

THE PROTECTION OF WOMEN DURING ARMED CONFLICTS

Cosmin IVANCIU

„Henri Coandă” Air Force Academy, Braşov, Romania (cosmin.ivanciu@afahc.ro)

DOI: 10.19062/2247-3173.2016.18.2.12

Abstract: *Following the development of the international life during the last decades, major changes occurred within the structure of the armed conflict itself. Nowadays we do not speak out about international armed conflicts only, but non-international armed conflicts or asymmetric ones, as well. However, there is a constant within this amalgam of changes and that is the status of woman, especially the status of woman as one of the most affected categories of civilians during an armed conflict.*

In Bosnia, Rwanda, Sierra Leone or Congo rape, sexual slavery, constrained prostitution, constrained insemination, as well as many other forms of sexual violence were literally used as methods of war. Therefore there's nothing unexpected in the efforts of the international community to ameliorate and to reduce the number of victims within this category of population. The aim of this paper is to highlight the norms of protection women should be granted with during an armed conflict, as part of the civilian population and taking into account their special needs, also.

Keywords: *international humanitarian law, women, special protection, combatant, civilian.*

Motto:

“[...] it has now probably become more dangerous to be a woman than a soldier in an armed conflict)”^[1]

(Patrick Cammart, former commander of the United Nations Observer Mission in the Democratic Republic of the Congo – MONUC)

1. INTRODUCTION

Alongside history, orders to spare the enemy who begs for mercy, to help women in danger, to keep ones made promises, to prove a humanitarian and generous behavior have crossed the boundaries of a specific timeframe in history or of a certain social context. The idea that the chivalry asks soldiers to behave in a civilized manner is a durable and long-lasting legacy^[2], even if for the nowadays fighters the concept of chivalry may be a romantic, idealistic and obsolete notion.

^[1] Statement belonging to Patrick Cammart, former commander of the United Nations Observer Mission in the Democratic Republic of the Congo – MONUC, issued with the occasion of the UN Security Council debates to adopt the resolution no. 1820/2008 – *Women, peace and security*. Available at: <http://www.refworld.org/cgi-bin/texis/vtx/rwmain/opendocpdf.pdf?reldoc=y&docid=486248912> (last accessed on 19 April 2016).

^[2] Theodor Meron: *Bloody Constraint: War and Chivalry in Shakespeare*, New York, Oxford University Press, 1998, p. 118.

In time of armed conflict, women will have to face the same tides, representing infringements of international humanitarian law as civilian population in its whole: torture, summary executions and abusive arrests, forced transfers, taking hostages, threats and intimidations. Beside those women will have to face, also, gender infringements, such as rape, forced prostitution, sexual slavery, forced inseminations. Together with their children women represent the biggest percentage of refugees or transferred population. Having their husbands far from the family, many times engaged in the armed conflict, the social status of a woman is frequently changing. Women will take upon themselves all responsibilities related to taking care of children and elders, becoming the sole and the last keeper of the unity, harmony and identity of a family. In such matters, they become vulnerable and, in case of an armed conflict, the death-rate within the pale of women is alarmingly increasing.

It's estimated that, since 1990, at global scale, from all deaths related to the armed conflicts, 90% are civilians and 80% of this percentage is represented by women and children.^[3]

In all armed conflicts, women have suffered from the grave breaches of human rights law and international humanitarian law. They were victims of all forms of sexual violence, in a sporadic and incontrollable manner because of the carelessness of commanders or chiefs of armed groups. However these acts of barbarism occur, also, in a continual and methodic manner. In certain situations women become real targets for those seeking to humiliate and to destroy entire communities by using these atrocities. Women are victims of sexual aggression because the assaulters aim to destroy their mental and physical integrity. Usually, women are aggressed in public in an inhuman attempt to exhibit the incapacity of the male part of a group to protect them. Women are, also, victims because they represent the future of the human resource of the group they belong to. That's why acts like mutilation of the genital organs or forced inseminations are widespread, the attackers pursuing partial or total destruction of a nation, ethnic or religious group. Perpetrated during an armed conflict or in time of peace these acts represent a crime of genocide.

In the post-conflict period women continue to suffer because of sexual aggressions they endured, but, in some cultures, the assaults are coming from the members of the group they are belonging to. In time of armed conflict or shortly after its ending, with husbands involved in conflict or killed in action, the status of women is dramatically altered and they, usually, become the only support for their families or, on the contrary, they are cast out because of the sexual aggression they need to confront. Being the victim of a sexual aggression is equivalent with extreme consequences for the victim, consequences like ruling out from community public life, oppressions or losing the marital status judging, in some cultures, that the victims dishonored the family and the group they reside in^[4].

