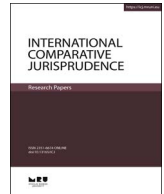


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## Violated or protected. Women's rights in armed conflicts after the Second World War<sup>☆</sup>



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### ABSTRACT

From the contemporary legal perspective war atrocities have to be seen as mass violations of human rights. They affect all members of the society, regardless of their gender, age, skin color, nationality or ethnic origin. Women however, were and still are particularly vulnerable to all forms of such violations, in particular - becoming victims of various forms of violence. The aim of the paper is to answer the question of whether the legal and the actual position of women in the armed conflicts has changed in any terms. In order to achieve this goal, the most typical examples of violations of women's rights during present-day hostilities will be indicated and examined. Moreover, the Author will analyze international legislation having as object the protection of women in armed conflicts, in search for any evolution of that legal framework.

### 1. Introduction

Throughout the history, wars were accompanied by atrocities, enormous cruelty and violence, which from the contemporary legal perspective ought to be seen as mass violations of human rights. Although every armed conflict imprints cruel toll on all members of the society, regardless of their gender, age, skin color, nationality or ethnic origin, women were and still are particularly vulnerable to all forms of such violations, in particular - becoming victims of various forms of violence. Women were treated as spoils of war for the victorious armies, and rape was seen as a cruel, but also an unavoidable consequence of war, a kind of a collateral damage (Gardam & Jarvis, 2001; Seyler, 2011–2012; Moodrick-Even Khen & Hagay-Frey, 2013; Draper, 1987; Wood, 2010). The Second World War was one of the most outrageous examples in this cruel scheme (Seyler, 2011–2012) nonetheless, as it will be envisaged in Section 2.2. of this paper, XXI century's armed conflicts' violence is even more persistent and prevalent.

The aim of the paper is to answer the question of whether in any terms legal, but most of all actual position of women in the armed conflicts has changed since the Second World War. In order to achieve this goal, the Author will overview international legislation having as the main object protection of women in armed conflicts, in search for any evolution of that legal framework. The Geneva Conventions of 1949, Statutes of International Criminal Tribunals, CEDAW and the resolutions of the Security Council in the agenda "Women, Peace Security" 2000–2015 will be the main area of the research. Although the analysis would focus on the United Nations legal framework of both – binding and non-binding character – the paper will also briefly outline the documents of the Council of Europe and the European Union in that respect. Moreover, in order to search for the answer what is the present-day situation of women during armed conflicts, the examples of most typical violations of women's rights during hostilities have to be indicated and examined. It is worth mentioning that the scope of this study is limited to the issue of violations and protection of

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women's rights during the armed conflict and thus will not thoroughly examine women's role as combatants and peacekeepers or issues of gender mainstreaming in the army.

## 2. Women and war

### 2.1. Violations of women's rights during WWII

The Second World War has brought atrocities and enormous amount of suffering to the civilians of all age, ethnicity and both gender. Similarly to any previous armed conflict, most of civilian victims were women (Seyley, 2011–2012). Although some research has been conducted on the scale of crimes committed against women during World War II, international community still lacks precise and reliable data on exact cases. (Moodrick-Even Khen, A. Hagay-Frey, 2013).

General evidence of the magnitude of violence against women during WWII has been fully expressed by the [Commission of Government Experts for the Study of the Convention for the Protection of War Victims \(1947\)](#). Part of that report is undoubtedly worth citing: “when innumerable women of all ages, and even children, were subjected to outrages of the worst kind: rape committed in occupied territories, brutal treatment of every sort, mutilations etc. In areas where troops were stationed, or through which they passed, thousands of women were made to enter brothels against their will or were contaminated with venereal diseases, the incidence of which often increased on an alarming scale” ([Commission of Government Experts for the Study of the Convention for the Protection of War Victims, 1947](#), p. 47).

Susan [Brownmiller \(1986\)](#) has delivered one of the most comprehensive studies on the sexual violence against women during armed conflicts, including those during WWII, proving its global and far-reaching presence. Correspondingly, other researchers have indicated that during WWII all sides of that conflict perpetrated rape on a large scale: it was the same case with German, Soviet, and Japanese combatants ([Olwine, 2010–2011](#)). Women were also victims of sexual violence and medical experiments of the worst kind in Nazi concentration camps (Moodrick-Even Khen & Hagay-Frey, 2013). One of the most shocking examples of massive and state-organized programs of sexual exploitation of women during the wartime was the case of the so-called “comfort women”. That euphemism hides the Japanese army system, which turned hundreds of thousands<sup>1</sup> of women (mostly Koreans) into sex slaves ([Number of Comfort Stations and Comfort Women, 2016](#); [Seyley, 2011–2012](#), [Amnesty International, 2016](#)). They were captured and kept in camps (called “comfort stations”) in fact acting as brothels, where they were repeatedly raped and subjected to other forms of sexual exploitation and violence. Many of them did not survive the war, and those who did, suffered permanent and deep physical and mental injuries. After years of denial, under huge pressure of NGO's, finally in 2015 Japanese government apologized and recognized Japan's responsibility, and committed itself to pay \$8.3 m. to fund victims, 46 of which are still alive ([BBC News, 2015](#)).

