

40th Round Table on Current Issues of International Humanitarian Law

“The Additional Protocols 40 Years Later: New Conflicts, New Actors, New Perspectives”

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Humanitarian negotiations for access to persons in need of assistance : what role for gender diversity ?

I am delighted to be back in Sanremo, where I started teaching exactly 10 years ago. It has not been an easy trip from Bangui, where I am currently based. But when Professor Pocar asked me to participate in the 40th Round Table and gave me the topic: “Humanitarian negotiations for access to persons in need of assistance: what role for gender diversity?” I could only accept the challenge.

In the current crisis of the humanitarian system, with serious problems of access to the populations in need in Syria, South Sudan, Yemen and elsewhere, to what extent are these problems gendered? We will assess if the Protocols provide us with more guidance than the Conventions; what are the obstacles to a gendered humanitarian negotiation; and we will finally look at recent developments.

The argument

A common argument is that humanitarian assistance is delivered in emergency to save lives and that there is no time for gender considerations at that stage.

When humanitarian law started to be codified in the 19th and 20th century, it was drafted by European male officials who were preoccupied with issues that principally concerned *them*: what would happen if they were made prisoners; under which circumstance could they be targeted; how would they be disciplined. Women, civilians, civil society were mentioned briefly, as if by accident. A French Officer summarised for me: « 50 years ago, in our operational doctrine, the population could be described with 3 words: friendly, enemy or evacuated”. That was the situation up to the end of the Cold War.

With “the end of history”, the end of the cold war and the new, ethno-political wars erupting in the Balkans and elsewhere, civil society women’s movements also flourished, and hundreds of new humanitarian actors emerged. There is now a solid base of material, conducted by the “Do No Harm Project”, donors like ECHO, SIDA, SDC and others, of what works or doesn’t work. Decades of evidence of humanitarian work show that “considering

the differences in needs according to sex and age is crucial for effective relief and life-saving assistance”¹.

A 2008 SDC study² shows that women usually face more obstacles than men in obtaining adequate emergency food and non-food items (for example, blankets, soap, shelter) “as a result of discriminatory practices in registration, and because of their lack of access to information, and frequent absence from consultation processes over resources distribution”.

Not including women in the assessment or the delivery means that large parts of the population - the most vulnerable - will not receive it. Can humanitarian assistance that doesn't meet the criteria of impartiality (serving the most vulnerable) be labelled humanitarian assistance?

Including men and women in the delivery also means consulting them and integrating the gender dimension in *the design* of programmes. In refugee camps in Tanzania, humanitarian organisations who had identified that there was a number of women-headed households, decided to set up for them specially marked tents in a special, ‘safe’, area. During that period, the number of sexual attacks clearly increased. Why was that? “Because the bright orange tents acted like markers pointing to unaccompanied women, i.e. without a husband to protect them, sending a strong signal to other men that they were ‘available’. Had women been consulted, instead of having humanitarian workers decide for them, they for sure would have avoided being completely ostracised by their own community and would have chosen a different protection approach”.³

In 2008 the British NGO OXFAM, together with their partner in Iraq, the Al-Amal Association, asked Iraqi women to rate their own security. The report states that, “as compared with 2007 & 2006, more than 40% of respondents said their security situation worsened last year.” At the same time, most of the male American soldiers - and Iraqi officials – thought that the ongoing war in Iraq was a success, soon to result in an improved sense of security. Women had a very different assessment because, as highlighted by the OXFAM report, they had access to different information relating to security because of their interaction with, and care for, various constituencies in the community and in the family: for example, lack of access to healthcare; children being unable to reach their school; family members kidnapped or injured; widows not receiving a pension from the government.

