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# **Gender identity, gender based violence, and the Responsibility to Protect**

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## Abstract:

this essay wishes to be a thought-provoking piece with the following as objectives. Firstly, gender should be recognized by the RtoP community as a social category that is as meaningful as race, nationality, and ethnicity. Accordingly, gender should be studied and considered as a key element in the perpetration of violence. Secondly, the equation of 'gender' with 'women' should be abandoned because detrimental to the achievement of full protection needs of some groups currently neglected, mostly including men victims of GBV. Thirdly, neither of the two biological sexes should enjoy better protection under the framework of 'gender'. Rather, both groups should be recognized as having gender-specific protection needs and therefore be the object of specific protection policies and actions. Finally, this paper wishes to argue that the international community already possesses the tools for to offer full protection to people facing GBV through the Refugee Convention of 1951 and the concept of RtoP, despite the relative weaknesses of both instruments.

This paper was presented at the University of Roma Tre in the context of "Italy and the Mediterranean: security and cooperation through a European perspective", the first congress of the Italian Association of Political Science Students (ASSPI) and in the context of "The Responsibility to Protect, the Duty to Prevent", a cycle of seminars offered as an option course to graduate students in International Relations at the University of Roma Tre.

## Keywords:

Gender, gender based violence, asylum, Responsibility to Protect

## Contents

|   |    |
|---|----|
| Introduction .....  | 4  |
| What is gender? .....                                       | 5  |
| What is Gender Based Violence? .....                        | 8  |
| Offering protection: Asylum and RtoP .....                  | 10 |
| Recommendations: Mainstreaming GBV in Asylum and RtoP ..... | 14 |
| Conclusion .....  | 16 |
| References cited .....                                      | 17 |

## Introduction

Attention to gender issues has consistently grown in virtually all fields, from economics to anthropology, from public policy to humanitarian intervention. Despite expanding popularity, however, 'gender' remains a rather marginalized area of study. As a matter of fact, 'gender' is often treated as a 'something to do on the side' of other initiatives, most of the times depending on the availability of residual funding after 'more relevant' issues have been addressed. The mass atrocity prevention community is not immune from this dynamic. Despite a verbal commitment to the mainstreaming of gender issues as key elements of concern, gender-related projects remains relatively underfunded and marginalized.

Arguably, the study of gender and the implementation of gender-related policies and initiatives should be a more prominent priority in the agenda of scholars, policymakers, and practitioners working in the field of the responsibility to Protect (RtoP). Academic literature has focused extensively on the link between masculinity and war, but only recently started exploring the possibility of understanding masculinity norms as a possible factors in the initiation and continuation of violent conflict (early efforts include an edited volume by Breines et al. (2000) commissioned by UNESCO). Attention to gender based violence (GBV) in time of conflict recently exploded, especially after the adoption of UN Security Council Resolution 1325 on Women, Peace, and Security. However, as the title of the resolution explicitly suggests, the focus of GBV has mostly been on some forms of violence experienced by women. While the term 'gender' should include both biological sexes, the equation of gender issues with women's issues de fact creates pockets of exclusion from protection for men victims of some very specific forms of GBV. As a matter of fact, these forms of violence are often unreported, understudied, and at times lack recognition as actual violence amounting to torture or persecution.

In light of the above, this essay wishes to be a thought-provoking piece with the following as objectives. Firstly, gender should be recognized by the RtoP community as a social category that is as meaningful as race, nationality, and ethnicity. Accordingly, gender should be studied and considered as a key element in the perpetration of violence. Secondly, the equation of 'gender' with 'women' should be abandoned because detrimental to the achievement of full protection needs of some groups currently neglected, mostly including men victims of GBV. Thirdly, neither of the two biological sexes should enjoy better protection under the framework of 'gender'. Rather, both groups should be recognized as having gender-specific protection needs and therefore be the object of specific protection policies and actions. Finally, this paper wishes to argue that the international community already possesses the tools for to offer full protection to people facing GBV through the Refugee Convention of 1951 and the concept of RtoP, despite the relative weaknesses of both instruments. Achievement of protection is thus a matter of efficiency at all levels, and partially depends on change at the discursive level to increase commitment and reduce pockets of exclusion.

Analysis will be carried out as follows. Firstly, I will offer an interpretation of the concept of 'gender' that draws on Foucault notion of discourse, Gramsci's notion of hegemony, and Connell's notion of hegemonic masculinity. Secondly, I will define gender based violence (GBV) in time of conflict and outline its path towards recognition as a matter of international concern. Thirdly, I will outline the opportunities for protection available to the international community under the Refugee Convention and under the RtoP. Finally, I will make some recommendations.

