

Women in times of war: vulnerabilities and means of protection

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ABSTRACT: This study aims to analyze the condition of women in the context of armed conflict, taking as methodological reference a diachronic approach, in a qualitative analysis according to the descriptive and exploratory procedure. War is a phenomenon that has been part of the daily life of human groups or States since time immemorial. Violence in war appears as a phenomenon inherent to human nature, based on the assertion of power, territorial conquest, plunder, submission or the achievement of hegemony and/or destruction. War and the history of war belong to the world of men. The armed conflict is one of the activities where the difference between the sexes and their respective roles is best expressed. In such a context, all femininity means weakness. In the West, the recognition of the need for the protection of women in the context of an armed conflict has been late to emerge, and appears timidly in the first quarter of the 20th century with the Geneva Conventions and, later, with the development of International Humanitarian Law.

Keywords: War; Gender-Based Violence; Discrimination; International Law; International Humanitarian Law.

Mulleres en tempos de guerra: vulnerabilidades e medios de protección

RESUME: Este estudo pretende analizar a condición da muller no contexto dos conflitos armados, tomando como referencia metodolóxica un enfoque diacrónico, nun análise cualitativo segundo o procedemento descritivo e exploratorio. A guerra é un fenómeno que forma parte da vida cotiá dos grupos humanos ou Estados dende tempos inmemoriais. A violencia na guerra aparece como un fenómeno inherente á natureza humana, baseado na afirmación do poder, a conquista territorial, o saqueo, a submisión ou a consecución da hexemonía e/ou destrución. A guerra e a historia da guerra pertencen ao mundo dos homes. O conflito armado é unha das actividades onde mellor se expresa a diferenza entre sexos e os seus respectivos roles. Neste

contexto, toda feminidade significa debilidade. En Occidente, o recoñecemento da necesidade de protexer ás mulleres no contexto dun conflito armado tardou en xurdir, aparecendo tímidamente no primeiro cuarto do século XX cos Convenios de Xenebra e, posteriormente, co desenvolvemento do Dereito Internacional Humanitaria.

Palabras chave: Guerra; violencia de xénero; Discriminación; Dereito internacional; Dereito humano internacional.

Mujeres en tiempos de guerra: vulnerabilidades y medios de protección

RESUMEN: Este estudio pretende analizar la condición de la mujer en el contexto de los conflictos armados, tomando como referencia metodológica un enfoque diacrónico, en un estudio cualitativo según el procedimiento descriptivo y exploratorio. La guerra es un fenómeno que forma parte de la vida cotidiana de los grupos humanos o de los Estados desde tiempos inmemoriales. La violencia en la guerra aparece como un fenómeno inherente a la naturaleza humana, basado en la afirmación del poder, la conquista territorial, el saqueo, el sometimiento o el logro de la hegemonía y/o la destrucción. La guerra y la historia de la guerra pertenecen al mundo de los hombres. El conflicto armado es una de las actividades donde mejor se expresa la diferencia entre los sexos y sus respectivos papeles. En tal contexto, toda feminidad significa debilidade. En Occidente, el reconocimiento de la necesidad de protección de la mujer en el contexto de un conflicto armado ha tardado en surgir, y aparece tímidamente en el primer cuarto del siglo XX con las Convenciones de Ginebra y, más tarde, con el desarrollo del Derecho Internacional Humanitario.

Palabras clave: Guerra; Violencia de género; Discriminación; Derecho internacional; Derecho internacional humanitario.

1. Introduction

Violence against women in armed conflict has very long roots and equally old sources. Indeed, an already ancient historical trail points to the objectification of women, in the form of spoils of war, victor's prize or instrument of revenge. In the context of armed conflict, women, when attacked, are treated with the utmost inhumanity, often being stripped of their personality and used as a means of demoralizing the combatants who are, for the most part, men. This panorama is worsen by two factors: firstly, women's lesser defensive capacity, at least with the classic means of combat; and secondly, women's lesser mobility, due to the fact that they are left with the task of looking after children or the elderly, while the men go off to war. In a situation of almost total vulnerability, without weapons and military defense, women suffer the harsh treatment inflicted by the enemy, who often applies inhuman constraints on them (acts of rape, kidnapping, torture, looting).

