflict in Darfur. Rape and other forms of sexual violence against women are widespread not only as a result of conflict, but due to the conduct of undisciplined soldiers. Testimonies indicate that rape and other forms of sexual violence are used as a weapon in the war in Darfur to humiliate women and their communities, as well as punish, terrorise and displace them. See (Amnesty International, 2004: 1).

not the intention of the two scholars), such an outcome can still be used to improve women's status in the future.

Whatever the good intentions of the authors, Gardam and Jarvis's conclusion seems premature. There is no evidence of women's enhanced status following their experience of armed conflict. On the contrary, numerous reports and studies show that women's empowerment during armed conflicts is mostly conditional and coercive, and that this ends as the armed conflict does. When men return from the battlefield, women's role becomes marginalised once again; for as the armed conflict ends, so the old stereotypes return, forcing women back into their traditional roles. Seemingly automatically, women are ignored in decision-making around the issues of aid, peace building, and the reconstruction of shattered communities (Benjamin, 2003: 167-168). Because of this, many thinkers demand that women be involved in all aspects following armed conflicts.*

More aggravating than women's return to traditional stereotypes is the fact that women's status declines not only during but also in the aftermath of armed conflict. In addition to immediate loss of independence they might have acquired in the armed conflict, the violence and alienation inflicted on women by men returning from the battlefield may be crueller than the violence and alienation inflicted on them during the conflict. This increase in aggression towards women is due to returning men becoming accustomed to high levels of violence, as well as war-induced psychological disorders (Rehn and Sirleaf, 2002: 15).

INTERNATIONAL LAW AND WOMEN IN ARMED CONFLICT

In the modern age, the changing nature of armed conflicts and the nationalistic nature of a state's use of the concept of national security have driven distinctions between states of war and peace between states, between armed conflicts within a state and among states, between states and non-state actors, between the concepts of combatant and non-combatant, and between periods and geographies in which conflicts take place or not. Although international law and associated objectives derive from one vision, which composes an integral whole, international law has distinguished between periods of peace and war, between states of emergency and normal conditions, and between the foreigner or the external and the internal (Brooks, 2004: 676). Such distinctions are made in light of differing levels of relative violence and violations inflicted on human beings in general and on certain people in particular. Special components under the international law were introduced to deal with such distinctions. However, these components need to be integrated and support one another in order to produce a complete model that aims to safeguard human dignity and protect human rights in various conditions and times; or, more accurately, regardless of changing conditions and times.

International human rights law is a comprehensive legal framework that comprises norms and principles necessary to guarantee human rights and dignity under various conditions and

* For example, Nicole Wildesheim calls on women to be given the right to choose the method of assistance that they believe are the best to empower them: "Provision of various programmes for women in emergency times does not only empower women and furnish opportunities of choice and dignity, but it is a real necessity to provide women — whom the war made de facto head of households and pioneers of society — with services needed to play their new role as well as take care of their families in the best manner possible. Thereby, women will be effective social stakeholders as well as a component of peace building and restoration of their countries." (Wildesheim, 2008: 28)

times. By distinction, international humanitarian law addresses armed conflicts and military occupation and is therefore applicable only to those instances and events. International refugee law, on the other hand, only concerns displaced civilians, including the suffering and violence inflicted on them. Finally, international criminal law aims at regulating the prosecution of persons charged with perpetrating international crimes, such as war crimes, crimes against humanity and genocide.

Although many recent indications point to the fact that violence against women during armed conflicts is largely an extension of violence exercised in times of peace, the international community's interest in addressing this issue began with the enforcement of international humanitarian law, and was only expanded later. It is only since the 1990s that the international community has been applying international human rights law, international refugee law and international criminal law. This trend reflects a typical shift in the international community's recognition that violence against women is not only limited to times of armed conflict. Gender-based violence cannot be isolated from women's particular situations, whether that be as a normal citizen in peacetime, a combatant, a civilian in wartime, or a displaced person or refugee. The international community's understanding has now become more inclusive; concluding that violence against women is a general and permanent phenomenon that has special consequence on women's lives.

INTERNATIONAL HUMANITARIAN LAW

International humanitarian law is the most prominent legal achievement to express an international consensus on laying constraints on state practices during armed conflict in order to moderate human suffering.* International humanitarian law concentrates on restraining the means and methods of warfare (the Hague Regulations). The four Geneva Conventions of 1949 and Additional Protocols of 1977 (the so-called Geneva Law) highlight protection of victims of armed conflicts, particularly "protected groups", including civilians. However, the nature of contemporary armed conflicts, which have transformed from statutory wars to civil wars between hostile groups within the state, has made the distinction between combatants and civilians increasingly difficult to uphold, leaving civilians without full protections afforded by law.