### 2.2. Women and contemporary armed conflicts

Contemporary warfare involves women as combatants much more than before. Just to give the brief examples: women constitute 15.6% out of 1.1 million soldiers in the US Army ([Ogilvie, 2013](#)) and 40.000 women served in the US Army during the 1990–1991 Gulf War. It is estimated that one-fifth of the Eritrean Army are women ([Rashid, 2003](#)). At the same time women constitute 4.21% of Polish soldiers ([Wojsko Polskie, 2014](#)). Nevertheless, the vast majority of women are involved in armed conflict not as combatants but as members of civilian population, which have none or little impact on its outbreak and course ([Prescott, 2013](#)). In the present-day armed conflicts women are still those who are overwhelmingly affected by the consequences of hostilities, but in general, it was proved not earlier than 10–20 years ago, that the experiences of women and men in armed conflicts differ considerably ([Gardam & Jarvis, 2001](#); [Moser, 2001](#)). Among factors significantly influencing women's situation during warfare are social, cultural and economic conditions under which women live normally in times of peace ([Buchowska, 2014](#); [Gardam & Charlesworth, 2000](#); [Gardam, 1997](#)).

Although slight changes can be observed during past two decades, women still constitute the majority of people living in poverty in the world ([United Nations Department of Economic and Social Affairs, 2015](#), p. 190), which means that women are more likely to experience negative economic consequences of the conflict, and they have to put much more effort to reconstruct their households and survive in the post-conflict situation. Additionally, due to the death of men-combatants in armed conflicts large numbers of households headed by women are created. These households are very likely to be poor ([Gardam & Jarvis, 2001](#)).

Furthermore, even if during the conflict, women overtake jobs in the public sector, which are typically male, after the war women often lose those jobs and return to ones in the private sector or undertake tasks traditionally associated with housekeeping and certainly generating no income ([CEDAW Committee, 2013](#); [Gardam & Jarvis, 2001](#)). Therefore, compared with men, women are much more exposed and vulnerable to the negative economic consequences of armed conflict.

The research prove that due to cultural position of women even in times of peace they are particularly vulnerable to violence and in fact they become victims of violence more often than men. Because of the culturally conditioned stereotypes and customs spread all over the world, women are seen as unequal, weaker and submissive to men. Such a perception of women's position in society is the major factor influencing the prevalent problem of violence against women (CEDAW Committee, Rec. No 19; [Holtmaat, 2008](#); [Benninger-Budel](#)<sup>2008</sup>, [Johnson, Ollus, & Nevala, 2008](#); [Cusack & Cook, 2009](#); [Barrow, 2010](#); [Buchowska, 2013](#); [Alawemo &](#)

<sup>1</sup> Obtaining data on the exact number of victims is very difficult and the numbers vary from 200.000 up to 400.000

Muterera, 2010). That phenomenon, which is not surprising, tends to strengthen during the wartime.

Violence against women occurs in all contemporary armed conflicts (Bernard, 2014). It takes many forms of acts, which frequently are perpetrated jointly and coexist with each other. These are inter alia: deliberate killing of civilian women, torture, medical experiments, trafficking, rape, forced prostitution or forced exchange of sexual favors for crucial items or return of children, forced cohabitation or marriage, forced pregnancies, intentional infection with HIV, forced abortion, forced sterilization (Alawemo & Muterera, 2010; Gardam & Jarvis, 2000–2001; Hankins, Friedmann, Zafar, & Strathdee, 2002). It is very significant that sexual violence – especially in the form of rape – is the most common and predominant form of serious violations of the law against women (Cohen & Nordás, 2013; United Nations Review, 2010; Gardam, 1997; Rashid, 2003). It could easily be said that literally there is no safe place, no hideaway from violence and from potential perpetrators. Women become victims of violence, especially of sexual violence, not only in the course of the battles, but also in the direct aftermath of the combat or during the marching of the troops or hostile occupation. Furthermore, they are attacked at the police stations, when they are arrested, at border crossings, in refugee camps, at homes or in detention camps created for the purpose of sexual exploitation (Gardam & Jarvis, 2000–2001; Gekker, 2014; Human Rights Watch, 1995; Turshen, 2001). Not only the enemy soldiers, the militias, members of the armed bands and looters are the perpetrators, but these are also those who were supposed to protect civilians: soldiers from native army and officers of the state, like police officers or border guards (CEDAW Committee, 2013) or even the UN peacekeepers (BBC, 2016). The acts of sexual violence are often committed in public places, in front of the family or local community members. It is also significant that the end of military engagement usually does not mean the end of the violence against women. On the contrary, very often it lasts long after the hostilities are over (CEDAW Committee, 2013).