The history of women and the violence they have suffered throughout history is complex. Firstly, because of the scarcity of the written and archaeological sources that exist on this sub-

ject. The domination of the writing of history by men throughout time and the almost exclusive representation of male participation in war is a well-known aspect. This fact women to oblivion and silence in the sources that are related to armed conflicts. Indeed, some exceptions are noted, e. g. Joan of Arc, the French heroine who fought the English in the Hundred Years' War; or the Portuguese Deuladeu Martins who took command of the Portuguese army against the Castilians, in the second half of the 14th century, or even Antónia Rodrigues who, in the 16th century, was the “terror of the Moors” in the Portuguese square of Mazagão, today El Jadida (Morocco) (Mariano, 2019). Secondly, the existing cultural and civilizational differences, synchronic and diachronic, assign different roles to women. Writing about the small and original populations of Africa or the large cities of the western Mediterranean in Greek-Roman antiquity or the Middle Ages and Renaissance is not the same as writing about the status of women in the contemporary era. The need to know the forms of social organization founded on the family (and its concept), kinship, sexuality, love, the relationship between mothers and children, wives and husbands, and marriage, among others, is not a matter that is immediately attainable. Hence, to base gender violence on discrimination (segregation) against women throughout history is a simplistic reading of the issue (Smith, 2020).

This study begins by recalling the historical line mentioned above (1.), complemented by an analysis of international politics on the evolving context of modern armed conflicts (2.). The final section is an analysis on the creation and on the contribution of International Humanitarian Law (and its practice) (3.), which make it possible to prevent violence and protect the integrity of women in the event of armed conflict. The methodology used in this contribution is qualitative, and takes the form of a descriptive approach combined with the exploratory method.

2. The silences of History: Women in the context of war

Despite the historical, civilizational and cultural changes in the role of women in and out of conflict, and the ways in which they are involved (some of which in their specificity may seem exclusive to a certain era) and what has changed over time, their constants remain similar to each other, even if in different configurations, and may also be discussed from different perspectives. At this point we should therefore begin by highlighting the conception and role of women in civil conflicts or conflicts between peoples, tribes or political factions in the *ante quo* period to the modern era. In the history of philosophical thought, scholars expressed similar idea on women, using different images, representing women as inferior, incomplete or even mutilated, too sensitive, victim of their own nature or even guilty of it, and therefore dominated by the rationality of man (Collin, Pisier & Varikas, 2011).

In classical Greek antiquity, man was considered to be the only political being. Women had a different social status. The limits placed on women derived from their function, duties and social capacities – caring for the home, giving birth – as well as the risks that any disobedience could entail. For Plato, the woman was an intellectually inferior being to the man, so she owed obedience to him and needed to cultivate moderation, discretion and temperance, not having political and civic rights. In general, women were

doubly removed from the masculine reality: on a first level she lived separated from the men of the same house; on a second, broader level, she was completely deprived of the activities of the polis, not being able to exercise any political function in it. (...) In the framework of the polis nothing connected the woman to politics, to citizenship, to the public stage (Alves-Jesus, 2015, p. 239 and p. 240).¹

From classical antiquity to the present day, by custom, norm or traditional practice, there are various forms of violence against women, particularly in the context of armed conflict. Indeed, war has long been one of the main causes of the violation of women's rights. In the absence of norms providing for the civil rights and protection of women, violence against women involved a panoply of experiences in the context of war – sexual slavery, female infanticide, war rape, abduction, and trafficking, reproductive coercion, among many others – repeatedly used as an instrument of psychological coercion against the enemy, and often justified by political or religious goals (Römer, 2009; Vaz, 2002).

