

# Women, Conflict and Trafficking: Towards a Stronger Normative Framework for Protection

Susan Martin and Amber Callaway

## Introduction

Human trafficking for forced labor and sexual exploitation is one of the fastest growing areas of international criminal activity and one that is of increasing concern to the international community. Human trafficking is the recruitment, transportation, harboring, or receipt of people for the purpose of exploitation. That exploitation takes many varied forms, but in all cases it leads to forced labor or sexual exploitation for profit or benefit of another. Armed conflict is inextricably linked to trafficking. War and instability cause a breakdown in law and order, a deterioration of institutional and social protection mechanisms, increased poverty, deprivation, and dislocation of the civilian population – creating an environment in which trafficking flourishes. Traffickers take advantage of the opportunity to exploit the vulnerable. They prey on those who are forcibly displaced or compelled to migrate in search of safety and stability, both internally and across borders, and they forcibly abduct those who lack adequate protection.

Women are particularly vulnerable to trafficking during conflict. While all people suffer from the devastation that accompanies war, violence against women, particularly on account of their gender, has reached epidemic proportions in many conflicts around the world. Women and girls are far more vulnerable to gender-based persecution, discrimination, oppression, and forced sexual slavery. The abuse they experience during conflict is often associated with their status in society. Trafficking of women during conflict is based on similar factors and conditions that characterize trafficking in general, which are exacerbated during conflict. Pre-war gender inequalities, a lack of status and inadequate livelihood opportunities leave many women at an increased risk of trafficking during conflict situations. Armed conflict also leads to specific forms of war-related trafficking such as military abduction and enslavement for sexual servitude or forced labor.

Women who become refugees or internally displaced persons (IDPs) as a result of conflict face an extremely high risk – especially in camp situations. Displacement

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S. Martin (✉)

Institute for the Study of International Migration, School of Foreign Service, Georgetown University, 3300 Whitehaven St NW, Washington, DC 20007, USA

strips away economic opportunities, terminates dependable employment and educational opportunities, induces extreme forms of isolation and poverty, and destroys social structures. As the men go off to fight, many displaced women struggle to survive with inadequate shelter, little or no access to food or basic healthcare, and no protection. They are cramped together in makeshift dwellings, often in unhygienic conditions, leaving them disoriented and less able to resist exploitation as they desperately search for a means of survival. Traffickers take advantage of their desperation either by forcibly abducting them or luring them away with false promises of a better life somewhere else. They are subsequently trafficked for forced labor or sexual exploitation.

This chapter examines the complex interconnections between trafficking of women and armed conflict. It is based on Martin's field work and an analysis of reports by international governmental and non-governmental organizations, newspaper articles, and academic publications. After a brief review of the literature and discussion of the various ways in which trafficking intersects with conflict, the chapter provides a detailed analysis of the legal and normative frameworks that have been adopted to combat trafficking of women, particularly during conflict. We argue that using a combination of international instruments creates a stronger framework for protecting and assisting these women than any of the instruments do on their own. While norms by themselves will not prevent trafficking or protect victims, they can serve as a basis for advocating implementation of policies and programs to achieve these goals. In emphasizing the importance of developing a strong normative framework to address trafficking in conflict, the chapter follows Martha Finnemore's framework for understanding the interplay between international norms and state behavior: "State interests are defined in the context of internationally held norms and understandings about what is good and appropriate. That normative context influences the behavior of decisionmakers and of mass publics who may choose and constrain those decisionmakers (Finnemore, 1996)."

## Literature Review

Although the issue of trafficking in persons has garnered considerable attention during the past decade, a recent review of the literature found that

there is little systematic and reliable data on the scale of the phenomenon; limited understanding of the characteristics of victims (including the ability to differentiate between the special needs of adult and child victims, girls and boys, women and men), their life experiences, and their trafficking trajectories; poor understanding of the *modus operandi* of traffickers and their networks; and lack of evaluation research on the effectiveness of governmental anti-trafficking policies and the efficacy of rescue and restore programs, among other gaps in the current state of knowledge about human trafficking (Goździak and Bump, 2008).