Although ferocity and coercion were bound with wars for centuries, significantly for the contemporary armed conflicts, the methods and scale of perpetration of violence changed considerably. Violence against women, especially sexual violence, is no longer a side effect of hostilities or their inseparable consequence. The major change that has occurred during past decades, after the end of the WWII in terms of the use of sexual violence in the armed conflicts is that at present, it is used deliberately: as weapon of war, as a war tactic or also as a means of political repression (Human Rights Watch, 1995). The way the sexual violence is used in most contemporary conflicts involves deliberate, conscious and intended effort to humiliate and intimidate not women only, but all members of the community or ethnic group in order to dominate it and in extreme cases – to achieve ethnic cleansing and to exterminate (Meron, 1993, p. 425). It is used to enforce hostile occupations, as a method of conquering or seeking revenge against the enemy, and a means of payment for mercenary soldiers (United Nations Review, 2010).

While precise statistical data are still difficult to obtain, joint efforts of NGO's,<sup>2</sup> GO's<sup>3</sup> resulted in producing reliable studies of contemporary wartime violence against women. Those studies envisage that violence, particularly sexual one, is omnipresent in all armed conflicts all over the world and it is overwhelming.

During the war in former Yugoslavia (1992–1995) up to 60.000 women were raped. However statistical data on the exact number of victims are variable (Amnesty International, 2010), the UN report revealed that the crimes of the most deprived nature were committed during that war (United Nations Department of Peacekeeping Operations, 2010). Women were raped and gang-raped in front of family or local community members, they were kept at special detention camps, like Omarska, Keraterm and Trnopolje camps where they were “routinely” raped (United Nations Department of Peacekeeping Operations, 2010). They were also victims of forcible impregnation as a part of ethnic cleansing, because in those societies the origin of the child is determined through the fatherhood (Engle, 2005).

Review provided by the United Nations Special Rapporteur (United Nations, 1996) reveals that the armed conflict in Rwanda tolled over 250.000 victims of sexual violence and “[r]ape was systematic and was used as a ‘weapon’ by the perpetrators of the massacre” (United Nations, 1996, Point 16). Correspondingly, Human Rights Watch report (1996) indicates, that however exact numbers of sexual violence victims in that conflict will never be known, “some observers believe that almost every woman and adolescent girl who survived the genocide was raped” (Human Rights Watch, 1996, p. 24).

Democratic Republic of Congo's civil war, which tolled over 5 million casualties since 1998, may serve as a horrendous example of an armed conflict, in which rape is used systematically, as a weapon of war, entailing enormous number of several hundreds of thousands of victims (International Trade Union Federation, 2011, Stop Rape in Democratic Republic of Congo, (n.d.)). Sexual assaults in that conflict included gang rape, which represents the majority of all cases, rape in public or in presence of family members, rape with instruments, genital mutilation, perpetrated on a daily basis (International Trade Union Federation, 2011).

Similarly, during Sierra Leone civil war (1991–2000) thousands of women were brutally raped<sup>4</sup> (Human Rights Watch, 2003) and forced to become wives of rebel commanders and combatants, some of which did not consider it wrong to rape women and turn them into sex slaves (Kelsall, 2009). Cruelty and scale of outrages against women in that conflict were almost indescribable and sexual violence was followed by or accompanied by other human rights abuses like: beating, bodily injury, amputation, torture, killing, forced labor, sexual assault without rape, abduction, burned dwelling, looting (Human Rights Watch, 2003).