Carefully selecting the term "person" in relevant provisions, international humanitarian law does not differentiate between men and women, and does not obligate High Contracting Parties to exercise gender-based discrimination. Article 3 under all four Geneva Conventions binds High Contracting Parties to humane treatment "... without any adverse distinction founded on ... sex ..." This principle is further confirmed in several other articles under the four Geneva Conventions, especially articles 13, 15, 27 and 96 under the Fourth Convention relative to the protection of civilians in time of war. In addition, Geneva Law recognises that women should be given special protection in view of their special needs. Of the 560 articles that make up the Geneva Law, approximately 40 (Krill, 1985: 359) or 50 (Amnesty International,

* In this section, Geneva Conventions will be highlighted. These include the four Geneva Conventions of 1949 as well as the Additional Protocols of 1977. Other components, including treaties and customs of universal or regional nature, will not be addressed. Moreover, non-obligatory international declarations and instruments will not be examined. For further details on how international humanitarian law addresses violence against women in armed conflicts, see (Amnesty International, 2005: 8-21; Bennoune, 2006/2007: 370-384; Lindsey, 2003: 11-18).

2005: 48) articles prohibit non-discrimination against women or demand the provision of special protection for them. It should also be noted that the Protocols Additional to the Geneva Conventions use the term “adverse distinction” to denote all forms of discrimination rejected by Geneva Law. However, this would mean that non-adverse (or positive) distinction is permissible, particularly if it achieves an interest of a certain targeted group, such as women or children.

Designating special articles on certain groups of women, including female prisoners and women held under administrative detention, Geneva Law aims to ensure that they are not subject to torture, which includes sexual abuse. These articles take into account women’s special needs, including physical and hygiene necessities, in designing specialist detention facilities. Moreover, Geneva Law treats expectant mothers in a manner resembling the treatment of sick and injured persons. In this context, Article 27 of the Fourth Geneva Convention states: “Women shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault.” The Protocols Additional to the Geneva Conventions also change the emphasis of sexual abuse, from an act that has a negative impact on the honour of women, families and their communities to one that degrades women’s human dignity.

INTERNATIONAL HUMAN RIGHTS LAW

In line with international humanitarian law, international human rights law addresses violence against women and prohibits gender-based discrimination. The infringement of women’s rights is no longer an internal affair exclusive to states; states are now required to end discrimination against women and to pass the relevant necessary laws that protect women against violence, including domestic violence, and hold perpetrators accountable. In this regard, the concept of human rights is based on an ethical truth, stating that all humans — including women and men — enjoy a human dignity that cannot be transgressed. They also enjoy unalienable rights — the right to be free of fear or need, and the right to equality under law.*

Despite calls to respect human rights and public freedoms, and to combat gender-based discrimination, as provided for by the UN Charter of 1945 (articles 1, 13, 55, and 76) and by the Universal Declaration of Human Rights of 1948 (articles 2, 7, 16, and 23), holding

* In this section, reference will be made to certain international conventions. As they lack treaty-based obligation, other highly significant conventions are not included. These include, but are not limited to, the Declaration on the Elimination of Violence against Women (General Assembly Resolution 48/104, 48 UN GAOR Supp. (No. 49) at 217, UN Doc. A/48/49 (1993)), the Declaration on the Protection of Women and Children in Emergency and Armed Conflict (General Assembly Resolution 3318 (XXIX), 29 UN GAOR Supp. (No. 31) at 146, UN Doc. A/9631 (1974)), the Declaration on the Participation of Women in Promoting International Peace and Cooperation (General Assembly Resolution 37/63, 3 December 1982), and the Beijing Declaration and Platform for Action, Fourth World Conference on Women, 15 September 1995, A/CONF.177/20 (1995) and A/CONF.177/20/Add.1 (1995). Other initiatives have also been in place to develop model strategies and practical measures to eliminate discrimination against women. These include General Assembly Resolution 52/86 on crime prevention and criminal justice measures to eliminate violence against women, dated 12 December 1997, and “Frameworks for Model Legislation on Domestic Violence: Its causes and consequences”, submitted by Ms Radhika Coomaraswamy, special rapporteur on violence against women, submitted to the 52nd session of UN Human Rights Committee in accordance with Commission on Human Rights Resolution 1995/85. To view these documents, see the University of Minnesota Human Rights Library: <http://www1.umn.edu/humanrts/>.