In the past, humanitarian assistance programmes have assumed that men's and women's experiences of, and response to crises are fundamentally the same, and that they have common interests and needs, regardless of their sex. *The understanding of their responses and the targeting of humanitarian aid has often been based on ideas people have of men's*

¹ SIDA, *Gender equality in Humanitarian Assistance*, March 2015

² SDC, *Gender and humanitarian aid*, 2008

³ *The Cost Of Ignoring Gender In Conflict and Post-Conflict Situations: A Feminist Perspective*, Nadine Puechguirbal, The Amsterdam Law Forum, Vol. 4:1

experience. Because gender and women's specific needs have not been taken into account, humanitarian aid has been gender-biased and has therefore failed in many cases to achieve its objectives.⁴

We need to add an additional dimension: women – and men – have different interests depending on their background, social class, education, age, if they live in a rural or urban area etc. It should not be assumed that all women have the same needs or that all men have the same needs - or that consulting one of them is sufficient to determine the needs.

Access to humanitarian assistance is gendered and it can be life-saving to include the gender dimension. This is by now established. What does it tell us about humanitarian negotiation for access and assistance?

Firstly, humanitarian negotiators must have in mind the gendered nature of humanitarian assistance. They must include it in the design and the objectives of the negotiation, but also in the process. I did a short piece of work last year with the UN Mission in Libya (based in Tunis). When he met the Libyans, the Special Representative of the Secretary-General, Martin Kobler, told them: "you need to have women in your negotiating team". "Where are yours?" was their answer.

What would advocating for impartial access mean if we do not ourselves live by the standards we promote, such as the principle of impartiality?

I have worked in the jungles of Mindanao with Islamic rebels; I have negotiated the price of 20 trucks at the Iranian-Afghan border; I have delivered goods in refugee camps controlled by ruthless militias in the Middle East. Is it easy? No. Is it made more difficult for women in a world where NIAC are multiplying as well as growing control of Non-state armed groups (NSAGs) and criminal groups on large portions of the territory? Not necessarily. Is it important to include women? Yes, it is.

There is a clear, evidence-based case that humanitarian assistance is gendered and that the gender dimension should be integrated in the design of programmes; with the participation of men and women who receive the assistance; and by including women at all levels and stages of the operation, including in negotiating access.

And yet, there are three types of resistance to this evolution: a cultural one; a structural one and a political one.

The obstacles

The first obstacle is cultural. Earlier this year, I was teaching Officers at a reputable military Academy in Europe. The Majors were working on a case study where troops they were

⁴ SDC, op. cit.

mentoring were about to commit rape on young IDPs. “By what is under-aged?” asked a LegAd. “Is it under-aged in *their* culture or in *our* culture?”

How often have I heard, from military, humanitarians and academics alike, that “since this is in their culture; it is safer, it is appropriate to accept”. How easily one accepts the “cultural” argument, without the slightest opposition or attempt to bend it, when it comes to demean women. The local warlord prefers that you do not employ women to conduct the assessment or delivery of humanitarian assistance? “Well, if this is their culture, nothing we can do about it. We have a programme to deliver”. The same persons will react very differently when the Islamic state beheads someone. They will not say “it’s their culture”; but when it is about demeaning women, cultural awareness is suddenly broadly shared. What is the value of delivering the programme, if this programme is biased and does not correspond to the criteria of humanitarian assistance?

The second obstacle is structural. The design of our institutions is such that it is difficult today for women to participate meaningfully – and to impact on the successful delivery of humanitarian action. Due to our education, to culture, to our patriarchal institutions, we are by default gender blind. The very vast majority of UN peace Envoys is male.

In 1994, Donald Steinberg (Former President Clinton’s special assistant for African affairs) participated in the signing of the Lusaka Protocol that put an end to the civil war in Angola. Asked about the participation of women in the peace process, Steinberg replied with confidence that the Lusaka agreement was ‘gender-neutral’, thus not discriminating against women. However, as he later explained: “It took me only a few weeks after my arrival in Luanda to realise that a peace agreement that is ‘gender-neutral’ is, by definition, discriminatory against women and thus far less likely to be successful.”