2. SPECIAL PROTECTION OF WOMEN IN INTERNATIONAL HUMANITARIAN LAW

International humanitarian law provides women, in time of armed conflict, with the same protection men are entitled to, disregarding if they are civilians or combatants. The

^[3] Olara A. Otunu: *Special comment on children and security, Forum du desarmement*, no. 3, United Nations Institute for Disarmament Research, Geneva, 2002, pp. 3-4.

^[4] Claire de Than, Edwin Shorts: *International criminal law and human rights*, Thomson, Sweet&Maxwell, 2003, p. 347.

principle of indiscrimination is statutory in the texts of the Geneva Conventions (1949) and the Additional Protocols to the Geneva Conventions (1977).

For that purpose, article 27 of the fourth Geneva Convention stipulates that “protected persons are entitled, in all circumstances, to respect for their persons, their honor, their family rights, their religious convictions and practices, and their manners and customs. They shall at all times be humanely treated, and shall be protected especially against all acts of violence or threats thereof and against insults and public curiosity”^[5]. On the same line any differentiation based on sex, color, language, religion, race, political opinion, national or social origins, level of wealth or any other similar criteria is strictly forbidden^[6].

At the same time, taking into account the physical and psychological particularities of women, the authors of the Geneva Conventions and their Additional Protocols have entitled women with a special protection condition. Rules that specify and impose respect for women special needs can be found in all four Geneva Conventions and their Additional Protocols:

- *Geneva Convention I for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field* and the *Geneva Convention II for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea*, in their article 12, par. 4 (similar in both Conventions) states that “women shall be treated with all consideration due to their sex”^[7];

- Geneva Convention III stipulates in article 14, par. 2 that “women shall be treated with all the regard due to their sex and shall in all cases benefit by treatment as favorable as that granted to men”^[8];

- Geneva Convention IV in its article 27, par. 2 entitles women with special protection “against any attack on their honor, in particular against rape, enforced prostitution, or any form of indecent assault”^[9];

- Additional Protocol I to the Geneva Conventions relating to the protection of the victims of international armed conflicts bears, also, special provisions with a view to protect women in article 76, par. 1: “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”^[10];

- Additional Protocol II to the Geneva Conventions doesn't encompass a particular rule that requires respect for women special needs, but requires, as general rule for everybody, the abstention from violent behavior against life, physical and mental well-being.

The majority of juridical specific norms approach the status of women from two points of view: as component of civilian population, respectively the status of women while imprisoned, especially flashing out security (mainly incriminating the acts of sexual

^[5] *Convention (IV) relative to the Protection of Civilians Persons in Time of War*, Geneva, 12 August 1949. Available at:

<https://www.icrc.org/ihl.nsf/INTRO/380?OpenDocument> (last accessed on 19 April 2016).

^[6] *Idem* [5].

^[7] *Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea*, Geneva, 12 August 1949. Available at:

<https://www.icrc.org/ihl.nsf/INTRO/370?OpenDocument> (last accessed on 19 April 2016).

^[8] *Convention (III) relative to the Treatment of Prisoners of War*, Geneva, 12 August 1949. Available at:

<https://www.icrc.org/ihl.nsf/INTRO/375?OpenDocument> (last accessed on 19 April 2016).

^[9] *Idem* [5], art. 27, par. 2 (last accessed on 20 April 2016).

^[10] *Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I)*, 8 June 1977. Available at:

<https://www.icrc.org/ihl.nsf/INTRO/470?OpenDocument> (last accessed on 20 April 2016).

violence) and livelihood aspects (ensuring a minimum of decency for women's life – shelter, food, clothes, etc), as well as provisions regarding the mental and physical health, juridical protection, etc.

Therefore, article 12, par. 4, common to Geneva Conventions I and II, designates the fundamental principle in accordance with, in time of armed conflict, women shall receive and be treated with all considerations due to their sex.

From personal security point of view, articles 14 and 15 of the fourth Geneva Conventions specify that the parties to an armed conflict may create hospital and security areas and localities, designed to shelter civilian population from the effects of the armed conflict, especially pregnant women and mothers with children under age of seven years old. Some provisions sight out the protection of minimum life conditions for the civilian population, especially for the most vulnerable categories in time of armed conflict.