Other illustration of present day warfare's cruelty is an armed conflict in Central African Republic (CAR). The United Nations Secretary General Reports (2013, 2014, 2015) indicate that sexual violence occurred at alarming rates during and in the immediate aftermath of hostilities. The report revealed, that all parties to the conflict perpetrated sexual violence, including rape and many victims had been assaulted in their homes, during door-to-door searches carried out to overpower and humiliate opponents and

<sup>2</sup> For the list of some of NGO's involved see: <http://www.stoprapenow.org/ngo-links/>

<sup>3</sup> E.g. see: the United Nations „Action Against Sexual Violence in Conflict” <http://www.stoprapenow.org/about/>

<sup>4</sup> It is very difficult to assess the exact number of victims and estimates vary from over 60.000 to even over 200.000 (Human Rights Watch, 2003, January)

terrorize civilians (UN Secretary General, 2015). What is more disturbing, recent SG Report, which followed press and NGO's allegations (Child Rights International Network, n. d.; Sieff, 2016) envisaged that not only parties to the conflict, but also members of the UN Peacekeeping forces perpetrated sexual violence on women and children in CAR's armed conflict (UN Secretary General, 2016). Further investigation proved other charges concerning the act of the same nature during UN operations in Côte d'Ivoire, Haiti, Democratic Republic of Congo, Liberia, Sudan and South Sudan (Sieff, 2016; UN Secretary General, 2016). Unfortunately, those facts support the thesis that the situation of victims is very often hopeless because those, who were supposed to protect from coercion, became oppressors themselves.

The civil war in Syria is another appalling example of conflict-related violence perpetrated against civilians, including women. Attacks of all parties to the conflict are targeted at Syrian women. They become victims of shelling against civilians, raids and massacres of terrorists, arbitrary arrests and enforced disappearances by governmental forces and their supporting militias, torture including sexual violence in detention centers to extract confessions (Zeghiche, 2014). It should be underlined, that obtaining exact data is very difficult, because in fear of facing the social stigmatization, most Syrian victims refuse to speak about the violence, especially that of sexual character.

The actions by terrorist groups become a relatively new threat to the safety of civilian women during the hostilities and internal conflicts. During the conflict in Iraq and Syria terrorists from Daesh<sup>5</sup> raped and abducted thousands of women and turned them into sex slaves. The most dreadful is the case of Yazidi population, against which systematic actions of massive violence are perpetrated. Yazidi women are sold for money, bartered for weapons or given as a gift. Those women and girls who convert to Islam are sold as brides to Daesh fighters for \$25 - \$150. Those who do not – are raped. It needs to be underlined, that Daesh made rape and slavery part of its brutal theology, treating rape as a means of converting to Islam (CNN Report, 2015). John Kerry, the US Secretary of State, has recently called those atrocities genocide (The New York Times, 2016).

Far-reaching consequences that last long after the termination of combat make sexual violence so dreadful. Sexual violence affects first the physical condition of women, often causing severe and long-lasting body injuries, especially of victims of gang rapes. But it also very deeply influences women's mental and psychological condition (Josse, 2010). Women experience humiliation, shame, disgrace, uselessness and injustice combined with loss of social position, and family disintegration (Josse, 2010; The Red Cross, 2014). That is especially palpable in the traditional societies, which are strongly based on so-called "culture of honor", where the infamy of a single woman is reflected in the whole community. Furthermore in those societies, the violation of sexual integrity of women affects the entire society adversely because all its members share her harm and shame. If, as a result of acts of sexual violence, the children are born, the mothers – victims of violence and their children are often excluded from the society.

It is also worth indicating that the consequences of wartime rape diminish women's economic position by depriving them of properties, excluding from society and, what follows, pushing them to live in poverty (Turshen, 2001). It should also be emphasized that the impunity of perpetrators is an additional, far-reaching factor, which strengthens the negative effect of armed conflicts' violence against women. Therefore the impunity of perpetrators, the silence that surrounds the crime and dishonor attached therein, combined with loss of social and economical position of women leads *de facto* to their re-victimization.

Consequently, the devastating impact of this form of violence affects not only women, but also the entire local community. It leads to the defragmentation of the society at its stage of post-war reconstruction, making the process much more difficult (Buchowska, 2014).

### 3. International legal framework for the protection of women in the armed conflict

Formulating a thesis that evolution of the approach to the protection and guarantee of realization of the rights of women in armed conflicts is clearly noticeable was possible after the analysis of international legislation adopted after World War II.

Initially, the legal position of women was defined through the prism of the general acts of international humanitarian law. Later on, international legal framework developed and, in course of time – one might observed the natural need for special legal protection of women and their rights in the armed conflicts.