Goździak and Bump's analysis of journal articles and reports found that most were analyses of trafficking for sexual exploitation, with only a few articles focusing on trafficking for labor exploitation or domestic servitude (Goździak and Bump, 2008).

The literature on trafficking of persons in conflict and crisis settings is particularly sparse. Few articles in scholarly journals focus explicitly on these issues. Most case studies focus on relatively stable countries with relatively easy access by researchers. Even those books and journal articles presenting case studies of trafficking in countries with conflict often devote little or no attention to the role that the conflict may be playing in relationship to trafficking, focusing instead on economic and social factors (see, for example, Hennink and Simkhada, 2004, on sex trafficking in Nepal and Ali, A., 2005 on South Asia). A notable exception is Friman and Reich (2007) on the Balkans. Richer in their treatment of trafficking, conflict and displacement are reports issued by human rights groups and relief agencies that work in such settings (see, for example, Amnesty International, 2004; Human Rights Watch, 1997, 2002; Women's Commission on Refugee Women and Children, 2005, 2006a, b, 2007; GTZ, 2004; Lough and Denholm, 2005). With press reports of the increase in trafficking associated with military and peacekeeping operations, attention has also been paid in the literature to these issues (see, for example, Allred, 2006; Crook, 2005; Hughes et al., 2007). The connections between trafficking and child soldiers have also received increased attention, including in the context of refugees and displaced persons (see, for example, Ford Institute 2008). A further area of research focuses on the interconnections between asylum and trafficking (see Koser 2000; Women's Commission 2006, 2007). In all, however, trafficking in persons in the context of conflict is an under-researched area.

## **Forms of Trafficking in Conflict**

### ***Abduction by Armed Forces for Sexual Enslavement and Forced Marriage***

During times of conflict, women and girls are especially vulnerable to trafficking by armed forces. Many of these women are held for sexual enslavement or enforced military prostitution. In some cases, women are abducted and given as "wives" to reward fighters. They may be captured for a variety of reasons, but sexual violence is almost always a part of their exploitation. Abduction for sexual enslavement by government and rebel groups has been documented in many past and current conflicts, including: Angola, the war in the Former Republic of Yugoslavia, Sierra Leone, Liberia, Uganda, Indonesia Rwanda, and the Democratic Republic of Congo (DRC).

In the camps straddling the Thai-Cambodian border in the 1980s, for example, women and girls were routinely trafficked by insurgent groups to be servants, "wives" and porters.<sup>1</sup> During the Indonesian occupation of East Timor, Indonesian army officials and militias abducted women and sent them to camps in West Timor, where they were "married" to Indonesian soldiers (Rehn and Sirleaf, 2002). During the 1994 Rwandan genocide, "ceiling women" were kept in the space between rafters and the roof while their captors were away, and were brought down for sexual and domestic servitude upon their captors return (Human Rights Watch, 1996).

In Afghanistan, more than 20 years of civil war has resulted in chronic insecurity, massive displacement, and poverty borne of conflict and drought, making

women extremely vulnerable to trafficking. Both Taliban and rebel fighters sexually assaulted, abducted, and forcibly married women during the conflict (Save the Children, 2003). According to the International Organization for Migration (2003), women and girls continue to be abducted for forced marriages in many Afghan provinces, particularly in rural areas that have been severely affected by drought, and among displaced populations. Women and girls are either snatched while walking outside, or forced from their homes by armed groups.

During the 10-year civil war in Sierra Leone, women were trafficked into refugee camps and used as sex slaves for the camp managers (United Nations, 2002). A report by Physicians for Human Rights (2002) found that one third of the women reporting sexual violence during the war had been abducted and 15% were subject to sexual slavery. The report also found that 94% of displaced households surveyed in Sierra Leone experienced sexual assaults, including rape, torture, and sexual slavery.

Similarly, the abduction of women and girls for sexual slavery and forced “marriage” has been particularly pervasive during the war in northern Uganda, where the Lord’s Resistance Army (LRA) has abducted thousands of women and girls and used them as domestic slaves and assigned them as “wives” to the LRA commanders.