accountable states that do not take measures against human rights violations, including discrimination and violence against women, under international human rights law is relatively tardy if compared to international humanitarian law.*

The International Covenant on Civil and Political Rights of 1966, which came into force in 1967, is particularly important because it obliges State Parties to adopt and enforce legislation that safeguards the respect of human rights, including the prevention of gender discrimination and holding accountable those who perpetrate violence against women. In times of peace and war, as well as in normal and exceptional circumstances, state parties must respect the right to life (Article 6), prevent torture or cruel, inhuman or degrading treatment or punishment (Article 7), prevent slavery and servitude (articles 8/1 and 2), safeguard the right to recognise a person before the law (Article 16), and guarantee freedom of thought, conscience and religion.

Under exceptional circumstances and within specific restraints, state parties may be exempted from complying with other obligations prescribed by the covenant, provided that this does not contradict other due obligations under international law. In addition, such exemptions may not imply discrimination “as to race, colour, sex, language, religion, or national or social origin”.

Despite the fact that it does not directly address violence against women, the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) of 1979, which came into force in 1981, defines discrimination (Article 1) as: “any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.” In addition to obliging state parties to not discriminate against women, CEDAW also stipulates that state parties take “all appropriate measures to eliminate discrimination against women by any person, organisation or enterprise” (Article 2). The convention also demands that state parties “modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women” (Article 5).

The UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which came into effect in 1987, also prohibits torture. Article 1 under the convention defines torture as “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering 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 ...” According to Article 2, state parties are obliged to take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction, and not invoke as a justification of torture any exceptional circumstances whatsoever.

* For more information on international human rights law see (Adams, 2007: 103-122; Amnesty International, 2005: 11-45).

Come consider that certain forms of violence against women in times of peace and war, whether in the private (domestic violence) or public domain is included within the definition of torture under this convention. Therefore, state parties are asked to prevent this form of violence.

INTERNATIONAL REFUGEE LAW

International norms concerning refugees are part of international human rights law. Since displacement is also a consequence of armed conflict, these norms are also closely associated with international humanitarian law. As the absolute majority of refugees are civilians, and because an overwhelming majority of civilians are women (and children), international refugee law — the Geneva Convention on the Protection of Refugees of 1951 — is particularly important in the provision of protection to women, if not explicitly.

According to the UN High Commission for Refugees (UNHCR), 75-80 per cent of the world's refugees and internally displaced persons are women and children who have not crossed international borders (Amnesty International, 2005: 64). To provide protection to these displaced people, representative of the UN secretary general, Mr Francis M Deng, developed the “Guiding Principles on Internal Displacement” (Ding, 1998). The principles promote non-discrimination and stress women's special needs (Al-Mubarak, 2006: 30-33). Principle 4 provides that “These Principles shall be applied without discrimination of any kind, such as race, colour, sex ...” The same Principle 4, however, states that “Certain internally displaced persons, such as children, especially unaccompanied minors, expectant mothers, mothers with young children, female heads of household, persons with disabilities and elderly persons, shall be entitled to protection and assistance required by their condition and to treatment which takes into account their special needs.”

Furthermore, Principle 7 provides that the “authorities concerned shall endeavour to involve those affected, particularly women, in the planning and management of their relocation.” According to Principle 18, special efforts should be made to ensure the full participation of women in the planning and distribution of basic supplies, which includes essential food supplies and potable water, basic shelter and housing, appropriate clothing, and essential medical services and sanitation. Additionally, Principle 23 (3) obliges states to make special efforts “to ensure the full and equal participation of women and girls in educational programmes”. In the treatment of wounded and sick internally displaced persons, “special attention should be paid to the health needs of women, including access to female healthcare providers and services, such as reproductive healthcare, as well as appropriate counselling for victims of sexual and other abuses.”

The “Guiding Principles” also oblige states to safeguard the right to recognition of a person before law. In this context, Principle 20 (3) prescribes: “Women and men shall have equal rights to obtain such necessary documents and shall have the right to have such documentation issued in their own names.”

