

Women, armed conflict and international law

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“IHL takes a particular male perspective on armed conflict, as a norm against which to measure equality. In a world where women are not equals of men, and armed conflict impacts upon men and women in a fundamentally different way, a general category of rules that is not inclusive of the reality for women cannot respond to their situation.”¹

A number of feminist academics increasingly maintain that international humanitarian law (IHL) continues to fail women. The authors of an excellent new book entitled *Women, Armed Conflict and International Law*, from which the above quotation is taken, have argued this point in an articulate and aggressive manner for many years. The crux of the debate is the “all victims” approach taken by international humanitarian law and the ICRC, versus a specific gender-based analysis of social norms. These two ways of grappling with the horrors faced by women in times of armed conflict do not sit easily together. Dialogue between their respective proponents (feminist academic and operational) can at times tend to be disjointed, as the starting points differ. However, it must never be forgotten that the general aim of reducing suffering is exactly the same for both sides, and that each side has something valuable to learn from their divergence of views.

An example of this “tension” can be found in *Women, Armed Conflict and International Law*, in which the authors, Gardam and Jarvis, demonstrate their capacity for analytical rigour and the breadth of their feminist and international legal expertise. They assert that international humanitarian law, philosophically based on chivalric ideals of women, addresses women in terms of their relationships with others and not as individuals in their own right. Pointing out that of the forty-two provisions focusing upon women in the 1949 Geneva Conventions and their 1977 Additional Protocols, nine-

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teen deal with women as mothers, they hold that the protection of the unborn child and small children is “the rationale for many of these provisions”. Overall, Gardam and Jarvis are critical of international humanitarian law’s limited focus upon the “biological” difference of women and contend that even the treatment of sexual violence is couched in terms relating to chastity and modesty. They write: “Generally, women are valued in IHL in terms of sexual and reproductive aspects of their lives”.²

Another issue of concern raised in the book relates to what is termed a “hierarchy of the rules”. In general in international law, the authors argue, legal norms dealing with women are seen as having lesser status. They go on to say that in international humanitarian law the provisions relating to women are articulated in terms of protection rather than prohibition (for example Article 76(1) of Protocol I, as opposed to language used to deal with men in Article 13 of the Third Convention). It is noted that no mention is made of sexual violence in the “grave breach” provisions, despite current interpretation of the capacity to prosecute rape under those sections. The authors contend that international humanitarian law is a legal regime based on the distinction between combatants and civilians, with more protection accorded to combatants than to non-combatants. They claim that this system *per se* is not a matter of concern, except when the distinction incorporates an assumption as to the value of lives. In the ensuing discussion the issue of the protection of victims of armed conflict is seen as constantly taking second place to a plea of military necessity. Furthermore, the influence of the military in both the development and application of international humanitarian law is considered disquieting. Indeed, the legitimacy of the term “international humanitarian law” is questioned, with the claim that it is misleading owing to the extent it focuses upon humanitarian rather than military concerns.

Compelling examples of the inadequacy of international humanitarian law in providing real protection for women are given throughout the book. The comprehensive regime of protection afforded to prisoners of war (mostly men) compared to the lack of regulation relating to people in refugee camps (mostly women), the violence suffered by women from all participants in armed conflict, including their “own” side and peacekeepers sent to protect; the re-enforcing of stereotypes and detrimental representations of women

1 J. Gardam and M. Jarvis, *Women, Armed Conflict and International Law*, Kluwer Law International, The Hague, 2001, p. 93.

2 *Ibid.*, p. 94.

found in the laws which do exist, and the lack of post-conflict assistance, are all deemed unacceptable. The authors do acknowledge in their discussions that women are not the only victims and that gender cannot always explain a lesser degree of protection, especially as regards the limited scope of law pertaining to internal armed conflict.