In Burma, where the military regime routinely abducts, rapes, and abuses women, victims often face rejection by their families and attempt to flee to Thailand, where they are not recognized as refugees and therefore denied protection, humanitarian aid and counseling. Once in Thailand, these women are vulnerable to further trafficking and exploitation (Shan Human Rights Foundation, 2002). As noted by the Women’s Commission for Refugee Women and Children (2006a) Thai immigration officials are participating in this exploitation by actively trafficking women in Mae Sot, a town located on the northwestern border with Burma. A senior UN official interviewed by the Women’s Commission reported that immigration officials sometimes force women, some of whom have been previously trafficked and are fleeing in search of safety, to have sex with them. Afterwards, they sell the women to work as sex slaves in the karaoke bars.

### ***Forced Labor***

The exploitation of women’s labor is also an important factor in sustaining war economies. Apart from being sexual slaves, women are forced to do domestic work, collect firewood, cultivate crops, and demine contaminated areas. They are forced to work in mines or drug plantations in order to sustain war economies and prolong conflict.

In the DRC, women and children are commandeered as slave workers, porters and guards in mines and plantations (United Nations, 2002). They are forced to live as slave laborers in the forest with the rebels or with local men who control and benefit from the mines and plantations. During the conflicts in Angola and Sierra Leone women and children were not only trafficked as sex slaves, but also as day laborers and domestic servants. They were abducted and forced to carry supplies, such

as ammunition, looted goods, and messages between work gangs or among fighting forces (Coalition to End the Use of Child Soldiers, 2001). Reports from Sierra Leone also indicate that some women and girls were forced to become combatants for the rebels – a common phenomenon in many contemporary conflicts around the world. In Colombia, women (and men) are forced by guerrillas or the paramilitary forces to work on drug crops (GTZ, 2004).

### ***Trafficking of Displaced Populations***

Mass displacement of the population and a loss of livelihood opportunities create a potential supply of trafficking victims. While men usually go off to fight in war, women and children are left behind unarmed and unprotected. Often times they languish in displacement camps with inadequate shelter, little or no access to food or basic healthcare and no protection. They are cramped together in makeshift dwellings, often in unhygienic conditions, leaving them disoriented and less able to resist exploitation as they desperately search for a means of survival. Sometimes these women are kidnapped outright in one country and taken forcibly to another. In other cases, traffickers entice victims to migrate voluntarily with false promises of stability, access to safety zones, or good paying jobs in foreign countries as au pairs, models, dancers, domestic workers, etc. After providing transportation and false travel documents to get victims to their destinations, they subsequently charge exorbitant fees for those services, creating lifetime debt bondage. An absence of law and order leaves borders uncontrolled – creating an opportunity for recruiters and armed forces to traffic vulnerable women and girls with little consequence.

### ***Post-Conflict Trafficking***

Unfortunately, trafficking of women for sexual exploitation and forced labor does not stop when the conflict ends. In fact, post-conflict regions offer ideal conditions for traffickers, as they are frequently characterized by the absence of law and order, political instability, increased criminal activity and dysfunctional law enforcement institutions. This highly volatile environment, coupled with social disintegration, destruction of livelihoods and a lack of economic activities following a war, particularly for women, offer a large collection of highly vulnerable people who are struggling to reconstruct their lives. Former militia, ex-combatants, or war lords may turn to trafficking in human beings as a way to replace revenue losses caused by the cessation of the war (GTZ, 2004). Additionally, demobilization programs force ex-combatants to turn in their weapons, causing an income loss in small arms trafficking which may be filled with trafficking in women and children.