Therefore, article 70 of the Additional Protocol I targets the situation when civilian population is ill provided, stage when humanitarian and impartial assistance actions are required. When allocating these humanitarian aids pregnant women and nursing mothers will receive them with priority. Also, both Parties to an armed conflict shall grant right of way to any transport of essential nourishment, clothing and tonics for children under the age of fifteen, pregnant women and maternity cases.^[11]

From the health protection point of view, many provisions from Geneva Convention IV and Additional Protocol I entitle women with a privileged state of protection because of their physical vulnerability, in certain situations. Hereby, pregnant women, beside wounded and invalid personnel are the subjects of a special protection, in accordance with article 16 of the fourth Geneva Convention. The next article of the same convention asks the belligerents to work together in order to reach an agreement facilitating the evacuation of wounded persons, invalids, elders, children and nursing mothers from an encircled and besieged area. Another special measure asks the occupying power not to limit in any way any actions related to nourishing, medical care and protection against all effects of armed conflict, actions that are deployed in favor of children under the age of seven, pregnant women or nursing mothers^[12]. Aiming to highlight the special needs of pregnant women and mothers of new-born babies, these categories of population have been, intentionally, included in the category of wounded and sick personnel^[13].

As a result from this entirety of provisions, not mentioning again the specific rules that protect women, generally speaking and some vulnerable categories among them, we can conclude that the Geneva Conventions and their Additional Protocols harbor the situation of maternity and the familial unity.

There are, also, specific rules concerning the norms of protections for imprisoned women, in a state of detention or inmates for reasons related to the armed conflict.

Thus, it is forbidden any form of discrimination, women prisoners of war being treated with all consideration due to their sex and having granted in all cases the same treatment “as favorable as that granted to men”^[14].

From quarter and ensuring the livelihood point of view women prisoners of war shall be lodged in places that are separate from the men and they will be monitored by women guards^[15]. Wishing to eliminate any indecent assault, the Geneva Conventions imposed

^[11] *Idem [5]*, art. 23, para. 1 (last accessed on 19 April 2016).

^[12] *Idem [5]*, art. 50, para. 5 (last accessed on 19 April 2016).

^[13] *Idem [10]*, art. 8, para. 1 (last accessed on 20 April 2016).

^[14] *Idem [8]*, art. 14, para. 2 (last accessed on 19 April 2016).

^[15] *Idem [10]*, art. 75, para. 5 (last accessed on 20 April 2016).

the rule that the search of a women prisoner of war shall be performed, also, by a woman^[16].

In the field of health, medical care and hygiene, specific provisions can be found within the texts of the third and the fourth Geneva Conventions. Inside of prisoners of war camps the detaining power is bounded to ensure sanitary installations (women will be provided with separate installations than men) and to take any necessary measures in order to prevent epidemics^[17]. In order to ensure an optimal state of health for pregnant women, nursing mothers and children under the age of fifteen they will be provided with additional food^[18].

We take into account in these cases about an entirety of norms aiming to ensure, on one hand a minimum standard demanded by a civilized livelihood considering the exceptional circumstances related to the armed conflict and, on the other hand the provision that some vulnerable categories of women will survive the effects of hostilities.

A special regime is applied from the point of view of juridical protection of women. Therefore, a woman prisoner of war cannot be convicted to a more severe punishment than any other man or woman belonging to the armed forces of the detainee power, punished for a similar crime^[19]. Also, aiming to protect the familial unity, death penalty shall be avoided against expectant mothers or those with dependent children^[20]. It can be found out that some of these norms became norms of customary international law, as is, for an example, the rule of women internees shall be detained separately from men.

Focusing on what women suffered during armed conflicts, United Nations Security Council adopted Resolution 1325, on October 2000. This one aims to entitle women with more decisional power in conflict prevention, conflict mediation or during the peace building process, all these being an add-on to the efforts of reducing the sex-based violence.

Following the enactment of Resolution 1325, the Romanian Ministry of National Defence issued a Plan for implementing UN Security Council Resolution 1325 and its related resolutions^[21].

The main objectives of the Plan are increasing the number of women involved in military operations abroad, boosting the number of women involved in the decision making process and developing cooperation between ministries, non-governmental organizations and civil society representatives.

Another organism concerned about the protection of women in time of armed conflict is International Committee of the Red Cross, as independent organism that aims, generally speaking, the protection of victims of the armed conflicts, both international and non-international. International Committee of the Red Cross keeps its policy of remaining an independent organism from all political ideologies related to an armed conflict, aiming the protection of women from the effects of hostilities.