INTERNATIONAL CRIMINAL LAW*

International criminal law addresses international crimes, even if committed by or charged against individuals. International criminal law entails a transformation in the traditional concept of international law with respect to the regulation of relations between states. Relatively modern, international criminal law originates from the International Military Tribunal at Nuremberg and the International Military Tribunal for the Far East, formed by the victorious powers of World War II to hold the defeated accountable in line with the principle of victor's justice. As such, these tribunals cannot be described as neutral. In the 1990s, the International Criminal Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR) were established to bring justice to these states; however, these tribunals can be considered selective, limited and temporary. Latterly, the International Criminal Court (ICC) was constituted in line with the Rome Statute of 1998, coming into force in 2002. The ICC is a standing international criminal court.

The International Military Tribunal at Nuremberg failed to incorporate crimes of a sexual character, particularly rape, into indictments filed against convicted persons. Although international humanitarian law then lacked implementation mechanisms, it did entail provisions regulating such crimes. Later, however, Article 5 under the Statute of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia classified rape as a crime against humanity.** Despite the fact that the statute of this tribunal does not consider other sexual abuses against women during armed conflicts as grave breaches of law applicable in wartime, the tribunal proceedings, as well as the resulting action of the chief prosecutor, have contributed to expanding and promoting international interest in violence against women. Above all, the tribunal entered decisions that established judicial precedents. These addressed sexual abuses against women in a more comprehensive manner than mere reference to rape, irrespective of the fact that these abuses were included on an indictment of crimes charged, not as a single crime. Importantly, charges were not brought because violations were committed by convicted persons, but because they were carried out by their subordinates in the armed forces with their knowledge and consent.

The ICTR was influenced by the ICTY, although the former did not address crimes perpetrated in armed conflicts of an international character, but in internal conflict. The indictment charged against convicted persons in the tribunal did not include charges of sexual abuse. However, collated testimonies and pressure brought to bear on the tribunal by human rights organisations resulted in the addition of these sexual crimes to relevant indictments. Expressing the tribunal's willingness to prosecute offenders or those who allowed the perpetration of these crimes, a number of judgements adopted broad definitions of sexual abuse.

Even though the ICTY and ICTR have largely contributed to developing the concept of international crimes of a sexual character against women, neither created binding norms for other states on how to deal with violence against women in armed conflict. In contrast, the Rome Statute of the ICC established for the first time that rape and other forms of sexual abuse are war crimes. However, it failed to categorise these crimes as serious breaches. According to Article 7, crimes against humanity include rape, sexual slavery, enforced prostitution, forced

* For more information on international criminal law, see (Campanaro, 2001: 2572-2586).

** To view this statute, see <http://www1.umn.edu/humanrts/icty/statute.html>

pregnancy, enforced sterilisation, or any other form of sexual violence of comparable gravity. On the other hand, Article 8 of the Rome Statute provides that war crimes, which also include actions during internal armed conflicts, feature “committing outrages upon personal dignity, in particular humiliating and degrading treatment” as well as “committing rape, sexual slavery, enforced prostitution, forced pregnancy ... enforced sterilisation, or any other form of sexual violence also constituting a grave breach of the Geneva Conventions.”

THE ABILITY OF INTERNATIONAL LAW TO PROTECT WOMEN IN ARMED CONFLICT

A key debate currently taking place is about the capacity of international law to prevent violence against women in and after armed conflicts. Some scholars believe that international humanitarian law is neither appropriate nor sufficient to fulfil this goal. Firstly, principles of international law reflect sexual stereotypes that promote discrimination against women while at the same attempting to protect them. Secondly, if applied in armed conflict, international law is largely enforced in isolation from other relevant components, particularly international human rights law, thereby rendering it incapable of preventing violence against women. Thirdly, international law is not concerned with the status of women following the end of armed conflict, when women also suffer. With concern for these points, scholars demand that substantive changes be made to international law, especially to international humanitarian law, in order to ensure that recent developments in contemporary armed conflicts are effectively addressed.