At the same time, post-conflict countries generally do not have the government systems in place to combat trafficking. Establishing the rule of law through functioning policing and judicial systems often takes time, particularly if trained personnel are not available. For example, newly appointed government officials in Serbia, following the fall of the Milosevic government, identified trafficking as one of their

most serious problems, but they had neither the resources nor the expertise to prevent trafficking. Nor did Serbia have a legal code that would permit prosecution of traffickers. Police did not understand the problem, and in many cases, received bribes from the traffickers. In the prior regime, informants stated, trafficking was not only tolerated but encouraged because it was a source of revenue for the government. Moreover, with all of Serbia's other problems, officials stated, combating trafficking was a low priority.<sup>2</sup>

A sudden increase in trafficking for sexual exploitation often occurs when foreign or international peacekeeping or civilian forces are deployed to a war zone. Foreign soldiers bring money and time to post-conflict settings where both are regarded as priceless commodities. With an increase in demand for sexual services comes an increase in supply. The arrival of peace support missions often directly coincides with an increase in local sex markets around military and peacekeeping camps. Traffickers and local authorities in post-conflict regions are quick to enter and benefit from the emerging market, which represents an economic opportunity in a situation where few other opportunities to earn an income exist.

The deployment of peacekeeping forces to Sierra Leone, Kosovo, Eritrea, and Bosnia, for example, created huge local sex markets (GTZ, 2004). In Bosnia and Herzegovina an explosive growth in "sex slaves" was fueled by the arrival of tens of thousands of predominately male NATO and UN personnel in the wake of the signing of the Dayton Peace Accords by Bosnia, Croatia, and Yugoslavia in 1995. The United Nations High Commission for Refugees (UNHCR) estimated that 30% of those visiting brothels in Bosnia were UN personnel, NATO peacekeepers or aid workers. Other research estimates that since 1995, 70% of traffickers' income in Bosnia came directly from peacekeepers (Refugees International, 2004). In the Democratic Republic of Congo, the international media reported allegations of a soldier-run prostitution ring involving girls as young as 15 in the South Kivu area (IDMC, n.d.). In Mozambique, following the signing of the peace treaty in 1992, soldiers of the United Nations Operation in Mozambique (ONUMOZ) reportedly recruited girls as young as 12 into prostitution.

## **Legal Protection of Trafficked Persons**

Despite notable progress by the international community to protect victims of trafficking, current international instruments are insufficient on their own to protect and assist women who have been trafficked during conflict. Taken together, however, the instruments provide for a more holistic and integrated approach to protecting and assisting the women who fall victim to this exploitative criminal activity than any do on their own, as each instrument has strengths and weaknesses that are balanced by the other.

### ***International Anti-Trafficking Law***

Human trafficking is now considered the third largest source of profits for organized crime, behind only drugs and guns, generating billions of dollars annually.

Recognizing the growth of trafficking operations, the UN General Assembly adopted the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children (Trafficking Protocol) in November 2000 (UN Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, adopted by UN General Assembly, November 15, 2000 [hereinafter Trafficking Protocol]). The Trafficking Protocol requires international cooperation in combating and preventing trafficking in persons with special attention to women and children. It lays out the first internationally recognized definition of trafficking as:

the recruitment, transportation, transfer, harboring, or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, or deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation or the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs (Trafficking Protocol, art. 3(a)).

As binding international law ratified by more than 90 countries, the Trafficking Protocol requires states to take specific actions to prevent trafficking and prosecute traffickers. The Trafficking Protocol contains provisions related to the protection of trafficking victims, but the language is fairly weak in assigning responsibilities to governments. The Protocol states, for example, that governments “shall endeavor to provide for the physical safety of victims of trafficking in persons while they are within its territory (Trafficking Protocol, art. 6).” The Protocol also requires a state party to protect the confidentiality of trafficking victims “in appropriate cases and to the extent possible under its domestic laws (Trafficking Protocol, art 6).”

Additionally, the Protocol encourages but does not require state parties to adopt provisions to help trafficking victims to recover: “Each State Party shall consider implementing measures to provide for the physical, psychological and social recovery of victims of trafficking in persons (Trafficking Protocol, art 6).” Among the areas to be considered are: appropriate housing; counseling and information; medical, psychological and material assistance; and employment, educational and training opportunities. For victims that are trafficked across an international border, the Protocol also encourages states to “consider adopting legislative or other appropriate measures that permit victims of trafficking in persons to remain in its territory, temporarily or permanently, in appropriate cases (Trafficking Protocol, art 7).” Also in the case of transnational trafficking, the Protocol includes specific provisions regarding return and reintegration of trafficking victims to their home countries. By contrast, it includes no provisions related to the return or reintegration of internal trafficking victims to their home communities. This is particularly important for women who are abducted by armed groups during internal conflicts – which make up the majority of contemporary warfare – because they are typically trafficked internally.