## **What is gender?**

A short and powerful definition 'gender' has been advanced by Mahler and Pessar (2006), scholars in migration studies, in the context of their effort for the mainstreaming of gender as a legitimate object of study for migration scholarship. In their definition, gender

is 'the meaning that people give to the biological reality that there are two sexes' (Mahler and Pessar 2006: 29). Therefore, gender refers to a social construction resulting from power dynamics between man and women and the effects of these dynamics on identity, social roles, responsibilities, and social status. Drawing from Foucault's (1972) notion of 'discursive formation' (or 'discourse'), gender can be understood as a system of ideas, beliefs, utterances, and practices that systematically works to produce and reproduce the idea that two objects (man and women) are inherently different and, accordingly, should occupy different social positions. In Crawley's words, gender refers to 'the social organization of sexual difference' (Crawley 2001: 7).

While Foucault's notion of discourse is a rather useful theoretical lens to understand gender, Gramsci's notion of hegemony is in my opinion more useful to understand how discourses about gender are produced, reproduced, and reshaped in a process that involves agency by all social actors involved (Fairclough 1992: 56). Foucault tends to over emphasize the extent to which people are influenced by power, leaving little or no room for agency beyond the reproduction of existing structures. Gramsci's portrays a much more unstable equilibrium that is highly depended upon alliances between different groups and the production of consent from subordinate classes. This unstable equilibrium is the ground of constant struggle, where structures are constantly renegotiated (Fairclough 1992: 56-58).

Gramsci theorises hegemony as the power of a class over society as whole. This dominance, however, is never fully achieved, and can only be maintained by forming alliances, making concessions, and most importantly developing ideological means to ensure the integration of subordinated classes into the hegemonic project (Fairclough 1989: 61-62). In other words, hegemony is the exercise of power through acquiescence rather than through coercion. A fundamental element in the exercise of power through hegemony is ideology. Still according to Gramsci, ideology is 'a conception of the world'

that is implicitly manifest in the ways in which people conduct themselves individually and collectively (Gramsci 1971, as cited in Fairclough 1989: 62). Ideology works to perpetrate hegemony by producing discourses that represent the world in a given way and by inculcating these discourses as ways of being (Fairclough 1985: 28). Usually, ideological discourses manage to increase their currency and to undermine the validity of other discourses by presenting themselves as the natural order of things. If successful, ideological discourses are eventually picked up by subordinate actors that uncritically accept them as 'common sense' (Gramsci 1971).

Gramsci's notions of hegemony and common sense have been picked up by Connell (1995) as the basis for the extremely influential concept of 'hegemonic masculinity'. Connell theorizes hegemonic masculinity as a system of beliefs that supports, reinforces, and legitimizes a patriarchal order of society that serves the interests of the dominant group (that is, men). Connell further argues that all members of society are to some extent complicit in the perpetuation of hegemonic masculinity. Among other ideologies, hegemonic masculinity produces normative ideas regarding what it means to be a man (and to be a woman) that are eventually internalized and reproduced by all members of society. One of the key insights of Connell is the realization that masculinity (like femininity) is not monolithic, but significantly fragmented. Different masculine identities arise from the intersection of gender with other social structures (such as class, ethnicity, sexuality, etc.).

Gender is, therefore, an ideological discursive formation (Fairclough 1989) that is produced as the result of power dynamics between different masculine and feminine identity in any given society. Its underlying ideology is reproduced through discursive practices and according to the normative ideas produced by hegemonic masculinity. Through ideology, hegemonic masculinity is capable of spreading normative ideas regarding what is the appropriate way of being a man (or to be a woman). As these norms

gain currency, those more closely adhering to them enjoy privilege, while those that do not or cannot conform are ostracized. For example, if the proper way of being a man is to be white, middle class, and heterosexual, other ways of being a man will be treated as deviant and therefore marginalized.

## **What is Gender Based Violence?**

Despite the fact that there has hardly ever been a war with no gender based violence (GBV), gender issues in time of conflict have been remarkably absent from discussion until quite recently. For much of modern history, it was widely held that GBV during conflicts resulted from random incidents of frustration and violence caused by individuals. Even more problematically perhaps, GBV has been treated invariably as the violence of men on women, and as the violation of the property rights of a group of men by another group of men. In other words, perpetrating violence against women in time of war was not seen as a violation of the human rights of the women themselves, but rather as the violation of male property rights upon them. Furthermore, the possibility of men being object of GBV was completely excluded from the discussion, and still today remain a particularly under-studied and under-regulated issue. Throughout the twentieth century, GBV moved from almost complete irrelevance to full recognition as a human rights issue and eventually as a threat to international peace and security (Carpenter 2006).