First, he realised that not a single woman had a seat on the Luanda based Joint Commission responsible for implementing the peace accords; secondly, the DDR programme was designed for men and it did not take into account the needs of women and girls who had been kidnapped by rebel forces and used as sexual slaves, cooks, messengers, etc. At the same time, male ex-combatants were sent back to their communities without adequate psychosocial support, job/skills training, and soon they sank into alcohol consumption and drug abuse that exposed women to more violence. A process that does not include women is not gender-neutral; it is biased against the security and safety of women.

About two decades later, when I met the Coordinator of the Senior Women’s Talent Pipeline in NY, she explained the difficulty in recruiting women for high-ranking positions. “We have to be very careful and choose the right person, she said, because if she fails, it will affect all the idea of recruiting women”. I have never heard that recruiting an incompetent man would put in danger the whole idea of recruiting men.

A study conducted in 2011 by Insecurity Insight⁵ shows that in about 43% of security incidents recorded by humanitarian agencies, the gender does not appear, whereas information about the nationality, or if the staff is local or expatriate, appear in more than 90% of the reports. "The scarcity with which information on victims' sex is made public is likely a result of general lack of awareness of the importance of gender analysis and concern for the privacy of affected staff" concludes the agency.

"Insecurity that is male on male (for instance, armed militias fighting each other) is more detrimental to political stability and stable governments than male on female violence is", explains Cynthia Enloe⁶ Which explains why governments are promoting a very masculine definition of security. Their motto is the neutralisation of armed groups, be they rebels or militia, so as to avoid a new outbreak of violence that could jeopardise their holding of power; however, they do not always see addressing the root causes of the conflict, or the fight against impunity, as relevant at this stage. "Violence against women is not a threat to men in power although they do not realise the impact it will have on the post-conflict society in the long run and how it will prevent the creation of sustainable peace. For women indeed, peace is not just the absence of war."

I spoke to several women who were raped while working for the biggest humanitarian agencies. No one speaks about this and their employer did not do much to support them, hiding behind the pretext of "not stigmatising them". Is it the only reason, or does it also have to do with the way these agencies understand and report about staff security?

The third obstacle is political. The big humanitarian party of the 90s where any individual could load their personal car with useless items and drive to Kosovo, is over. The backlash manifested itself with the return of the State -and an angry one. In Sudan, in Syria, in Russia, in the US, the State is back with revenge. Humanitarians are not welcome. They are seen as part of a larger, hostile political agenda of the so-called West. Yes, about 90% of humanitarian assistance funding comes from Western governments. Can we articulate in a credible way that we do not have a political agenda? Aren't the humanitarian agencies contributing to durably install countries in under-development, corruption and poverty? The Ebola crisis has demonstrated how the political choice of allocating funds to 3 main threats (Aids, TB and malaria), decided in Geneva and NY, had contributed to weakening the national health systems, that were unable to identify and respond to the Ebola emergency.

But with rejecting the humanitarian system as it is today, the authoritarian governments also reject what they see as a threat: democratic control and the contribution of a vibrant civil society, inclusive of women.

⁵ Christina Wille, Larissa Fast, *Aid, Gender and Security: The Gendered nature of Security Events Affecting Aid Workers and Aid Delivery*, Insecurity Insights, 2011

⁶ Cynthia Enloe and Nadine Puechgirbal, quoted in Puechgirbal, *The cost of...*

What do the Protocols say? Are they gendered?

The Additional Protocols provide an increased visibility to women, but largely treat them as victims and object of the assistance, not as actors themselves. In the 558 articles (without annexes) of AP I, only a couple (Art. 8 a; 70.1; 75.5; 76.1, 2 and 3), mention them, in wording such as: “Measures for expecting mothers and children”. Rape concerns only women, not men (76.1). Men are not portrayed as victims or vulnerable persons. Women are generally associated with children as recipients of assistance and services– not with male adults as actors. Gender is never mentioned when describing the combatants; the sanitary personnel; any actor really, with agency of their own and not a mere recipient of assistance. In the words of Nadine Puechgirbal:

“Time and time again, women are labelled victims and put in the category of vulnerable people together with children, irrespective of the increasing responsibilities they take over in the absence of men. A military manhood is promoted for the protection of women who are defined as powerless individuals.”⁷

In AP II, there are only 2 references to women: one confining them in the category “motherhood and children”⁸; interestingly, the second one, Art. 5.2.a, relates to “persons deprived of their liberty for reasons related to the armed conflict, whether they are interned or detained »⁹ and suggests that women can be interned or detained. It is the closest experience women can get in reference to the treatment of men in the Protocols.