However, the Trafficking Protocol does require states to facilitate the safe return of their trafficked nationals and residents (Trafficking Protocol, art 8), and it requires the country that is returning a trafficked person to do so with full regard for

the victim's safety and the status of legal proceedings related to the trafficking (Trafficking Protocol, art 8). The Protocol also mandates that governments provide and strengthen training for law enforcement and immigration officials in the prevention of trafficking in persons with special consideration to human rights and gender specific issues (Trafficking Protocol, art 10). Furthermore, the Trafficking Protocol contains a savings clause that notes "nothing in this Protocol shall affect the rights, obligations and responsibilities of States and individuals under international law, including international humanitarian law and international human rights law and, in particular, where applicable, the 1951 Convention and the 1967 Protocol Relating to the Status of Refugee and the principle of non-refoulement as contained therein" (Trafficking Protocol, art 14).

### *International Refugee Law*

Today, primary responsibility for refugee protection and assistance rests with the UNHCR. Refugees, as defined by the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, are persons outside their own country who are unwilling or unable to return because of a well-founded fear of persecution on account of race, religion, nationality, political opinion or membership in a particular social group (United Nations Convention Relating to the Status of Refugees, 189 UN Treaty Series 137 (opened for signature July 28, 1951); United Nations Protocol Relating to the Status of Refugees, 606 UN Treaty Series 267 (opened for signature January 31, 1967) [hereinafter Refugee Convention]). The Refugee Convention prohibits the expulsion or return of refugees to a country where their lives or freedom would be threatened because of a well-founded fear of persecution the basis of the five criteria mentioned above – a principle known as *non-refoulement*. The Refugee Convention is legally binding. It has been ratified by 147 states party to either or both the Convention and the Protocol as of September 2007 (UNHCR, 2007).

In 2006, the UNHCR published guidelines on the application of the Refugee Convention to people who have been trafficked. The Guidelines note that UNHCR's involvement in the issue of trafficking is essentially two-fold. First, UNHCR "has a responsibility to ensure that refugees, asylum-seekers, IDPs, stateless persons, and other persons of concern do not fall victim to trafficking." Secondly, UNHCR "has a responsibility to ensure that individuals who have been trafficked and who fear being subjected to persecution upon a return to their country of origin, or individuals who fear being trafficked, whose claim to international protection falls within the refugee definition contained in the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees are recognized as refugees and afforded the corresponding international protection."

While the guidelines in no way suggest that all victims of trafficking are entitled to refugee status, they demonstrate how some trafficked persons may have entitlements under the Refugee Convention. For example, they state that some acts – which are inherent to the trafficking experience – "constitute serious violations of human rights which will generally amount to persecution." These include: abduction,

incarceration, rape, sexual enslavement, enforced prostitution, forced labor, removal of organs, physical beatings, starvation, and the deprivation of medical treatment. The guidelines also state that “the mere existence of a law prohibiting trafficking in persons will not of itself be sufficient to exclude the possibility of persecution. If a law exists but is not effectively implemented, or if administrative mechanisms are in place to provide protection and assistance to victims, but the individual concerned is unable to gain access to such mechanism, the State may be deemed unable to extend protection to the victims, or potential victim, of trafficking.”

The guidelines include provisions related to the possible persecution upon the return of trafficking victims to the territory from which they have fled or from which they have been trafficked. For example, they state that reprisals and/or possible re-trafficking could amount to persecution depending on whether or not the acts feared involve serious human rights violations. In addition, the guidelines recognize that victims may fear ostracism, discrimination, or punishment by their family and/or the local community which could give rise to a well-founded fear of persecution, particularly if aggravated by the trauma suffered during, and as a result of, the trafficking process. Notably, the guidelines note that even if the ostracism does not rise to the level of persecution, “such rejection by, and isolation from, social support networks may in fact heighten the risk of being re-trafficked or of being exposed to retaliation, which could give rise to a well-founded fear of persecution.”