In the Middle Ages, the compilation of Roman law (*Corpus Juris Civilis*, 6th century A.D.) and the figure of the *pater familias* (head of the household), with responsibility over the actions of the woman and her children, led to a restriction of female freedom and assertion (Phang, 2001). In the 16th century, the French Parliament, in 1593, decreed the removal of women from public functions. Thus, the role of women was restricted to the home and the education of children (Duby & Perrot, 1994).

In the process of creative appropriation of classical forms and values in the new Renaissance context of the 16th century, the adoption and overcoming of classical forms and values translated into the maintenance of the representation of the woman as mother and wife (private domain). The new man, the modern man, was a man who was being built in the ideal proportion of the human form (see for example the Vitruvian man by Leonardo da Vinci).

In the 17th century, Western societies only recognized one sex model, the masculine. Woman was understood as an inverted man, an inferior being, and therefore a less developed subject on the scale of speculative perfection, hence her continued withdrawal from activities of political and military (“public”) responsibility.

The theories of the nature and legal capacity of women began to take shape in the final centuries of the Modern Age, particularly in the writings of Jean-Jacques Rousseau.

Jean-Jacques Rousseau, Enlightenment philosopher and writer of one of the greatest treatises on pedagogy – *Emile or On Education* –, is clear when he states:

A woman's education must therefore be planned in relation to man. To be pleasing in his sight, to win his respect and love, to train him in childhood, to tend him in manhood, to counsel and console, to make his life pleasant and happy, these are the duties of woman for all time, and this is what she should be taught while she is young (Rousseau, 2011).

1 Our translation of the original: duplamente afastada da realidade masculina: num primeiro plano vivia separada dos homens da mesma casa; num segundo plano, mais largo, via-se completamente privada das actividades da pólis, não podendo de modo algum exercer nela qualquer função política. (...) No enquadramento da pólis nada ligava a mulher à política, à cidadania, ao palco público (Alves-Jesus, 2015, p. 239 e p. 240).

In parallel, due to the role that is traditionally and socially reserved to women (family tasks) women hold a weak citizenship. They can neither defend their rights nor meddle in political affairs. From the perspective of Immanuel Kant, “female virtues are those connected with the powers of the beautiful and a well-functioning home: sensitivity, patience, and financial prudence”, and consequently women have been assumed to have a “natural inclination” to be morally responsible for their actions in the domestic sphere (Varden, 2015, p. 13; see also Zirbel, 2011). For most of the political theorists, the status of women in society until the 19th century was not a central concern. The development of liberal values of freedom, consent and rights promoted the general idea of female emancipation and women’s suffrage, as shows the suffragist movement since the second half of the 19th century (Rémond, 2017). However, most women were encouraged to be not interested in politics and to care whether they have the vote or not. However, the structure of bourgeois society based on individual property and money confirmed the superiority of the man who works, reads and writes, and holds economic power. The superiority of the male role in the public and private space remained for much longer. This includes the woman’s place linked to armed conflicts. Women were not supposed not to wage war, as a consequence of the belief that they are naturally fragile (Barbosa, 2009, p. 63). On the other hand, warfare activities, until the end of the 19th century and the beginning of the 20th century, took on the character of an essentially corporal and individual struggle, and as such the differentiation of physical capacity between men and women sustained the gender distinction.

3. Social and political context of modern armed conflicts

While assuming a growing role in new social spheres, notably in the industrialized world of work, women continue to carry, in the last decades of the 19th century (and indeed to this day), the task of caring for children, the elderly, and dealing with other family matters. Moreover, women continue to be specifically targeted in the case of armed conflicts, often associated with old and new types of abuse and exploitation.

