

# International Humanitarian Law and Gender

Report Summary  
International Expert Meeting:  
'Gender Perspectives on International Humanitarian Law'

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*Foreword by the Swedish Minister for International Development Cooperation,  
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The Swedish Delegation for International Law at the Swedish Ministry for Foreign Affairs has the primary task of taking new initiatives to stimulate development and discussion of humanitarian law. With its 35-year history, the Delegation has a long tradition in the field. A few years ago the Delegation decided to examine international humanitarian law from a gender perspective, building on the important work that governmental and non-governmental organisations, researchers and others had done with respect to women and war. Believing there was a need to deepen the discussion and widen the debate, the Delegation's first step was to attempt to survey what had already been done. It soon became apparent that in fact little had been done. Most initiatives focused on women and war. 'Gender aspects' were often synonymous with women's aspects. Men were seldom included except as analysed within their traditional roles. For example, there was little focus on men as the carers of children and old people. Likewise, women were generally presented as victims rather than combatants or perpetrators. The gender issue was merely dealt with in the context of the perceived traditional roles of men and women.

Was this a problem? To find out, the Swedish Ministry for Foreign Affairs decided to host an informal expert meeting to analyse the matter, in cooperation with the Swedish National Defence College, the Asia Pacific Centre for Military Law at Melbourne University in Australia and the Folke Bernadotte Academy.

We invited participants who had special knowledge and expertise in this area – as lawyers but also as experts in gender, military and medical issues – to come to this meeting with an open mind. The only important premise was that it should be a legal discussion, a discussion on applicable law and practice. We did not know beforehand what the outcome would be. When we sent out the invitations to this 'think-tank' meeting, we were taking a chance and a risk. The results may have surprised all the participants. Their fruitful discussions have taken the question of international humanitarian law and gender a step forward, while pointing to areas where important work still remains to be done.



# 1. Introduction

The international expert meeting on international humanitarian law and gender issues was held at the Swedish National Defence College in Stockholm, Sweden on 4–5 October 2007. International experts on international humanitarian law, military lawyers, medical expertise as well as personnel from regional organisations, humanitarian organisations and armed forces participated in the meeting. The diversity and expertise of the participants heralded the growing international interest in this topic.

The meeting was built on the assumption that the traditional roles of men and women have changed, both in times of peace and in times of war. Not only men participate in armed conflicts. Today increasing numbers of women are also engaged in hostilities, in regular and irregular forces. There is therefore a need to analyse existing international humanitarian law and its implementation from a gender perspective. Important work has already been undertaken in this field – in particular the significant study by the International Committee of the Red Cross entitled ‘Women facing War’. However this study and much of the academic writings have focused upon a women’s perspective. Less has been done to discuss the issue of a genuine gender perspective on international humanitarian law.

The aim of the meeting was to discuss existing international humanitarian law from a gender perspective. A number of central issues were raised including: Is it possible to have a gender perspective on international humanitarian law? Does such a perspective already exist? If not, what would a gender perspective entail? What could be gained or lost in terms of the protection of civilians, combatants and understanding of vulnerable groups? Is this reflection desirable and is it achievable?

It was noted that international humanitarian law includes obligations before, during and after hostilities have broken out. Examples of this include the obligation for states parties to the Geneva Conventions and their Additional Protocols to teach and train military forces in international humanitarian law, to undertake a legal review of a new weapon, means or methods of warfare that they plan to include within their armed forces, and to return prisoners of war after active hostilities have ceased. Responsibility for prosecuting those

accused of breaches of international humanitarian law also has no temporal restriction.

Whilst the perspective of the meeting was primarily practical, it had a concurrent aim of triggering deeper theoretical discussion in this area. International humanitarian law is becoming increasingly important and relevant to the international community and it is necessary to encourage a range of reflections in this crucial international legal framework.

Indeed even though the seminar was characterised by an intense debate, not all issues were addressed in full. Among the outstanding issues identified during the seminar that would need further legal consideration are the use of non-lethal weapons, the targeting process, and the future role and impact of United Nations Security Council Resolution 1325 (2000).