Therefore, in Sri Lanka and Afghanistan, International Committee of the Red Cross developed small-scale programs in order to provide assistance and a possible source of income for women. Concerning the internee women, International Committee of the Red Cross aims, by visiting the detaining facilities, that those women are protected from

^[16] *Idem* [5], art. 97, para. 4 (last accessed on 22 April 2016).

^[17] *Idem* [8], art. 29, paras. 1-2 (last accessed on 22 April 2016).

^[18] *Idem* [5], art. 89, para. 5 (last accessed on 23 April 2016).

^[19] *Idem* [8], art. 88, paras. 2-3 (last accessed on 23 April 2016).

^[20] *Idem* [10], art 76, para. 3 (last accessed on 20 April 2016).

^[21] Plan available at: <http://dmru.mapn.ro/doc/Plan-final.pdf> (last accessed on 18 April 2016).

inhumane treatments, are guarded by women guards, are detained separately from men and have the opportunity of communicating with their families^[22].

3. INCRIMINATORY NORMS FOR SEXUAL VIOLENCE

We have to notice that the indictment of the acts of sexual violence is relatively recent. Of course, the four Geneva Conventions and their Additional Protocols carry provisions that condemn sexual violence. Thus, article 27 of the fourth Geneva Convention stipulates that women shall be protected against any attack to their honor, against rape, forced prostitution and any other kind of indecent act.

Rightfully, the interpreters of the Geneva Conventions emphasized that the crimes of sexual violence do not take up the well-deserved place they should have in the text of all four conventions. Even if acts of sexual violence are remembered within the substance of the Conventions, they do not fall under the category of serious infringements of international humanitarian law and human rights law. Moreover, depicting the acts of sexual violence as *indecent behavior* or *indecent assault* diminishes, somehow, the severity of these crimes.

Both tactical and strategic tool, rape has been, deliberately, used as a real weapon in all armed conflicts. In time of armed conflict or in case of internal disturbances, rape was used to conquer, hunt or dominate women and the ethnic groups they were belonging to. Gender related crime, rape may, also, be used as a tool to gather information, to punish, terrorize and humiliate. It's a universal weapon that allows those using it to peel away the dignity of their victims and to destroy any feeling of honor. It's a weapon used to spread terror and destruction amidst entire populations.

Even if acts of sexual violence have been perpetrated during World War II, the statute of the International Military Tribunal at Nurnberg or that of the International Military Tribunal at Tokyo did not encompass provisions on sexual violence as a crime.

The tragic events that shook the area of former Yugoslavia and, furthermore, the country of Rwanda, events that involved a pervasive violence against women, led to an unprecedented evolution from the point of view of juridical norms. The statutes of the two criminal courts incriminated the acts of sexual violence. Taking into account the specific aspects of each conflict, these crimes are considered and judged as crimes against humanity or crimes of war. The Statute of the International Criminal Tribunal for former Yugoslavia incriminates the crime of rape as crime against humanity^[23]. In a similar manner, rape in time of armed conflict is considered a crime against humanity by the Statute of the International Criminal Tribunal for Rwanda, too^[24].

A milestone on the way of incriminating these crimes is considered to be the enactment of the Rome Statute, from 17th of July 1998 and the building-up of the International Criminal Court, whose jurisdictional competency is to judge crimes of genocide, crimes of war and crimes against humanity. For the first time, crimes of sexual

^[22] U. C. Jha: *International humanitarian law. The laws of war*, Vij Multimedia, New Delhi, 2011, p. 177.

^[23] *Statute of the International Criminal Tribunal for the former Yugoslavia*, art. 5, lit. g). Available at: http://www.icty.org/x/file/Legal%20Library/Statute/statute_sept08_en.pdf (last accessed on 17 April 2016).

^[24] *Statute of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan citizens responsible for genocide and other such violations committed in the territory of neighboring States, between 1 January 1994 and 31 December 1994*, art. 3, lit. g). Available at: <https://www.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=08BC7CE5D944A8E1C12563FB0048726F> (last accessed on 17 April 2016).

violence are defined, in a clean-cut manner, as crime against humanity or crimes of war. The fall under one category or another is judged on case-by-case basis.

Therefore, in accordance with the Rome Statute of the International Criminal Court, it is considered a crime against humanity “any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack: [...] rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity”^[25], all these acts being considered “incompatible with the dignity and the value of human being, threatening individual and international community well-being”^[26].