It is important to put these issues into their respective context, particularly with regard to how the very concept of armed conflict has evolved, and the treatment of women during a war. In parallel to political ideas about a nation state providing social welfare, new types of armed conflicts appeared at the end of the 19th century, with more deadly weapons and explosive devices, as well as new ethical and disciplinary principles in armies, with the most notable initiatives in Russia under Czar Alexander III, to humanize combat (Crawford & Pert, 2020, p. 10). This may be difficult to accept, at a time when the Russia of the 2020s (and of even earlier years) practices a series of warlike onslaughts in an abusive manner. But historically and legally, Russia was the pioneer, with the diplomat Friedrich Martens, who contributed decisively to humanizing the rules of modern warfare. In Russia and elsewhere, a new or renewed chivalry ideal was associated with this “civilizing vision”, which, strictly speaking, was perfectly hypocritical with regard to women. Armed conflicts were a man’s thing, and women were therefore only required to have an exemplary ability to nurse, cuddle and cure the combatants and, basically, look after the house during the war.

Few, if any, specific norms were provided for the effects of armed conflict on women. In the United States, the “Lieber Code” (Instructions for the Government of Armies of the United States in the Field, of 24 April 1863), only mentions, in article 44, the severe punishment of rape committed by soldiers of the United States Army (ICRC, s/d):

All wanton violence committed against persons in the invaded country, all destruction of property not commanded by the authorized officer, all robbery, all pillage or sacking, even after taking a place by main force, all rape, wounding, maiming, or killing of such inhabitants, are prohibited under the penalty of death, or such other severe punishment as may seem adequate for the gravity of the offense. A soldier, officer or private, in the act of committing such violence, and disobeying a superior ordering him to abstain from it, may be lawfully killed on the spot by such superior (Lieber Code, art. 44).

Thus, on the initiative of President Abraham Lincoln, the United States had already ensured, before the Geneva Convention of 1864, a disciplinary sanction of a military nature for acts committed against women in armed conflict. Women were still traditionally considered in many countries – most of them, in fact – to be the “spoils of war”, and persons whom the victors in war could freely dispose of. The Geneva Convention of 1864 actually made no mention of women. That was not its purpose. However, it does mention in its Article 5 that “the inhabitants of the country, who come to the aid of the wounded, shall be respected and shall remain free”. It is a minimum. About this minimum, one must read between the lines to discover the woman in that reference. This woman who increasingly accompanied the medical services on the battlefields, or improvised relief, like the many women who accompanied Henry Dunant himself in the long days following the Battle of Solferino, the famous battle (or carnage) that inspired its author to propose the Geneva Convention and create the committee that would become the Red Cross (Dunant, 2016).

However, the First World War constitutes a decisive turning point, in political terms. It was undoubtedly the moment when the idea of nobility or military chivalry came to an end, a concept which had already been severely damaged by armed conflicts at the end of the 19th century, such as the Commune of Paris (1871) in Europe, and the massacres of the Boxer War (1900) in China. In a new way, women participated in a more and more “organized” armed conflict, especially in the rearguard, in logistics and in medical services. This involvement forced the classic law of war, made by men for men, to pay once again minimal attention to the situation of women as combatants. Thus, a decade after the end of World War I, in 1929, the Geneva Convention on Prisoners of War states: “Prisoners of war have the right to respect for their persons and honor. Women shall be treated with all consideration due to their sex.” (emphasis added). However, little or nothing will change, in reality, and the influence of the suffragettes in the humanitarian field or as concerns armed conflicts will be as limited as in the political society (or even more). It is recalled that a country like France will only grant the right to vote to women in 1944. In Switzerland’s case, it will not be until 1959, and in a limited way.

The Second World War represented a change in perspective on the impact of armed conflict on women, and therefore the most important step in this evolution of the political context. Three aspects contribute to this. First, the involvement of women in armies becomes more

systemic, namely in the Soviet Union Army (in the German Army too, to a lesser extent and for different reasons) (Alexievich, 2017). Secondly, there is greater media coverage of the social situations experienced during a war, and an awareness of humanitarian issues. We recall the attention given to the special victimization of women in the war in the Pacific. Korean women (for the most part) were particularly targeted by Japanese troops, treated as “comfort women”, enslaved and blatantly sexually exploited. Even so, this awareness-raising situation was far from giving rise to normative reforms. The same could be said of the several millions of women who were victims of the Shoah, tortured and killed at the hands of German army soldiers. Thirdly, immediately after the Second World War, the question of refugees arose, and they were mainly refugees (mostly women and children). Although they were undoubtedly a step forward at the time, the rules on refugees nevertheless had limited effect and are still considered to be insufficient to protect women.