## **2. Panel 1: What has been done to date?**

During the last fifteen years, feminist legal scholars have raised gender related concerns, in particular the placement within the major legal instruments of sexual violence and the historical lack of prosecution of rape as a war crime. The focus to date has been on the position of women within society and the specific type of impact conflict has upon such women's lives. Within the Geneva Conventions and their Additional Protocols, there are frequent references to the fact that international humanitarian law is based on the equality of protection. However such scholars have argued that as societies do not treat men and women alike, situations of armed conflicts will inevitably impact upon men and women in an unequal manner. Armed conflicts have the capacity to reinforce existing inequalities in society. On the other hand, such situations can also provide new social possibilities for women – at least during the armed conflict itself.

In the last decade, jurisprudence from the two international criminal *ad hoc* tribunals (for the former Yugoslavia and Rwanda) have confirmed that rape and other forms of sexual violence are war crimes, crimes against humanity and even genocide in certain circumstances. Furthermore there is a broader definition of sexual crimes to be found in the International Criminal Court

Statute and 'hybrid' tribunals such as those for Cambodia and Sierra Leone are also including this area within their jurisdiction. Whilst issues such as the elements of the crime of rape and matters such as the concept of 'consent' during times of armed conflict require further reflection, modern treaties and case law clearly confirm that rape is a war crime. As well as developments with the jurisprudence, concerns about the 'placement' and reference to crimes such as rape within the Geneva Conventions (for example Article 27 of the Fourth Geneva Convention appears to focus upon women's 'honour') can be seen to have had some resolution with the development of the Additional Protocols in 1977. The two Protocols use terms such as 'dignity' when referring to sexual crimes and are broader to the extent that they do not limit such breaches exclusively to women.

The changing roles of women were also highlighted. It was acknowledged that women are not only victims of armed conflict but that they also participate in armed conflict and are sometimes perpetrators of war crimes. It was noted that attempts to 're-integrate' women who have directly participated in hostilities can be particularly difficult due to social expectations of female behaviour. In many parts of the world, the social responsibilities of men and women are undergoing change. In some social environments men are more involved in the caring of children and women are taking an active part in hostilities. This can be through choice and sometimes due to circumstances. Despite such changes, it is important to consider and value the range of 'specific' protections provided for women under international humanitarian law. For example a number of the provisions found in the Geneva Conventions and their Additional Protocols relate to the biological differences between men and women, such as those articles which deal with pregnant or nursing mothers (Article 89 of the Fourth Geneva Convention). However in other instances, such as the provisions which prohibit the execution of women with young children, the protections can be seen to attach to the child and not the woman (Article 6(4) Additional Protocol II). Would the same protections apply to a man who is caring for a child?

Another important matter raised was the lack of discussion and clear jurisprudence relating to sexual crimes against men. Women are not the exclusive victims of rape during times of armed conflict; however limited attention has been paid to the practical and legal implications of men who are victims of this heinous crime.

A range of other factors were discussed including the 'placement' of women within the United Nations Security Council Resolution 1325 as having capacity to impact upon change, as well as seen as being vulnerable. This was seen as a useful example of dealing with the complex position of women during times of armed conflict. It was noted that deeper understanding of 'vulnerable groups', not based on traditional views of men and women but rather reflecting upon the impact of armed conflict on communities, had the potential to strengthen the capacity for international humanitarian law to provide relevant and useful protection.

### **3. Panel 2: A gender perspective on the roles of men and women in armed conflict**

It was advanced that "*gender is more than just biological*" and discussions were held on the broad concepts involving institutional power, and masculine and female attributes and expectations contained in many societies about roles and behaviours. It was noted that there are different assumptions about men and women, which are dependent on context and social understandings. As the International Committee of the Red Cross writes in 'Addressing the Needs of Women Affected by Armed Conflict' (2004):

*"The term 'gender' refers to the culturally expected behaviour of men and women based on roles, attitudes and values ascribed to them on the basis of their sex."*

Views about gender are complex because they are at once extremely intimate and personal and also highly public and shaped by public institutions and power. The value of undertaking a gender analysis of areas of international law such as international humanitarian law was highlighted. A case study on the Swedish experience was provided.