The UNHCR guidelines represent a useful addition to our understanding of the Convention regime, but they are not legally binding and they do not purport to amend the Refugee Convention – states remain only bound by the 1951 Refugee Convention and its 1967 Protocol. Even in cases where trafficked persons can be entitled to refugee status, the Refugee Convention only protects refugees fleeing very specific kinds of persecution, leaving those fleeing civil wars, ethnic conflicts, and generalized violence – which make up the majority of refugees and a substantial number of trafficked persons – inadequately protected (Loescher, 1996). Although some regional laws have been adopted to address this deficiency, such as the Convention Governing Specific Aspects of Refugee Problems in Africa and the Cartagena Declaration on Refugees in Latin America, protection of refugees fleeing for grounds other than persecution need to be formalized in both national and regional law in order to provide adequate protection.

### ***Protection of Internally Displaced Persons***

Not all persons forced to leave their homes as a result of armed conflict actually cross an international border and thus become refugees under international law. People who flee for similar reasons as refugees but remain within the borders of their own country are known as internally displaced persons (IDPs). Worldwide there are an estimated 26 million IDPs (IDMC, 2008). Although IDPs now outnumber refugees by two to one, their plight has received far less international attention. This is largely due to complex legal and political challenges related to state sovereignty. Although it is clear under international law that states themselves carry the primary

responsibility to protect their own citizens, the governments of many countries that experience internal displacement are either actively involved in the persecution of IDPs or are unable or unwilling to protect them.

In 1998 the UN Secretary-General's Special Representative on Internal Displaced Persons developed the *Guiding Principles on Internal Displacement* (Guiding Principles). Although not legally binding, the Guiding Principles provide a critical framework for defining and promoting IDP protection. They do not create rights per se, but they restate and compile existing international human rights and humanitarian law relevant to the internally displaced. They also attempt to clarify gray areas and gaps in international instruments with regard to issues of particular relevance to the internally displaced (Martin et al., 2005).

Under the Guiding Principles, IDPs are defined as:

persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized stated border.

The Guiding Principles identify the rights and guarantees relevant to the protection of IDPs in all phases of displacement. They provide protection against arbitrary displacement, offer a basis for protection and assistance during displacement, and set forth guarantees for safe return, resettlement and reintegration. They also establish the right of IDPs to request and receive protection from national authorities, and the duty of these authorities to provide protection (Guiding Principles on Internal Displacement, principle 3). Vulnerable populations, such as expectant mothers, mothers with young children, and female headed households are entitled to protection required by their condition and to treatment that accounts for the needs (Guiding Principles on Internal Displacement, principle 4).

The Guiding Principles specify the rights of IDPs to be protected against various human rights violations, including genocide, summary execution and forced disappearances (Guiding Principles on Internal Displacement, principle 10). They specifically call for protection of IDPs from many forms of trafficking, including: acts of gender-specific violence, forced prostitution, and indecent assault (Guiding Principles on Internal Displacement, principle 11). They also call for the protection of IDPs against slavery or any contemporary form of slavery, such as sale into marriage, sexual exploitation and forced child labor (Guiding Principles on Internal Displacement, principle 11).

The Guiding Principles specify that internally displaced persons have "the right to be protected against forcible return or resettlement in any place where their life, safety, liberty and/or health would be at risk" (Guiding Principles on Internal Displacement, principle 15). This would benefit victims who have been internally displaced as a result of being trafficked who may be returned to their home communities without an adequate assessment of the risks they may face.

The Guiding Principles also stipulate that "internally displaced persons who have returned to their homes or places of habitual residence or who have resettled in

another part of the country shall not be discriminated against as a result of their having been displaced. They shall have the right to participate fully and equally in public affairs at all levels and have equal access to public services” (Guiding Principles on Internal Displacement, principle 29). This provision is particularly important for internally displaced trafficked victims that suffer from social stigmas after being forced into prostitution.