While it is important to protect women during conflict because they are indeed more exposed to some forms of violence and need a specific form of protection, especially against sexual violence, it is not enough to confine them in the role of victims.

The Conventions and the Protocols do not exclude women in their spirit; article 75.1 for example, requests that people who are in the power of a party to a conflict are not discriminated on the basis of their gender. But the men who wrote them¹⁰ did not think at that time that women would play more roles very quickly.

There is no need to change the texts. They do not prevent the inclusion of women in the design of the delivery of humanitarian assistance, on the contrary. The Principle of “Impartiality” says it all. Impartial assistance is assistance delivered on the basis of vulnerability and needs. Associating women is essential to determine needs, vulnerabilities and capacities in an impartial way. The change has to happen in our minds and in our structures; the law, including the Protocols, allows for such an evolution.

⁷ Nadine Puechgirbal, *The cost of...*

⁸ Art. 6.4: “The death penalty shall not be pronounced on persons who were under the age of eighteen years at the time of the offence and shall not be carried out on pregnant women or mothers of young children”.

⁹ “Except when men and women of a family are accommodated together, women shall be held in quarters separated from those of men and shall be under the immediate supervision of women”

¹⁰The President of the Diplomatic Conference, the Vice-President, the Chairs of all Commissions and all of the rapporteurs are male as well as the overwhelming majority of the representatives who signed the Protocols at the end of the Diplomatic Conference: only 3 women out of 102.

This evolution is also taking place in other fora.

Developments

The UN, donors and in particular those who conceptualise humanitarian assistance and its challenges (SIDA, ECHO, SDC) as well as the IASC and CSOs have prompted humanitarian actors to better integrate the gender dimension in their work, including when designing and negotiating humanitarian access.

The UN took the lead and helped articulate political agendas around the questions of women's participation; sexual violence; rights of children affected by war; or humanitarian access.

We saw during a presentation earlier this morning, the long list of UN Security Council resolutions relating to Women, Peace and Security and to combatting Sexual Violence. The UNSCR 1325 in particular, looks at four areas where governments are requested to improve gender equality.

Participation: "Ensure increased representation of women at all decision-making levels in national, regional and international institutions and mechanisms for the prevention, management, and resolution of conflict".

Protection: "Calls upon all parties to armed conflict to respect fully international law applicable to the rights and protection of women and girls as civilians, in particular the obligations applicable to them under the Geneva Conventions of 1949 and the Additional Protocols thereto of 1977 (...) and to bear in mind the relevant provisions of the Rome Statute of the International Criminal Court".

Prevention: "Requests the Secretary-General to provide to Member States training guidelines and materials on the protection, rights and the particular needs of women, as well as on the importance of involving women in all peacekeeping and peace-building measures".

Relief and recovery: "Calls upon all parties to armed conflict to respect the civilian and humanitarian character of refugee camps and settlements, and to take into account the particular needs of women and girls, including in their design".

It also emphasizes the responsibility of all States to put an end to impunity and to prosecute those responsible for genocide, crimes against humanity, war crimes including those relating to sexual violence against women and girls, and in this regard, stresses the need to exclude these crimes, where feasible from amnesty provisions.

In Conclusion

Humanitarian negotiations are gendered both concerning their purpose: access to persons in need of assistance and because negotiations that include women in the design and implementation are more likely to be successful.

The humanitarian community is moving in this direction, pushed by the encouragements of civil society organisations, women's movements, donors and the UN system. The Red Cross/Red Crescent Movement, the military who often facilitate humanitarian assistance, are part of this effort because, as Prime Minister Trudeau would put it, we are in 2017.