#### 3.1. Geneva Conventions 1949

Establishment of Geneva Conventions has been seen as great step forward for protection of women in the armed conflict (Gekker, 2014). Art. 12 of Geneva Convention I for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (1949) creates the rule of equal treatment of women and men. At the same time however it indicates that women should be treated with "all consideration due to their sex" (Article 12). Similarly, Geneva Convention III relative to the Treatment of Prisoners of War provides equality of treatment of women and men and ensures treatment of women „with all the regard due to their sex" (art. 14, 88, 97). Correspondingly Geneva Convention IV relative to the Protection of Civilian Persons in Time of War (1949) reads that „[w]omen shall be especially protected against any attack on their honor, in particular against rape, enforced prostitution, or any form of indecent assault." (Article 27 p. 2) and it also determines specific protection of maternity (Article 14, Article 16, Article 23, Article 27, Article 38, Article 50, Article 76).

Wider analysis of Geneva Conventions would go beyond the scope of this paper, nevertheless some remarks should be

<sup>5</sup> The so-called "Islamic State of Iraq and Syria" – ISIS. It is indicated that the name "Daesh" should be used, because it does not support the statehood demands of that terrorist group. See e.g. <http://www.ibtimes.co.uk/why-isis-hate-being-called-daesh-whats-correct-name-worlds-most-dangerous-terrorists-1531506>

formulated. Geneva Conventions constituted a major shift in the legal position of women in warfare, but still protection of their rights provided therein, is mostly based on the notions and ideals of „respect for women”, “honor” and “family rights”, and women are seen in those treaties primarily as mothers and caregivers (Barrow, 2001). It is indicated by researchers, that acts of coercion against women and rape in particular, are considered by those treaties as harm to women's “honor” in its social meaning, rather than women's dignity in the sense of essential feature of a human being (Moodrick-Even Khen & Hagay-Frey, 2013, p. 56). It is also significant, that application of Geneva Convention IV is somehow limited by the notion of “protected persons”, who are persons who find themselves “in the hands of a Party to the conflict or the Occupying Power of which they are not nationals” (Geneva Convention IV, 1949, art 4). It means that nationals of a state who is not a party to the Convention and a state's own nationals, neither nationals of a neutral State, nor those of a co-belligerent state receive protection from the Convention (Gardam & Jarvis, 2001, p. 60). Moreover Geneva Conventions do not explicitly provide prosecution of crimes against women, they do however stipulate that state parties to the Conventions should provide effective penal sanctions for persons committing, or ordering to be committed, any of the grave breaches of the Convention (Geneva Convention I, Article 49; Geneva Convention II, art. 50; Geneva Convention III, art. 129; Geneva Convention IV, Article 146). However all forms of sexual violence has been considered as meeting the hallmarks of grave breach of the Convention (Final Report Of The Commission Of Experts Established Pursuant To Security Council Resolution 780 (1992)), it has been signposted that the question of prosecution of acts of violence against women should explicitly provided within the treaty and should not be the matter of its interpretation (Gardam, 1997, p. 76).

### 3.2. Statutes of international criminal tribunals

Undoubtedly, Nuremberg<sup>6</sup> and Tokyo Tribunals<sup>7</sup> created in order to conduct “the just and prompt trial and punishment of the major war criminals” of the European Axis and in the Far East, respectively (Nuremberg Charter, Article 1; Tokyo Charter, Article 1), constituted a shift in challenging the international responsibility for the war crimes. Nevertheless during the Nuremberg Trial no express reference to women, or to the types of crimes that are likely to specifically affect women had been made (Gardam & Jarvis, 2001; McDougall, 2006; Moodrick-Even Khen & Hagay-Frey, 2013). To the contrary, at Tokyo Trial some defendants were accused with charges including rape, e.g. during the occupation of Nanking. Those charges were however limited, as for example the “comfort women” case has not been mentioned at all (Gardam & Jarvis, 2001; McDougall, 2006). Later on for decades no international prosecution for war crimes has been conducted.