The Second World War was therefore both a moment of awareness and the start of a limitation of the military power during wars, and mainly of its impact on civilian populations, especially women. Technology, so praised at the beginning of the 20th century, now seems to be the engine of an exponential increase in brutality and, to call it by its name, barbarity. Acids put into the bowels or the vagina (it happened), the use of the more varied chemicals, electric shocks, the most complete battery of experiments seems to be at the disposal of the victor, disposing of the body of the vanquished. Technology seems to satisfy the “animality” present in each one, the one that Vladimir Jankélévitch describes so well as “le Mal” (Jankélévitch, 1947). Technology, again, rather than serving humanity, covers up or justifies more cruelty and violent actions, and this trait seems to be aggravated by the characteristics of the most recent armed conflicts.

As for the new forms of armed conflicts, we can highlight three factors that tend to worsen the treatment of women. First, a factor linked to the multiplication of armed conflicts of a non-international nature (typically, civil wars). These conflicts do not always involve organized and disciplined armies. The examples of Rwanda and Sierra Leone in the 1990s are paradigmatic. In these contexts, many “ordinary” crimes are committed in an opportunistic manner, during the armed conflict, and these crimes tend to victimize women and children more acutely – notably sexual crimes, associated with various types of invalidating wounds (rape itself being often invalidating, as it frequently causes reproductive health problems to women). In addition to this aspect, civil conflicts are associated with ethnic aspects that lead precisely to the will on one side to destroy the enemy social group (the paradigmatic case in this respect being the conflict in the former Yugoslavia, namely in Bosnia and Herzegovina). This “ethnic” factor or sub-factor implies a higher degree of risk, both for civilian populations in general and for women in particular. In new ethnic conflicts, in “ethnic cleansing”, women are relegated to the category of sub-object. Indeed, and illustrating the superlative character of machismo contained in today’s wars, the woman is, here, almost nothing.

Second, current armed conflicts have a range or geographical scope that places non-combatant populations at high risk. Current military technology makes possible forms of action at a distance. Lightning strikes, if not an absolute novelty, are easier to use with current aviation techniques. In this respect, we recall the desperate appeals of the President of the Ukraine for the closure of the airspace under the territory of this country since March 2022, in the context of the

international armed conflict with Russia. The range of missiles, but also the use of other types of projectiles, is much greater today than fifteen or twenty years ago, and their launch from the sea, for example, makes it possible to reach populations gathered in supposedly safe zones.

Symmetrically, the use of drones controlled (if necessary) from other continents is a possibility that has occurred in several armed conflicts. Two classic examples are their use in Pakistan (Pakistan's Federally Administered Tribal Areas) and in Palestine (Gaza Strip), together with Ukraine since 2022. They demonstrate not only the physical damage, but also the destructive psychological effect they have on populations, particularly women and children (IHRCRC, 2012). Violence perpetrated in this way shows the 'side' or 'collateral' effect of the use of technology for war purposes, mostly on women. They may also be intended to provoke the enemy, just as physical violence used in the (recent) past. Whatever its effects, the use of modern technology has a disproportionate impact on women and, in many cases, forces migration, in addition to accentuating the risks to women's lives and health.

Third, contemporary armed conflicts tend, in truth, *not to be* armed conflicts. They cannot be legally qualified as such. They are increasingly acts outside the lines defining an armed conflict, in the legal sense or as a concept of in international law and politics. They are often acts of pure terrorism, with a total absence of military discipline, organized hierarchy and responsibility, as well as a lack of identification of the combatants, which, strictly speaking, cannot be considered as combatants.