Relevant criticism of international humanitarian law derives from the following criteria (Bennoune, 2006/2007: 384-385; Aoláin, 2006: 831-846; Copelon, 1994: 243-266; Durham, 2002: 655-659; Byrne, 2002: 31-34):

i. Criticism of the essence of international humanitarian law

International humanitarian law is time-bound and biased (even if unintentionally) against women. It deals with women not as human beings but as “weak” persons or emblems of “honour”, or associates them with reproduction. International humanitarian law also makes special reference to women with a view to provide “protection”, not to “prevent” or “prohibit” abuse against them in armed conflict. Being subject to sexual abuse, for example, is an aggression against women’s honour, but not against their intrinsic human dignity. Such considerations yield serious results — discrimination against women will be sustained. International humanitarian law does not treat women equally to men, but rather on the assumption that they need permanent protection by the latter.

ii. Criticism of the exclusion of gender-based crimes from grave breaches

Geneva Law classifies contraventions against the Geneva Conventions into grave and non-grave breaches. As such, the “High Contracting Parties undertake to enact any legislation necessary to provide effective penal sanctions for persons committing, or ordering to be committed, any of the grave breaches of the present Convention.” Additionally, “Each High Contracting Party shall be under the obligation to search for persons alleged to have committed, or to have ordered to be committed, such grave breaches, and shall bring such persons, regardless of their nationality, before its own courts. It may also, if it prefers, and in accordance with the provisions of its own legislation, hand such persons over for trial to another High Contracting Party concerned, provided such High Contracting Party has made out a prima facie case.”

With respect to non-grave breaches, the Geneva Conventions provide that “Each High Contracting Party shall take measures necessary for the suppression of all acts contrary to the provisions of the present Convention.” Of course, this formula fails to prevent non-grave violations. Importantly, however, gender-based crimes and violations are not listed as part of grave violations under Geneva Law. For critics, these are not adequately addressed by the law in question.

iii. Criticism of short protection in armed conflicts

Critics of international humanitarian law believe that protection of women in armed conflicts is only limited to sexual violence and enforced pregnancy but does not extend to include all forms of potential violence inflicted on women, both directly and indirectly. Such restriction does not give sufficient attention to other forms of violence that require action to prevent them. In reality, violence against women transcends sexual abuse, involving both physical and mental factors.

iv. Dissociating violence against women in wartime from relevant discrimination in peacetime

In addition to the fact that violence against women in peacetime generates abuse in wartime, post-conflict situations mostly feature continuing violence against women. Appropriate and effective protection mechanisms are also lacking. Often times, there is not sufficient consideration of discrimination against women in post-conflict situations. Then again, gender-based discrimination perpetuates. In the process of reconciliation, these issues are not considered to be of relevance. Critics ascribe such lack of interest to masculine hegemony over the negotiation process as well as to the exclusion of women from taking part in this process or playing an efficient role in establishing rules of peace in the post-conflict period (Aoláin, 2006: 830).

Such political alienation extends to the social and economic domains as well. It prejudices women’s rights, debilitates not only women’s ability to confront violence against women, but also that of society. Against this background, critics stress that limited protection of women during and after armed conflicts, as provided by international humanitarian law, should be raised for public discussion. From their perspective, necessary amendments should be introduced into international humanitarian law so that it conforms to the current states of affairs and becomes capable of providing expedient protection to women.

Notwithstanding the fact that the above criticisms are substantial, an opposite opinion, expressed by experts of the International Committee of the Red Cross (ICRC) — the guarantor of the Geneva Conventions — states that the basic issue in continuing violence against women in and after armed conflict is not a product of ineffective international humanitarian law in particular, or international law in general. On the contrary, ICRC experts believe that legal provisions safeguarding women’s rights are in place and that the relationship between international law’s components is now more coherent and cohesive. In their opinion, the essential problem lurks in feeble — or even lack of — commitment to implement provisions by parties in armed conflicts (Lindsey, 2003: 18). The majority of these conflicts have become internal, taking place in states in which women are viewed in a traditional and inferior manner. In these states, respect of laws (both domestic and international) is usually inadequate.

ICRC experts reject that international humanitarian law be a subject for public discussion. They believe that a great deal of time and effort have been given to reach a common conviction

amongst states and stakeholders. Elaboration on international humanitarian law might now give rise to a latent desire of certain parties to revoke positive provisions currently in place, thereby stepping backwards instead of forwards. Therefore, proponents of this viewpoint insist that international humanitarian law should not be “tampered with” in order to preserve its positive features. Nevertheless, this does not mean that international humanitarian law cannot be developed by new special treaties and conventions that empower and add new dimensions (Amnesty International, 2005: 67). Parallel to, or more relevant than, the foregoing opinion is the fact that serious action must be taken to enhance the mechanisms of implementation of applicable law. Tools and mechanisms, which have until now only been available to international criminal law, are believed to be a proper approach towards achieving this goal.