The first major change in the prosecution of crimes committed against women during the armed conflict has been brought with the creation of International Criminal Tribunal for Yugoslavia (ICTY) and International Criminal Tribunal for Rwanda (ICTR) as they were advised by the United Nations General Assembly to pay particular attention to crimes of sexual violence (McDougall, 2006, p. 331). The Statute of ICTY empowering the Tribunal to prosecute persons for committing crimes against humanity directly indicates to rape, “when committed in armed conflict, whether international or internal in character, and directed against any civilian population” (Statute of ICTY, Article 5 (g)). Correspondingly, the ICTR Statute while vesting the Tribunal with power to prosecute crimes against humanity also refers to rapes. However, in order to accuse any person of those charges, the actions must constitute “widespread or systematic attack against any civilian population on national, political, ethnic, racial or religious grounds” (Statute of ICTR, Article 3). Both Tribunals have prosecuted defendants with rape charges, and significantly in 48% of cases before ICTY the accused have been charged with the systematic use of various forms of sexual violence against women (UN Review Of The Sexual Violence Elements, 2010). Thorough analysis of the jurisprudence of both Tribunals would go beyond the limits of this paper. Nevertheless it is worth mentioning, that though the ultimate impact and effectiveness of those Tribunals may be disputable (this especially refers to ICTR), they are acknowledged for delivering adequate definitions of rape, violence and sexual violence (McDougall, 2006) and their jurisprudence is likely to become very important for international humanitarian law.

The foremost shift in the challenging issue of prosecution of crimes against women has been made with the establishment of International Criminal Court. The Rome Statute has been described as the first adequate response to the decades of insufficient prosecution of crimes against women committed during the armed conflict (SaCouto & Cleary, 2009, p. 338–339). The Rome Statute provides the ICC with jurisdiction with respect to *inter alia* „crimes against humanity” (The Rome Statute, 1998, Article 5). According to Article 7 of the Rome Statute (1998) crimes against humanity include “rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack”. Rape charges were brought up in cases against accused from Democratic Republic of Congo, Darfur, Uganda and Central African Republic (SaCouto & Cleary, 2009). Nevertheless in its first judgments, for example in Katanga case, despite the evidence of a widespread practice of rape and sexual slavery, the Court did not find the evidence to be sufficient to determine whether the suspect knew that rape and sexual slavery has been committed by his subordinates (SaCouto & Cleary, 2009). In that context, the judgment of 21 March 2016 in Jean-Pierre Bemba Gombo's case is very much worth noting. Bemba Gombo has been found guilty of two counts of crimes against humanity and three counts of war crimes in Central African Republic (International Criminal Court, 2016), all of them including rape. The ICC has determined that Bemba Gombo bears the command responsibility for the acts committed by his subordinates, because he has not prevented those crimes and has not punished those guilty of committing them (Wierczyńska, 2016). That is definitely a groundbreaking judgment, because it is the first one in which ICC has convicted a defendant for committing rapes as a

<sup>6</sup> The International Military Tribunal.

<sup>7</sup> International Military Tribunal for the Far East created under The International Military Tribunal for the Far East Charter.

crime against humanity and war crimes.

### 3.3. Specialized regulations

After centuries of silence, the international community has drawn a lot of attention to women issues over the past few decades. This has resulted in adoption of number of binding and non-binding legal acts referring to various aspects of legal, social, economic and cultural position of women. Though international legal framework regarding women is well developed, most of it deals with peacetime situation of women, which particularly applies to binding legal acts. In order to conduct a broader analysis of position and protection of women during armed conflicts the acts adopted under the auspices of the UN, the Council of Europe and the European Union will be considered.

As far as the UN legal framework is concerned it has to be underlined, that [Convention on the elimination of all forms of discrimination against women \(1979\)](#),<sup>8</sup> the so-called constitution of women's rights, neither has any direct reference to the violence against women nor to the women's rights during the wartime. Nevertheless it also has no provisions suspending its applicability during war or armed conflict. Therefore it has been indicated, that state-parties are obliged to follow the Convention during armed conflict, state of emergency, within its jurisdiction, both in its own territory and in occupied territories ([CEDAW Committee, 2010](#); [Sękowska-Kozłowska, 2013](#)). Additionally, the CEDAW Committee has defined violence against women as a form of discrimination against women and one of the major breaches of women's rights ([CEDAW Committee, General Recommendation no 19](#)). Thus the Committee has mentioned the situation of women in the armed conflicts, and the issues of violence against women in particular, in its Reports submitted on an exceptional basis<sup>9</sup> ([Sękowska-Kozłowska, 2013](#)) and in its General recommendation No. 30 on women in conflict prevention, conflict and post-conflict situations (2013).