One of the essential criteria, if not the fundamental criterion, for a person to be considered a combatant is the fact of showing his or her weapons clearly in front of the enemy, at least in a combat situation. In the case of terrorist groups, in Syria or in many African countries where attacks take place (without always being properly reported), practice shows that the persons committing terrorist acts use practices incompatible with the principles of the law of war, in this respect.

While it is true that the new characteristics of contemporary armed conflicts (or other forms of conflicts) may constitute breaches of traditional customary or conventional rules on the law of war, they may still fall into the categories of special crimes under international rules (e.g. genocide). The qualification of such special crimes constitute a positive evolution of the international normative framework. But it would be better if the norms could be implemented without the need to go to a criminal court. Indeed, prosecuting and punishing a crime is nevertheless far worse than preventing it to happen (or to produce its full effect). The experience of many situations of armed conflict shows that the execution of sanctions for sexual crimes committed in Bosnia, for example, took years (if not decades), to be coupled with compensation for the victims. Moreover, monetary compensations obtained do not remove the stigma they carry for the rest of their lives, the denial of their personhood sometimes, when the facts have occurred in front of their own families, and the feeling of total loss of their individuality.

4. From the legal to the social

The normative revolution in the field of the protection the integrity of women in armed conflicts only happened with the Geneva Conventions, in 1949. These international conventions

introduce something new: a more specific attention to civilian populations affected by armed conflict (Convention IV). In addition, the Nuremberg judgment (and that of Tokyo) introduced the concept of “crime against humanity”, which will have an important future for the question of sanctioning violations of women’s integrity during a war, notably via the qualification of rape as a crime against humanity (done only in the 1990s, however, with the International Tribunals for the Former Yugoslavia and Rwanda) (Haddad, 2011). It is also worth mentioning the concept of the crime of genocide, which is present in another international (and multilateral) convention of the same period (the Convention on the Prevention and Punishment of the Crime of Genocide, of 1948, in force since 1951), which, however, will not have any international application before the genocide in Rwanda, in 1994. This set of norms appears very late and, in a way, is still being tested or progressively adjusted to the reality. Despite the legal instruments, the current reality of the armed conflict in Ukraine demonstrates, if it was necessary, that little has been learned since the crises of the former Yugoslavia and Rwanda.

More generally, the four Geneva Conventions (I, II, III, and IV), contain a common article (Article 3), which ensures a by-default protection to non-combatants, even in the event of civil (non-international) armed conflict.

In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions: (1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed ‘hors de combat’ by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.

To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

- (a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
- (...) (c) outrages upon personal dignity, in particular humiliating and degrading treatment. (Art. 3, Geneva Conventions).

In addition to this generic and somehow minimal protection, two principles can be found in each of the four Geneva Conventions, and they concern women in situations of armed conflict (Deyra, 2001, pp. 121-122; Vale Pereira, 2014). First: the principle of “non-distinction”. Non-distinction, or non-discrimination, is a well-known general principle in international humanitarian law, which always or almost always includes the issue of sex as a potential factor of discrimination. Second, the principle of “specific treatment” reserved for women, the latter being a kind of positive discrimination. The principle of ‘specific treatment’ requires not only to guarantee women a level of protection at least equal to men, but also to treat women differently from men in specific circumstances of vulnerability. Article 12, concerning the wounded and sick, whose provisions are common in Geneva Convention I (which protects wounded and sick soldiers during land warfare) and Geneva Convention II (which protects wounded, sick and shipwrecked soldiers during maritime warfare), aggregates the above two principles:

Members of the armed forces and other persons mentioned in the following Article, who are wounded or sick, shall be respected and protected in all circumstances. They shall be treated humanely and cared for by the Party to the conflict in whose power they may be, without any adverse distinction founded on sex, race, nationality, religion, political opinions, or any other similar criteria. (...) Women shall be treated with all consideration due to their sex. (Art. 12, Geneva Conventions I and II).