Gender based violence can be defined as 'any harm that is perpetrated against a person's will; that has a negative impact on the physical or psychological health, development and identity of the person, and that is the result of gendered power inequities that exploit distinctions between males and females, among males, and among females' (Ward, 2002: 8-9). GBV is particularly likely to take place in time of conflict and in post-conflict environments. GBV can take many forms, including rape, slavery, forced impregnation/miscarriages, kidnapping/trafficking, forced nudity, and disease transmission,

with rape and sexual abuse being among the most common (Manjoo and McRaith 2011: 12).

One of the earliest steps towards recognition of GBV as a matter of concern came in 1863, when the Lieber Code (a U.S. code of conduct for the treatment of enemy civilians and prisoners of war) made rape a capital offense. Later, the Hague Convention of 1907 coded GBV as “violations of family honor and rights”. Explicit condemnation of GBV was achieved with Article 27 of the Fourth Geneva Convention, was restated in Article 76 of the First Geneva Protocol directed to the victims of international war, and was extended to the victims of non-international conflicts with the Second Geneva Protocol of 1977. Further commitment to eliminate GBV in time of conflict came with the 1979 Convention on the Elimination of All Forms of Discrimination Against Women, which includes several articles relating to the issue (Manjoo and McRaith 2011).

Despite the existence of international laws and norms condemning wartime GBV, implementation has been patchy at best. In the aftermath of World War II, the trials of Nuremberg did not prosecute any case of GBV. Remarkably, the mass rape committed by the Red Army following the capture of Berlin went literally unspoken until very recently. The analogous trials in Tokyo only marginally engaged with GBV, treating this cases as a marginal category under the broad umbrella of crimes against humanity. More recently, mass rape, forced prostitution, and other forms of GBV went almost unspoken and unpunished in most conflicts, including very prominent ones such as the Vietnam War, the Pakistani secessionist war with, and the First Gulf War (Saha 2009: 505-7).

The turning point came in 1998, with the decision of the International Criminal Tribunal for Rwanda to condemn to life imprisonment Jean-Paul Akayesu for encouraging and facilitating mass rape operated during the 1994 Genocide. The decision finally recognized that rape can be perpetrated with the purpose of intimidation, degradation, humiliation, discrimination, punishment, control or destruction of the person, and thus is a

serious war crime. Besides, rape was recognized as falling under the definition of torture in those cases when it is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. The decision also acknowledged that rape can be used as an instrument of genocide, when it is accomplished with the intent to physically or psychologically destroy a group (Saha 2009: 505-9; Manjoo and McRaith 2011).

After the 1998 Akayesu decision, attention to gender issues in conflict scenarios and beyond increased dramatically, followed by a proliferation of legal and policy instruments for the protection. In 2000, Security Council Resolution 1325 on Women, Peace and Security emphasized 'the responsibility of all States to put an end to impunity and to prosecute those responsible for genocide, crimes against humanity, and war crimes including those relating to sexual and other violence against women and girls'. Entering into force in 2002, the Rome Statute of the ICC codes wartime rape as a crime of war. In 2008, Security Council Resolution 1820 recognized GBV recognized as a threat to international peace and security. Subsequently, Security Council Resolution 1888 (2009) called for the appointment of a Special Rapporteur on sexual violence and for more concrete efforts for monitoring and reporting of GBV in time of conflict.

## **Offering protection: Asylum and RtoP**

In this section, I wish to argue that the international community has two possibilities to offer protection to victims of GBV, to be used depending on their physical location with respect to the border of their country of origin. For people outside their country of origin, the international community can and should offer protection through a gendered interpretation of the 1951 Refugee Convention. For people still within the borders of their country of origin, the international community can and should offer protection through one of the Responsibility to Protect. Both instruments are limited for a wide array of reasons, but nonetheless encompass a strong mandate across and within national borders.

The 1951 Refugee Convention can be a powerful tool of international law to offer protection to people facing persecution based on their socially constructed gender role. Gender entered the agenda of the UNHCR in the 1980s following mass displacement due to violent conflicts in central and south-eastern Asia. At first, 'gender' was explicitly equated with 'women'; a practice with consequences still resonating today. Early policies aimed at adding protection for women to the existing framework of refugee protection. This process came to be known as 'integrative mainstreaming' of gender in asylum.