Since late 1960s the UN has drawn its attention specifically to the situation of women in armed conflict in its declarations, resolutions and actions plans. In 1968 the International Conference on Human Rights in Teheran has initialized the discussion on the protection of women and children in emergency and armed conflict ([Biehler, 2008](#)). Commission on the Status of Women has followed that with its own discussion during sessions held in 1970, 1972, 1974. The result of those actions was the UN General Assembly Declaration on the Protection of Women and Children in Emergency and Armed Conflict, adopted in 1974 ([Biehler, 2008](#); [United Nations General Assembly, 1974](#)). Also the final document of the United Nations Fourth World Conference on Women held in Beijing in November 1995, i.e. [Platform for Action \(1995\)](#) has referred to the issue of women in armed conflicts as one of the twelve crucial points of interest of the UN member states ([Platform for Action, Chapter IV, Point E, 1995](#); [Gardam & Jarvis, 2000–2001](#)).

In search for the most important UN achievements in the field of developing the legal framework for the protection of women's rights in the armed conflict, the Security Council's agenda „Women, Peace Security”, under which eight resolutions<sup>10</sup> have been adopted, should undeniably be mentioned. The groundbreaking Resolution 1325 (2000) has strongly underlined the need to reduce the use of gender-based violence in armed conflicts, explicitly requiring Member States to take all necessary action in this regard and urging them to stop impunity and to prosecute those who are responsible (Point 10). Resolution 1325 (2000) has also obliged Secretary General to start the reporting procedure to the Security Council on the agenda, which resulted in 22 reports by now, with last report of 17 September 2015. Eight years after the adoption of Resolution 1325 Security Council has adopted another pivotal document (Resolution 1820 (2008)), in which sexual violence in the armed conflict has been identified as kind of military tactics and action deliberately targeting civilians, thereby significantly affecting the intensification of armed conflict and blocking the subsequent restoration of peace and security. Unfortunately in the same document Security Council has declared that rape and other forms of sexual violence “can constitute” a war crime or a crime against humanity. That approach has been criticized and has been seen as step backward, as the Council has used conditional mood (“can”) instead of affirmative one ([Barrow, 2010](#)). Furthermore, under Resolutions 1888 and 1889 (2009) Special Representative of the Secretary-General on Sexual Violence in Conflict has been appointed and UN Action Against Sexual Violence in Conflict - Stop Rape Now has been launched. The assessment of those two resolutions was variable. Some expressed the general positive reception ([Deshmukh, 2010](#)). Others however, pointed out to their shortcomings, as having not enough impact on the improvement of real position of women in the armed conflict ([Seyler, 2011–2012](#)). One of the most important of the resolutions in the UN SC agenda “Women, Peace, Security” is the Resolution 1960 (2010), which has introduced the so-called „naming and shaming” procedure. Secretary General has been obliged by SC to include detailed information on parties to armed conflict that are credibly suspected of committing or being responsible for acts of rape or other forms of sexual violence (SC Resolution 1960 (2010), p. 3). Negative assessment of that resolution as being counterproductive one ([Heathcote, 2012](#)) has to be rejected. It has to be argued that “naming and shaming” procedure allows strengthening the international pressure by pointing out those responsible for committing violence in armed conflicts and has to be seen as positive example in generally limited range of the UN legal instruments. Finally, the UN SC Resolution 2242 (2015) has to be welcomed. Security Council has drawn its attention to the “changing global context of peace and security, in particular relating to rising violent extremism” (Resolution 2242, p. 2). It is very important that SC has directly expressed the view that “acts of sexual and gender-based violence are known to be part of the strategic objectives and ideology of certain terrorist groups, used as a tactic of terrorism, and an instrument to increase their power through supporting financing, recruitment, and the destruction of communities” (Resolution

<sup>8</sup> CEDAW entered into force on 3 September 1981, and as of April 2016, has 189 state-parties.

<sup>9</sup> *Bosnia and Herzegovina, Rwanda, Zaire (D.R.K.), Federal Republic of Yugoslavia (Serbia & Montenegro)*

<sup>10</sup> Resolutions: 1325 (2000), 1820 (2008), 1888 (2009), 1889 (2009), 1960 (2010), 2106 (2013), 2122 (2013), 2242 (2015)

2242 (2015), p. 2). Obviously the impact of that resolution to actual situation of women is very limited. Nevertheless it indicates the growing attentiveness of international community towards the dangers of atrocities committed by extremist terrorist groups.