The Rome Statute has a considerable contribution to the process of incriminating sexual violence and, it worth mentioning the broadening of the concept in accordance with these acts were considered simple acts of indecent assaults.

CONCLUSIONS

Relatively recent, the focus, granted by the international community to women protection in case of armed conflict, was extensively enhanced. There are, however, many obstacles in achieving the objectives, as in many other fields of international humanitarian law. Despite some major changes regarding the attitude of international humanitarian law towards women, they remain one of the most vulnerable categories of civilian population that suffer the most for reasons related to the armed conflict.

On one hand, checking up the existing juridical framework, it can be noticed that international humanitarian law possesses the theoretical necessary tools designed to protect women from any acts of violence, related to the armed conflict. On the other hand, when applied in the field, these tools face multiple challenges. For an example, how UN or ICRC employees will be able to provide support for the population affected by an armed conflict if a specific country doesn't grant them access on its territory or if they are asked to leave its territory before accomplishing their mandate?

At the same time, taking into consideration that “you're going to learn that one of the most brutal things in the world is your average nineteen-years-old [...] boy”^[27], we conclude that a shift must be operated in the mentality of a combatant that is fighting a conflict. This shift concerns the accountability and the cognizance augmentation in relation with the population that doesn't take part, directly, in the hostilities, at the same time with strict, punitive measures against any infringements of international provisions of protection.

REFERENCES

- [1] Jha, U. C., *International humanitarian law. The laws of war*, Vij Multimedia Publishing House, New Delhi, 2011;
- [2] Meron, Theodor, *Bloody Constraint: War and Chivalry in Shakespeare*, Oxford University Press, New York, 1998;
- [3] Otunu, Olara, *Special comment on children and security*, *Forum du desarmement*, no. 3, United Nations Institute for Disarmament Research, Geneva, 2002;
- [4] de Than, Claire, Shorts, Edwin, *International criminal law and human rights*, Sweet&Maxwell Publishing House, Thomson, 2003;

^[25] *Rome statute of the International Criminal Court*, art. 7, par. 1, lit. g). Available at: http://www.icc-cpi.int/nr/rdonlyres/ea9aef7-5752-4f84-be94-0a655eb30e16/0/rome_statute_english.pdf (last accessed on 15 April 2016).

^[26] Eugen E. Popescu: *Drept internațional umanitar*, Universul Juridic, București, 2011, p. 101.

^[27] Gary D. Solis: *The law of armed conflict. International humanitarian law in war*, Cambridge University Press, Cambridge, 2010, p. 27.

- [5] Popescu, Eugen, *Drept internațional umanitar*, Universul Juridic Publishing House, Bucharest, 2011;
- [6] Solis, Gary, *The law of armed conflict. International humanitarian law in war*, Cambridge University Press, Cambridge, 2010
- [7] *** International Committee of the Red Cross. *Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea*, Geneva, 12 August 1949. Available at <https://www.icrc.org/ihl.nsf/INTRO/370?OpenDocument>, accessed on 19 April 2016;
- [8] *** International Committee of the Red Cross. *Convention (III) relative to the Treatment of Prisoners of War*, Geneva, 12 August 1949. Available at <https://www.icrc.org/ihl.nsf/INTRO/375?OpenDocument>, accessed on 19 April 2016;
- [9] *** International Committee of the Red Cross. *Convention (IV) relative to the Protection of Civilians Persons in Time of War*, Geneva, 12 August 1949. Available at <https://www.icrc.org/ihl.nsf/INTRO/380?OpenDocument>, accessed on 19 April 2016;
- [10] *** International Committee of the Red Cross. *Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I)*, 8 June 1977. Available at <https://www.icrc.org/ihl.nsf/INTRO/470?OpenDocument>, accessed on 20 April 2016;
- [11] *** *Statute of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan citizens responsible for genocide and other such violations committed in the territory of neighboring States, between 1 January 1994 and 31 December 1994*. Available at <https://www.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=08BC7CE5D944A8E1C12563FB0048726F>, accessed on 17 April 2016;
- [12] *** *Statute of the International Criminal Tribunal for the former Yugoslavia*. Available at http://www.icty.org/x/file/Legal%20Library/Statute/statute_sept08_en.pdf, accessed on 17 April 2016;
- [13] *** *Rome statute of the International Criminal Court*. Available at http://www.icc-cpi.int/nr/rdonlyres/ea9aef7-5752-4f84-be94-0a655eb30e16/0/rome_statute_english.pdf, accessed on 15 April 2016.