Gender mainstreaming represent an incredible leap forward in the recognition of women rights as human rights. However, integrative mainstreaming has its shortcomings. Indeed, early policies were aimed at women as a specific and separate group. Consequently, they had the negative side-effect of labeling women as vulnerable, defenseless, and in dire need of special help. It was not until the late-90s that the UNHCR switched from integrative mainstreaming to what is called 'transformative mainstreaming'. This strategy aims at rethinking the asylum discourse in light of new issues, including gender issues. Most notably, new policies were not aimed at women only. Rather, they focused on a much broader dimension of the gender issues, which can equally affect men and women (Freedman 2010a).

The efficiency of the Convention in offering protection to potential victims of GBV is limited by the absence of 'gender' among the protected grounds (race, religion, nationality, political opinion, and membership of a particular social group). Lacking a specific provision for GBV, it has been the strategy of the UNHCR to treat gender as a 'particular social group' (PSG). Offering protection under PSG is, however, rather problematic. Neither the Convention nor the Protocol provide a univocal definition of PSG. Asylum applications based on the particular social group ground are often viewed with diffidence. States perceive it as the key to the 'floodgates' of undesired refugee flows. Claims based on particular social group have very low success rates. In most cases, particular social group

is the very last resort for asylum claimants. It is only used when none of the other grounds for asylum is available. It has been argued that particular social group is in some way the 'ugly stepsibling' of the other protected grounds. Amorphous in nature, it has always been the object of very restrictive and inconsistent interpretations across and within jurisdictions, making it a very risky option for asylum seekers (Prochazka 2012: 446; Cianciarulo et al. 2012: 142-3).

Despite the fact that gender based persecution has been a policy priority in the agenda of the UNHCR for more than twenty years, implementation has faced several obstacles. Arguably, this is the product of three factors. First, the discourse on women's right to asylum has come to the fore during a period in which Western attitude towards migratory flows is not as friendly as it used to be in the early Cold War years. In some cases, expansion of protection conflicts with other priorities of receiving states. Secondly, the large bureaucratic structure of the UNHCR itself can be viewed as a sort of obstacle. As in many other bureaucratic agencies, policy implementation is often slow, and policy priorities not always penetrate evenly through the various branches.

Thirdly, it is worth considering that the UNCHR heavily depends on the financing of donor states, with the EU and EU Members providing almost half of its resources. While these states have declared their commitment to the defence of human rights, evidence shows that their asylum policies are becoming more and more restrictive. Thus, the UN agency is in the uncomfortable position of having to promote policy priorities that might or might not coincide with the political interest of its main sponsors (Freedman 2010b). Finally, the greatest limitation of the Refugee Convention is probably its limited focus on international migrants. Despite its quite advanced outlook, the refugee Convention was drafted in 1951, and is invariably a product of its time and context. Despite liberalism was on the rise in international relations, state sovereignty was still an almost untouchable concept, at least for what concerns the administration of domestic matters.

In the post-Cold War scenario, increasing attention has been given to the need to redefine State sovereignty to include not only rights but also duties. These trend is significantly changing international relations in some unprecedented ways. In this context, one of the most relevant emerging trend is the growing consensus in the international community around the emerging norm of the Responsibility to Protect (RtoP). Formulated for the first time in 2001, RtoP was adopted unanimously by the international community at the 2005 UN World Summit. The concept of RtoP stands on three pillars, respectively stating that (1) states have a responsibility to protect their own population from genocide, crimes against humanity, war crimes, and ethnic cleansing; (2) that the international community has a duty to assist states in performing their primary duty to offer basic security; and (3) that the international community has a duty to intervene with the authorization of the UNSC to stop ongoing atrocities.

Probably the most interesting characteristic of the responsibility to protect is its implications for state sovereignty. Ever since its formulation by early social contract theorists, sovereignty derives its legitimacy from the people who choose to alienate part of their freedom in favour of a sovereign that in turn is charged with some duties, the most important of which is the provision of security. Ever since the peace of Westphalia (1648), where modern nation-states made their first appearance, the security function of the sovereign has been mostly interpreted as limited to external security, with little or no attention to the treatment of domestic residents.

Arguably, the responsibility to protect is a norm that aims at re-establishing the original meaning of sovereignty in terms of responsibility within the framework of social contract theory (Deng et al: 1996). This is indeed the key assumption laying behind its first pillar, that aims at making any sovereign liable for neglecting its most basic functions. Similarly, the second pillar of RtoP is grounded on the assumption that states failing in performing their basic duties can call upon the international community to assist them.