As far as Council of Europe's legal framework is concerned firstly the Convention on preventing and combating violence against women and domestic violence (2011)<sup>11</sup> has to be mentioned. It indicates the ongoing human rights violations during armed conflicts in the form of widespread or systematic rape and sexual violence as one of the reasons of adopting that legal act (Convention on preventing and combating violence, 2014, Preamble). On the contrary to CEDAW, the Istanbul Convention expressly stipulates at Article 2 point 3 that it "shall apply in times of peace and in situations of armed conflict". It has to be emphasized however, that it has been ratified or accessed by barely 21 out of 47 Council of Europe member-states (2016), which significantly limits its application. Additionally, as far as Convention's application is concerned, it provides the obligation of states to prosecute an offence committed abroad by its "nationals or by a person who has her or his habitual residence in their territory" (Article 44. 1 d), e)). However according to Article 77, Convention is applied within the territories of state parties, and as indicated in Explanatory Report (Council of Europe, 2011a, 2011b) does not create any extra-territorial obligations for states, which significantly limits its applicability.

Also Parliamentary Assembly of Council of Europe (PACE) in its resolutions and recommendations has drawn the attention to the situation of women in the armed conflicts. It has called upon the member states to comply with Security Council resolutions adopted in the agenda "Women, Peace, Security", as well as urged them to ensure effective prosecution of crimes of sexual violence in armed conflicts is possible (Resolution 1670 (2009)). PACE has also pointed out to the Committee of Ministers' duty to ensure that human rights are guaranteed in the territory of Council of Europe member states and recommended Committee to assist member states in dealing with the legacy of past sexual violence against women in armed conflict (Recommendation 1873 (2009)).

Correspondingly, the European Union's European Parliament has adopted couple resolutions on women and armed conflicts. In its Resolution of 1 June 2006 on the situation of women in armed conflicts and their role in the reconstruction and democratic process in post-conflict countries European Parliament has recalled the UN actions and resolutions, and UNSC Resolution 1325, in particular and inter alia demanded ending impunity and underlined the importance of prosecution of perpetrators. That standpoint has been repeated in Resolution of 2 February 2012 on women's situation in war in which the need active involvement of women as peacemakers has been emphasized.

In conclusion to the legislative framework analysis it has to be underlined that significant change in attitude towards women's position in armed conflict can be observed. Crimes against women committed during and in direct aftermath of hostilities are no longer hidden in shadow and seen solely through the prism of deprivation of women's honor of mothers and caregivers. It has been well evidenced that women are still overwhelmingly affected by consequences of the armed conflicts and that their experiences are significantly different than men's. The UN SG Reports, „naming and shaming" procedure and gathering of testimonies of victims and statistical data deserve positive assessment. On the contrary, despite some effort in prosecution of perpetrators has been made, impunity still is a huge problem and conflict-related rape remains the least condemned war crime. Furthermore, despite that increased interest in women issues of armed conflicts, most of the legislative framework consists of soft law acts, like non-binding documents, resolutions and action plans having very limited influence on actual position of women and on eradication of violence in contemporary armed conflicts.

#### 4. Conclusions

The answer to the question of whether the position of women in the armed conflicts has changed since the Second World War unfortunately has to be the ambiguous one. Paradoxically, it seems that women's wrights in the armed conflicts are more protected and more violated at the same time. On the one hand, violence against women during armed conflicts is no longer concealed and international society speaks of it openly. The positive evolution of the legislative framework is incontestable as well. From the legislative point of view the position of women in the armed conflicts intensely improved during past decades after the end of the WWII. However, in contrast to improving legal position of women, their actual situation has significantly deteriorated. Violence against women has not only been not eliminated but is increasingly omnipresent. At the same time, the methods and purposes of its perpetration extremely altered for worse. The most significant change that can be observed in terms of the use of sexual violence in the present armed conflicts is that it is no longer the inevitable side effect of the war but it is used intentionally, as weapon of war.

The conclusion can be made that the joint efforts of different international actors are highly ineffective as wars and armed conflicts in the XXI century still remain the purest and highest forms of unlawfulness.

It seems therefore that in order to advance the implementation of legal framework and to improve the actual position of women in armed conflict and in post-conflict situations, international society efforts should be attracted to three areas, i.e., prevention, protection and prosecution.

It is outstandingly important for the international society to understand the importance of conflict prevention. Thus issues contributing to the outbreak of conflicts, namely poverty, uneven development, corruption, unstable governments, and dictatorships, extremist movements and rise of nationalisms have to be tackled efficiently.

Much more effort has to be put to improve actual peacetime position of women, inter alia by changing harmful stereotypes affecting women. The rise of the awareness of dreadful, long-term consequences of violence is necessary. Furthermore sufficient medical, psychological, economic and legal assistance has to be provided to the victims of conflict-related victims.

Finally – last but not the least – the effective prosecution of perpetrators is crucial, as impunity of offenders is one of the worst

<sup>11</sup> Convention entered into force on 1 August 2014.

forms of re-victimization for women affected with wartime violence.

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