In order to achieve the high-priority goal of bringing about better protection for women, especially in and after armed conflict, positive factors of the above dissenting perspectives can be built on. As such, protection of women’s rights currently safeguarded by international humanitarian law can act as a point of departure and be developed by either one of two methods: a new binding international treaty in the form of a third additional protocol to the Geneva Conventions; or an international convention on violence against women. Unlike previous conventions, the new convention should be valid in times of peace and war, to bridge the gaps highlighted in international humanitarian law and international human rights law. The new convention would also address gender-based violations in a complementary and inclusive manner. Alternatively, international principles or norms would be approved. These can take the form of a UN General Assembly resolution, or guiding principles, that aim to stop violence against women in general, as well as during and after armed conflict in particular, taking inspiration from analogous standards prepared on internally displaced persons not covered under international refugee law.

In reality, several initiatives utilising both methods have been released. A number of conventions or protocols of international character have been passed. These include the Convention on the Political Rights of Women of 1952, which entered into force 7 July 1954, CEDAW, which entered into force 3 September 1981, and the Optional Protocol to the Convention on the Elimination of Discrimination Against Women of 1999, which entered into force 22 December 2000. Additionally, the UN General Assembly adopted a number of declarations, including the Declaration on the Elimination of Discrimination Against Women of 1967, the Declaration on the Protection of Women and Children in Emergency and Armed Conflict of 1974, the Declaration on the Participation of Women in Promoting International Peace and Cooperation of 1982, and Declaration on the Elimination of Violence Against Women of 1993.*

In the pursuance of such considerable international activity on the issue of violence against women, the UN Security Council adopted Resolution 1325 at its 4213th meeting on 31 October 2000.** The first of its type, this resolution has crowned a decades-long process of relentless effort made by local and international feminist and human rights organisations and movements. It recognises the central status of women in respect of international peace and security, as well as expressing the international community’s awareness of the gravity of violence inflicted on women and serious willingness to eliminate it decisively. The resolution

* All these conventions are available on the University of Minnesota Human Rights Library website:

<http://www1.umn.edu/humanrts/>

** See <http://daccessdds.un.org/doc/UNDOC/GEN/N00/720/18/PDF/N0072018.pdf>

calls for an increased participation of women in peace negotiations, planning of refugee camps, distribution of humanitarian aid, peacekeeping operations, and reconstruction of communities tormented by armed conflicts. Moreover, the resolution urges member states to ensure increased representation of women at all decision-making levels in national, regional and international institutions, and mechanisms for the prevention, management and resolution of conflict.

The latter demand is consistent with the trend of the Beijing Conference of 1995, which confirms that: “Equality between women and men is a matter of human rights and a condition for social justice and is also a necessary and fundamental prerequisite for equality, development and peace.” (Otto, 2006: 126)

UN Security Council Resolution 1325 also encourages the UN secretary general to implement his strategic plan of action (A/49/587) calling for an increase in the participation of women at decision-making levels in conflict resolution and peace processes. In addition, it urges the secretary general to appoint more women as special representatives and envoys. The resolution further urges the secretary general to seek to expand the role and contribution of women in UN field-based operations, especially among military observers, civilian police, human rights and humanitarian personnel. It also calls on “all actors involved, when negotiating and implementing peace agreements, to adopt a gender perspective, including, inter alia: a) The special needs of women and girls during repatriation and resettlement and for rehabilitation, reintegration and post-conflict reconstruction; and b) Measures that support local women’s peace initiatives and indigenous processes for conflict resolution, and that involve women in all of the implementation mechanisms of peace agreements.”

UN Security Council Resolution 1325 is a remarkable turning point in the quest to end violence against women. In particular, the resolution adopts a vision to promote women’s participation in several spheres that contribute to ending gender-based abuses and infringements. The resolution also features new capacities, the application of which will undoubtedly curb many violations and negative practices against women. However, state parties should take the resolution seriously and implement its provisions that have, so far, not been put properly in place. (De la Vega and Nelson 2006: 437-464; Cahn, 2005: 217-291; Barrett and Little, 2003: 30-85).

FUTURE HORIZONS

Against this backdrop one might say that many international achievements have been made over past decades in the consolidation of women’s status and the abatement of gender-based violence and abuses, particularly in armed conflicts. But one must also admit that numerous corresponding failures have taken place over this period too.

The international community does not realise its failures except in armed conflicts, which effectively result in innumerable victims and abuse of vulnerable groups, including women. The situation is further worsened when armed conflict is internal and neither heeds ideal values, nor implements international law principles or respect for human rights. With women’s suffering reaching a climax, ordeals perpetuate even after armed conflict ends.