Finally, the third pillar of RtoP wants to reinforce the idea that, in light of nexus between sovereignty and responsibility, international interventions to enforce or protect peace and security are indeed legitimate in those cases when the state is failing in providing basic guarantees or is itself the perpetrator of violence.

While the limitations to the mainstreaming of gender in Asylum are to some extent due to the nature of the asylum system as envisioned by the Refugee Convention and the bureaucratic structure of the UNHCR, the limitations to the implementation of a gendered interpretation of RtoP are mostly discursive. Since RtoP refers to the duty to protect victims and prevent atrocity crimes, the recognition of GBV as a serious human rights violations automatically includes GBV into the framework of RtoP. Limitations are therefore mostly tied to the way in which 'gender' and 'gender based violence' are conceptualized, translated into policy, defined in guidelines, and eventually implemented in daily practice. The next section will try to suggest possible ways of increasing efficiency at all levels, offering examples of best practices as implemented by actors in both asylum and RtoP discourses.

## **Recommendations: Mainstreaming GBV in Asylum and RtoP**

Despite the availability of tools for the protection of victims of GBV, It has been argued that verbal commitment to GBV is struggling to achieve full translation into practice, with efficiency losses (or 'gaps') in the transition from discourse to policy (discursive gap), from policy to guidelines (implementation gap), and from guidelines to change on the ground (efficacy gap) (Czaika and de Haas 2013). In this section, I will argue that efficient implementation of a concrete GBV agenda requires action to fill all three gaps. Furthermore, I will also include a personal plead for broader change at the discursive level.

Starting from the grassroots, efficient implementation of any policy-driven guideline regarding gender requires the presence of trained personnel capable of translating directions into the desired effects on the ground. In the context of GBV, asylum, and RtoP,

filling the efficacy gap entails training UNHCR staffers, humanitarian workers, NGO volunteers, and other actors to recognize the importance of GBV as a relevant issue and provide them with the tools for efficient responses. For example, the Centre of Excellence for Special Police Units in Padova, Italy, is well known for its best practices in training military police for post-conflict situations, including trainings to deal with cases of GBV.

Moving up one level, filling the implementation gap requires the production of precise guidelines under the advice of experts on gender issues and GBV. The UNHCR is actually among the actors most engaged in this respect, and has consistently issued guidelines for the implementation of GBV-related policies for peacekeepers, humanitarian workers, and IGO/NGO staff members since the conflict in former-Yugoslavia in the 1990s. Another virtuous example is the Liberian Truth and Reconciliation Commission, that has worked with the advice of experts in gender issues throughout its mandate.

Scaling further up, filling the discursive gap requires a stronger role of civil society in monitoring the work of policymakers and hold them accountable for not translating verbal commitments to protection into practice. Still referring to best practices, a wide consortium of several associations in former-Yugoslavia, including Trial, Association of Women-Victims of War, Women's Section of the Concentration Camp Torture Survivors Canton Sarajevo, Foundation of Local Democracy, and many other, has consistently worked to gather qualitative and quantitative data to pressure policy makers into respecting their verbal commitments and translate them into policy.

Finally, currently circulating discourses regarding gender based violence are not fully satisfactory, with the undesired effect of producing pockets of exclusion for some potentially vulnerable groups. To overcome this undesired effects at the level of discourse, it is paramount to disrupt the notion that gender equates with women. GBV can be addressed towards both man and women in different but equally painful and persecutory forms, especially during and after a violent conflict. both men and women are entitled to

the same level of protection by international law. Neither of the two groups is inherently more vulnerable, and neither of the two groups should be object of special attention. Rather, both the groups should receive protection based on the specific forms of GBV they are most likely to encounter (Carpenter 2006).

## **Conclusion**

In this essay, I have argued that gender is a social construction that is produced, reproduced, and maintained through normative ideas regarding what is the appropriate way of being a man or being a woman. People can be targets of violence because of their socially constructed categorization, and this include gendered categorizations. Gender based violence is therefore violence targeted at both men and women because of their gender. Gender based violence has been disregarded for much of human history, entered the agenda of the international community only after World War II, finally achieved full commitment in the late 1990s, and still today awaits the achievement of adequate protection and prevention. This achievement is arguably dependent on the efficiency of the actors involved in filling 'gaps' between the actual and the intended effects of their actions, between their intended impact and their policy commitment, and between their policies on paper and their discursive commitments. Finally, full and efficient protection requires change at the discursive level to disrupt the notion that gender equates with women and recognize men's issues as equally relevant.

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