This specific treatment of women – in particular the fact of being “treated with all the deference due to their sex”, takes into account, in particular, the factual situation of pregnancy, or the condition of having given birth. Articles 14 and 25 of Geneva Convention III (on Prisoners of War), and also Article 110 of Geneva Convention III, on the possibility of agreements on the repatriation of women who are prisoners and who are pregnant or have small children, confirm these aspects.

Does singling out women through this specific treatment indicate a gender bias in the norms of international humanitarian law? The 2016 interpretation of the Geneva Conventions published in 2020 (see also: ICRC, 2021) denies this possible interpretation, stating in paragraph 1681 of the commentary that such treatment “(...) in no way implies that they have less resilience, agency or capacity within the armed forces or as civilians, but rather recognises that women have a distinct set of needs and may face particular physical and psychological risks” (ICRC, 2020). These “specific needs” of women are precisely underlined by Article 12 in Geneva Conventions I and II, which allows for a favorable distinction based on the specific needs that may arise from the sex of the wounded or ill combatant (this is the conclusion of an interpretation *a contrario* of the prohibition of “unfavourable distinction” based, among other things, on sex). The same article recognizes that women have specific needs and face particular risks for which a “general” protection may not be adequate. The ICRC commentary adds: “such needs and risks may be physical or physiological, but may also stem from the social, economic, cultural and political structures of a society” (ICRC, 2020).

Beyond these aspects, the most relevant international norm is arguably Article 27 of Geneva Convention IV, which opens the section on the “Provisions common to the territories of the Parties to the conflict and to the occupied territories” and specifically targets women:

Protected persons are entitled, in all circumstances, to respect for their persons, their honour, 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.

Women shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault (Art. 27, Geneva Convention IV).

Despite the ICRC’s assertions, the considerations linked to the notion of “honour” in Article 27 of the Fourth Geneva Convention raise the problem of gender stereotypes by referring to the association between a woman’s sexuality and her “honor” (Crowe, 2016).

In the case of international armed conflicts, Protocol Additional I (on international armed conflicts) to the Geneva Conventions reiterates this protection mechanism, in an article that specifically focuses on the protection of women.

- » 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.
- » 2. Pregnant women and mothers having dependent infants who are arrested, detained or interned for reasons related to the armed conflict, shall have their cases considered with the utmost priority.
- » 3. To the maximum extent feasible, the Parties to the conflict shall endeavour to avoid the pronouncement of the death penalty on pregnant women or mothers having dependent infants, for an offence related to the armed conflict. The death penalty for such offences shall not be executed on such women (Art. 76, Protocol Additional I to the Geneva Conventions).

In addition to conventional law, international humanitarian law also includes international customs – or customary “rules”. The rules were collected in the 1990s, and published by the International Committee the Red Cross. Customary rules (currently 161 rules) are a relatively secure source of law, since they embody a consensus among a significant number of States in the world, and more specifically a consensus among the military codes or military manuals of most countries.

Rule 93 indicates that “Rape and other forms of sexual violence are prohibited”; Rule 119 affirms: “Women who are deprived of their liberty must be held in quarters separate from those of men, except where families are accommodated as family units, and must be under the immediate supervision of women”. Lastly, Rule 134 makes it obligatory the protection of women, by stating: “The specific protection, health and assistance needs of women affected by armed conflict must be respected”. However, the customary rules face, just as conventional law, the challenge of their effective applicability. Albeit written in an ICRC compilation, customs only remain binding until States do not oppose them. In addition, and contrary to the international conventions (with the human rights committees created by the very conventions), there are no specialized bodies (except the ICRC; and, of course, the courts) in charge of controlling their implementation.