Based on United Nations Security Council Resolution 1325 the Swedish Armed Forces have appointed gender advisers. One purpose is to ensure gender equality, both within Sweden and abroad. Despite initial concerns there was now a wide understanding of the benefits this position provided. For example, when a gender adviser participates in peace operations, important functions such as the gathering of information from the civilian

population are enhanced. The ability to establish good relations with the local women will in fact function as a force multiplier and, in the longer perspective, work as a force protection measure. It was noted that it is important that the gender perspective is implemented in the operation as a whole. The success of these measures is in fact dependent on the understanding of those who perform the duties of the operation. At the same time it is essential that senior decision makers within the military, such as generals, and political advisers, have an understanding of the benefits stemming from gender advisers.

In conclusion, it was advanced that the concept of gender was found to be based both on biological differences and social constructions, where male and female attributes play a prominent role. It was noted in this context that in many languages there was no equivalent word and that in certain instances the concept of gender takes time to explain. Questions were raised on the best method of incorporating these understandings – be that through the use of the word or discussions on the concepts inherent in the term ‘gender’. The fact that society’s view of women in armed forces seems to be complex was raised. However it was also acknowledged that incorporating a gender perspective made it possible to reach out to women and establish contacts with the local population in situations such as peacekeeping operations. This also had the additional effect of retrieving information valuable for the operation as a whole and in fact functioned as a measure of force protection.

## **4. Summary of the workshops**

### **Workshop 1: Participation in international and non-international armed conflicts**

International humanitarian law is supposed to be gender neutral, although the stereotyped perception of men and women leads to differences in application of the law. Women have increasingly taken a direct part in hostilities, in particular in internal struggles as part of irregular armed forces. By using the stereotypes and gender assumptions of being more ‘peaceful’ to their advantage, women have used their perceived role as civilians to gather information and even assist in targeting tasks. When women use their bodies as human shields they may in fact be regarded as taking direct part in the hostilities.

Post-conflict reintegration has sometimes proved to be harder for women combatants than men combatants.

### **Workshop 2: Methods of warfare**

Many armed conflicts today are characterised by asymmetric warfare and urban warfare. In the theatre of operations in such conflicts, the demarcation between civilians and combatants is difficult to draw. The perception of men and women places men at greater risk than women in such situations. Indeed men are usually less inclined to shoot at women and men are usually more at direct risk in armed conflicts. For example, young civilian males, not participating in armed conflict but present in the area of operations, fit the stereotyped perception of an attacker. In the ensuing moments following an attack on a vehicle, young male civilians run the risk of being, wrongly, automatically perceived to be responsible for the attack, based partly upon perception of gender. Understanding the position of men and women in the context of theatres of operations (through appropriate intelligence gathering) will assist in the implementation of policies to ensure the safety and security of men and women not taking direct part in hostilities.

It seems to be the case that, during an armed conflict, we value and handle people differently based on gender. But this does not seem to be due to insufficiencies in international humanitarian law primarily, and can be corrected through a correct implementation of the law. In this regard, proper training on gender related matters is key to ensuring compliance with international humanitarian law. In sum, understanding and adapting to the gender context of the battlefield environment and to the 'gender effects' of attack, both during conflict and in a post-conflict setting is vital.

### **Workshop 3: Means of warfare**

There is a need to include a gender perspective when reviewing a new weapon, means or method of warfare as is required in Article 36 of the First Additional Protocol to the Geneva Conventions. Based on the experience of such an analysis, there might be a need for a renewed discussion on what constitutes superfluous injury or unnecessary suffering. The effect on the target, not the nature of the weapon, is crucial. Increased and differently focused research



(incorporating a gender perspective) is needed when non-lethal weapons/crowd control measures are studied, developed and used. Furthermore there might be a need to discuss the effects of weapons on civilians, something which is not dealt with adequately in current times.

It was noted that in post-conflict analysis and post-enforcement operations a gender perspective should be included. Questions needing to be asked involve issues such as whether more women than men were killed? How did injuries affect men and women, respectively? It was noted that the list of things prohibited from being booby-trapped, such as kitchen utilities but not agricultural equipment, actually had the effect of playing a role in gender stereotypes. The consequences of the use of a weapon in, what is called 'a changing legal environment' such as 'mixed type operations', should be analysed from a gender perspective, not from gender stereotypes.