A subject on which detailed debate would have been desirable and is frequently lacking in such discussions is the tension between the aims of international humanitarian law, which are limited and pragmatic, and the expectations often placed in this area of the law. For example, in the introduction to *Women, Armed Conflict and International Law* the authors comment that “one of our major criticisms of IHL is its unrealistic boundaries”.³ In this writer’s view it is the critics, and not the law itself, who attribute a greater capacity to international humanitarian law than it actually has — and thus more failure. International humanitarian law has very precise boundaries. It seeks only to limit suffering during times of armed conflict, not to redress social inequalities or assist in rebuilding post-conflict communities. The accusation is made in the book that:

“IHL in addressing humanitarian needs in armed conflict assumes a population in which there is no systemic gender inequality. The system fails to recognize the unequal situation of men and women in society generally.”⁴

This accusation overlooks the fact that international humanitarian law makes no claim to deal with the basis of social structure in general. Rather its aims are extremely restricted and focus upon ensuring survival for as many people as possible during the most extreme circumstances a society can experience. International humanitarian law strictly abstains from any attempt to determine the validity of the reasons for a conflict, be they based on discriminatory practices or not. It is this limited mandate which accounts for the successes in international humanitarian law (and there are many) and lies at the heart of this whole legal regime.

Much feminist theory, on the other hand, requires an analysis that looks deeply into the very fabric of a society and locates itself in the belief that there is no universal experience. It demands that what is deemed the “norm” is questioned vigorously. It exposes the major dichotomies between the public and private, logic and emotion, body and mind as merely constructed dualism. It listens for the silences and does not assume there is one

³ *Ibid.*, p. 18.

⁴ *Ibid.*, p. 97.

truth. It aims to question the very things taken for granted. International humanitarian law does not and cannot aim for such scope or examination; to do so would draw it into a quagmire of moral and ethical argument which would render its rules useless. It would open international humanitarian law up to “just war” theories and a range of attempts to justify avoiding application of this area of law, such as is currently claimed in the fight against “terrorism”. These limitations of international humanitarian law and the need for it to avoid inherently questioning a society are complex and require further examination and debate. This may also explain why there is occasionally bitter disagreement between those advocating increased adherence to and enforcement of international humanitarian law and those arguing along feminist lines.

At times theorists such as Gardam and Jarvis have directly criticized the methods employed by the ICRC to address the suffering of women, and indeed the patriarchal nature of the institution itself. Whilst acknowledging a recent “sea change” within the ICRC in its approach to this issue, some sections in *Women, Armed Conflict and International Law* are unduly disparaging in claiming that the ICRC does too little too late and is institutionally not able to grapple deeply with the inherent complexities of a gender perspective.

The ICRC, like any other part of the humanitarian community, must constantly reconsider its capacity to incorporate gender issues into its operational work. The pledge made at the 27th International Conference, specifically addressing the issue of women and armed conflict, and the Women and War project are obvious examples of an institution seriously committed to reducing the suffering of women. The ICRC’s Women Facing War study, which resulted from the Women and War project, is far more than an academic piece of literature. Undertaken with the practical aim of alleviating the plight of women in times of armed conflict and reviewing operational responses to their real concerns, it helps the ICRC to understand and meet the needs of female members of the population who are the most vulnerable victims of war. The future will show what the ICRC does with this information and how the feminist academic community responds. However, too much work remains to be done in this field for academics and organizations such as the ICRC to spend time in constant disagreement rather than find common ground.

There is an underlying and restrained passion in *Women, Armed Conflict and International Law* and in much general feminist debate on that

subject — anger and frustration at the lack of action, and acknowledgement of the diverse horrors suffered by women during and after armed conflict. And so there should be. Anyone working in this field cannot but help become angry at what is and what is not talked about in relation to women and war. The silence and lack of public knowledge about the women kept confined and raped in Fiji's constitutional crisis; the lack of women representatives at formal peace negotiations in Afghanistan despite the fact that the vast bulk of the backbreaking and heartbreaking work of rebuilding the country will fall upon their shoulders; the consistent use of women's bodies as battlefields, their private suffering only deemed serious when it is seen to impact upon the public; the treatment of women who are combatants in regular and irregular armed forces — at times it appears that the world refuses to listen and act appropriately to address real issues of humane concern. International humanitarian law needs a comprehensive gender-based critique, which is what *Women, Armed Conflict and International Law* has provided. It is now up to all who strive to give women increased protection during times of armed conflict, both theorists and practitioners, academics and operational personnel, to work together (albeit uncomfortably) to find the right solutions.