But it is also important to go beyond the text of the norms, and to look at the way they are applied, and adapted by the agencies in the field. Nowadays, there is little doubt that gender issues are “mainstreaming”, and that gender equality – if not Gender-Based Violence – is a dimension that must be mandatorily considered if humanity aspires to better, fairer and egalitarian societies (UNFPA, 2005). Also, in situations of crisis or conflict, the main agencies in the field are aware that women and girls are the ones who are specially subjected to situations of discrimination and violation of human rights, and that this requires action both in humanitarian work as well as aid to development activities (Bradley & Gruber, 2021). Modern humanitarian aid and humanitarianism should aim not only at providing aid, but also at the social development of communities (Allen, Macdonald & Radice, 2020). The United Nations Office for the Coordination of Humanitarian Affairs (OCHA), for instance, has integrated gender into its core mandate. This occurs in five distinct dimensions: coordination (mainstreaming gender in the

Humanitarian Program Cycle and in the humanitarian response); advocacy (advocacy of gender equality and the empowerment of women and girls); information management (analysis of data related to gender/age issues, development of gender-sensitive information products); humanitarian funding (promote gender response funding, include gender equality programming applying the IASC [Inter-Agency Standing Committee] gender/age marker); and policy-making (support IASC members, in implementing a gender agenda). In its Policy Statement on Gender Equality 2021-2025, the OCHA emphasizes the need to promote commitments and efforts that bring more equality to all, but especially to those who are most affected by humanitarian emergencies, namely women and girls. But the OCHA also underlines that this can only be achieved if gender analysis is strengthened, if women's participation in humanitarian decision-making is enhanced, and if the fight against Gender-Based Violence is effectively prioritized (OCHA, 2019).

If gender issues have entered the mainstream in international policymaking and administration of humanitarian aid and aid to development (Olivius, 2016), if there is a growing attention to increase of funding for this specific area, the low fund percentage levels show that humanitarian settings still have a long way to go, if a change in gender equality and empowerment of women is to be achieved. Between 2018 and 2021, funding has doubled in this area, even if it only represents 2.1% of all humanitarian funds in 2021 (Development Initiatives, 2022). Besides the need for fulfillment of political compromises like the "Great Bargain", which implementation is far too slow (Krille, 2021), or The Call to Action on Protection from Gender-Based Violence in Emergencies (2022), all organizations and actors involved should practice a more modern approach to gender in humanitarian aid.

To help transform societies into modern and democratic societies, humanitarian aid needs to be based on the idea that gender is a *structural relation of power*, and that these relations are deeply rooted in the social, cultural, economic, and political systems of each society (Olivius, 2016). While this understanding is not fully applied in all humanitarian actions and by all humanitarian actors, providing efficient aid and promoting democratic and structural development will remain a utopian reality.

5. Conclusion

Since classical antiquity, women and children have been the weakest link in the event of civil conflict or conflict between countries. With a social role confined to the home and without legal personality and few rights, women's lives were exposed to all sorts of risks, especially in war. Until the bourgeois society of 19th century, female existed only in relation to the male, which was its ground and defining reference. During a long time, marriage and the domestic female's role were a social way of securing status for women. The liberal values (individual freedom, civil rights, and consent) represented the more important changes in the traditional role women, but emancipation occurred very slowly and in a reluctant way. In the 19th century, the first sanctioning measures for situations of rape in case of armed conflict emerged, with the *Lieber Code*, but they were clearly insufficient to protect women in the context of war. International humanitarian law, with the Geneva Convention of 1864, was also insufficient to cover

all the contexts of abuse and violations of women's integrity, but it laid an essential foundation. In the 20th century, the first steps were taken towards prescribing specific and more stringent norms regarding sexual violence during armed conflicts, albeit somewhat timidly.

Only recently has rape been considered as an international crime, integrated into the international courts list of sanctions and integrating the international customs that are not becoming part of the *jus cogens* (or imperative law) in the light of international law. International pressure continues and the international recognition of the need to safeguard the dignity of women is a decisive factor in the growing defense of women's rights in situations of armed conflict, considering acts of sexual, moral or physical violence committed as war crimes, crimes against humanity or crimes of genocide. Yet, the recognition of the crimes, and the sanctioning aspects, are far from being enough. The social norms still need to change, calling for a humane treatment of all during war, and a cautious but active respect for the equal dignity of human beings.

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