#### **Workshop 4: Special aspects, incl. 'Responsibility to protect', United Nations Security Council Resolution 1325, protected persons, prisoners of war, detainees, and fact-finding**

**Responsibility to Protect.** A state has the primary responsibility for the protection of its people. In situations when the state is unwilling or unable to halt or avert a situation where its population is suffering serious harm, the international community, including the United Nations Security Council has a role to play. A gender perspective is necessary when evaluating a situation to determine when and how to act.

**United Nations Security Council Resolution 1325.** In United Nations Security Council Resolution 1325 the importance of including women as active participants in peace processes was high-lighted and acknowledged by the UN Security Council. The resolution has given attention to women and their active participation as well as their need for better security, which has improved the situation on the ground. There remains a lot to be done in the field to implement the resolution.

**Field experience.** It is a well-known fact that rape and other forms of sexual violence are frequent occurrences during times of armed conflict throughout the world. In many countries complexities arise when the crime of rape

does not exist in the national legal system. To be able to deal efficiently with gender-based violence the national legal system has to be improved and the rules of international humanitarian law incorporated within it. Attempts to tackle the problems of rape and sexual violence have been made through the setting up of committees for reports regarding sexual assaults in specific locations, such as Darfur.

**Men as victims of rape.** There is a need to acknowledge that men are also victims of, and threatened by rape. Up till now prosecution of crimes of sexual violence against men has been treated as torture and other international crimes. It was deemed of symbolic importance to classify rape by its name and when identifying victims of such crimes to take into account male perspectives of sexual violence. Armed forces need proper training in this regard and military manuals must include prohibition against rape and sexual violence – independent of gender. In general it was noted that by adopting a gender perspective on the planning and training of a military operation or a peace keeping operation, security and protection can be increased.

**Detention.** It could be argued that women enjoy higher legal protection when detained as internees. In such a situation they may only be searched by women (Article 97, Fourth Geneva Convention). This obligation is not required for women when they are prisoners of war. Should there be a similar regulation concerning men as internees? There is a risk that this situation is used to exploit cultural differences and gender perspectives during interrogation or other such procedures. It was raised that perhaps the development of interpretative guidance on international humanitarian law on these aspects could be useful?

**Fact-Finding.** Investigations and fact-finding missions should always be based on a gender perspective. The International Fact-Finding Commission, established in accordance with Article 90 of the First Additional Protocol to the Geneva Conventions should be encouraged to include gender aspects when investigating situations of both international and internal armed conflict.

## 5. Way Ahead

The expert meeting was a crucial first step in encouraging those involved in international humanitarian law to consider genuine gender aspects in practical and legal applications. The diverse range of participants at the meeting, including representatives from the United States Naval War College, NATO, the African Union, senior members of the military (from Fiji, Ireland, Sri Lanka, Sweden), international academic experts (in both international humanitarian law and gender studies) as well as medical expertise and representatives from the International Committee of Red Cross demonstrated the broad interest in this dialogue. During the two-day meeting a wide range of views were expressed and debate was honest and open. A number of issues did result in firm agreement and these included the usefulness of a gender perspective in reviewing categories of 'vulnerable groups' and the need for further work and reflection in this area. The practical use of gender perspectives as a 'force multiplier' for the military, in particular in peacekeeping and stability operations, as well as the importance of feminists scholars understanding the principles inherent in international humanitarian law were both positive outcomes of the event. It was generally agreed that a gender perspective when drafting military manuals and Rules of Engagement would be of benefit both to the military operation and to the protection of civilians. Likewise, a gender perspective should be an inherent part of training of military personnel.

In relation to the way ahead it was agreed that the process of holding 'expert meetings' was useful and that an increased dialogue and reflection on the relevance of gender aspects to international humanitarian law was necessary. It is proposed that further such meetings be hosted in the coming year, potentially in Australia and that in the long-term there be opportunities to develop projects such as interpretative guidelines. The changing social position of men and women as well as the changing nature of armed conflict result in the need to continue to reflect upon the principles and specific elements of international humanitarian law, an area of law needed today more than ever.



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