The world's memory of forcible transfer, collective displacement, the raping of women and the starvation of children fades in the intervals between one war and another, and one genocide and the next. What has been achieved is notable, but is not adequate to eliminate all forms of suffering and distress. Much waits to be done on several intertwined levels.

In the first instance, international activity should continue to support women and to eradicate gender-based violence. With the intention to empower and develop relevant international laws, such activity must be underlined in all international and regional arenas. To avoid being restricted to abstract legal frameworks, a campaign should also be launched to call for the development of mechanisms necessary to enforce valid laws; resorting to the ICC will play a central role in ending violence against women worldwide.

Secondly, the distinction between violence and abuses against women before, during and after armed conflict should cease. Such a mechanical distinction between phases appears to minimise and restrict grave violence and abuse to the period of armed conflict only. Moreover, such a separation suggests, perhaps deliberately, the elimination of violence from its root in society by ascribing its outbreak to armed conflict. It has by now been proved that increasing violence against women in armed conflict dates to the preceding phase — to a form of violence that is deeply-rooted in the given society, which practiced various forms of violence against women in peacetime, before the conflict took place. When armed conflict erupts, women's status deteriorates and violence escalates. The same situation pertains after the armed conflict ends. In short, violence against women constitutes a complete and perpetual cycle that undergoes phases and levels before, during and after armed conflict. Raised awareness of this predicament is indispensable; work should continue to devise links to develop a system of integral international laws — not a set of fragmented regulations — that will eliminate violence against women in various circumstances.

Thirdly, though important, international effort alone is no longer adequate. Side by side with international activity, individual states should also raise awareness and promote commitment by taking all necessary internal legislative, executive and judicial measures to eliminate violence against women. If not accompanied by sanctions on non-compliance, international law will not be capable of penetrating state borders and effecting enforcement. Thus it should be emphasised that states need to adapt their respective domestic legislation to be consistent with international law norms in all aspects related to violence against women. As such, women's salvation from such violence is not only an international responsibility that attempts to cross national borders. The converse is also true. States' liability will be supported by international law, which provides further external enforcement mechanisms. If domestic legislation falls short in its elimination of violence against women and does not punish offenders, and not only in armed conflict but also in peacetime, before and after the outbreak of conflict, international law will be of little use in the cessation of this cycle of violence, which will more than likely perpetuate. Importantly, pressure should be brought to bear on various states to demand that they amend their respective national legislation or promulgate necessary new regulations to address this issue, ensuring that they take all actions necessary to ensure the effective enforcement of such legislation. A state that does not neglect violence against women in peacetime will be more capable of committing to and respecting relevant international norms in wartime.

Finally, developing and enforcing internal legal structures is essential to eliminate violence against women. However, this action alone is not sufficient to produce the desired transformation.

A substantial transformation of negative and stereotypical views of women should be taken place in the societal domain. Often, violence against women is generated by such views that convey prejudices against women and afford men preferences over women. Naturally, this causes societal inaction — if not acceptance — of the abuse of women by men. Unless changed, violence against women will still be rooted in the respective cultures of several societies. To effect the desired transformation, continuing education on the values of gender equality and respect of human rights is of paramount importance.

Additionally, a substantive transformation should be introduced to target political cultures; particularly those suffering from internal armed conflicts. Mostly located in the southern hemisphere, these states are authoritarian, with political regimes that monopolise authority and power. A typical state would treat its people as subjects who are obliged to fulfil its wishes and implement its demands, not as citizens who have the right to participate and demand accountability. Discarding human security for their respective citizens, these states believe that their national security is associated with bringing about state security. Repression, though at times unapparent, is inherent in such states; it shifts from the state to society, from society to individuals, and from men to women, who are treated as inferior and made to assimilate and admit all prejudice and abuse inflicted on them.

Women's security will not be attainable except in a secure society, which cannot be established in the absence of a prevalent democratic political system. This form of political system will not be put in place without safeguarding equal and proportionate citizenship rights for both men and women. As a point of departure, a state's national security cannot be brought about but by achieving its citizens' human security. It should be highlighted that human security, both domestically and internationally, cannot be brought about except by safeguarding women's security; not because women are a core unit of society's sustainability, but because they are intrinsically human beings who have a safeguarded human right to a decent life and dignity.

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