### ***International Humanitarian Law***

International humanitarian law, which comes into force during international and non-international armed conflict, regulates the conduct of hostilities and protects civilians who are not taking part in hostilities. This area of law is particularly relevant to the protection of women and girls during armed conflict. The principle instruments of humanitarian law are the four Geneva Conventions of 1949 and their Additional Protocols. The protections and guarantees set out in these instruments are granted to all without discrimination, but women also benefit from special provisions that offer them additional protection.

For example, the Fourth Geneva Convention states that “women must be especially protected against any attack on their honour, in particular against rape, enforced prostitution, or any other form of indecent assault” (Geneva Convention IV, art 27). The Additional Protocols prohibit “violence to the life, health or physical or mental well-being of persons. . .in particular humiliating and degrading treatment, enforced prostitution and any form of indecent assault or threats thereof” (Geneva Convention, Additional Protocol I, art. 75). They also prohibit “slavery and the slave trade in all their forms” (Geneva Convention, Additional Protocol II, art 4(2)). Additional protection is provided to pregnant women and mothers of young children (Geneva Convention IV, art. 8, 20, 21). They are afforded special treatment in relation to medical care (Geneva Convention IV, art. 50 and 91; Protocol I, art. 70), physical safety (Geneva Convention IV, art. 14, 17, 18, 20, and 21), and release, repatriation and accommodation in neutral countries.

The protections afforded by international humanitarian law are applicable in situations amounting to “armed conflict.” However, the protections do not apply “in situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of similar nature” (Geneva Convention IV, art. 132; Protocol I, art. 76). Additionally, Protocol II, which applies to internal armed conflicts, provides fewer protections than the Geneva Conventions provide to those affected by inter-state conflicts (United Nations, 2002). Most conflicts that occur in the world today are non-international in nature which leaves many civilians without full protection under international humanitarian law.

Some additional protections are provided to civilians affected by non-international armed conflict through Common Article 3, which is common to all four Geneva Conventions. Although more applicable to contemporary armed conflict, Common Article 3 is not explicit in granting special protection for women against gender-based crimes. Human rights norms, which complements the protection

provided to women during times of armed conflict, are particularly significant in the context of non-international armed conflicts where the protection provided by conventional international humanitarian law is more limited (United Nations, 2002).

### *International Criminal Law*

International criminal law also has increasing significance in relation to crimes against women and girls during armed conflict, in particular crimes of sexual violence. The Rome Statute constituting the International Criminal Court (ICC) was adopted at a diplomatic conference in Rome on 17 July 1998 and it entered into force on 1 July 2002. It is an international treaty binding only on those states which formally express their consent to be bound by its provisions. The ICC has the power to exercise jurisdiction over the major international crimes: genocide, crimes against humanity, and war crimes. One of the most important and highly praised aspects of the Statute is that it covers internal armed conflicts, as well as international conflicts.

The court does not have universal jurisdiction. Rather, its jurisdiction can be triggered in three different ways: by a state party, by the Security Council, or by the prosecutor of the Court (after receiving authorization from the Pre-Trial Chamber). Furthermore, the court's jurisdiction is limited by events that have occurred since the Statute came into force on July 1, 2002 (Rome Statute of the International Criminal Court; hereinafter Rome Statute). The fundamental principle under which the ICC operates is one of "complementarity" to national criminal jurisdictions. The ICC may exercise jurisdiction only when certain criteria are satisfied, meaning that national courts have the primary responsibility for the prosecution of international crimes. Thus, Article 17 limits the ICC's jurisdiction in favor of national judicial systems, "reflecting the concerns of States over national sovereignty and the potentially intrusive power of an international institution" (Holmes, 2002).

The Rome Statute codifies gender-related crimes within the definition of war crimes to include rape, sexual slavery, enforced prostitution, forced pregnancy, and enforced sterilization (Rome Statute, art. 8 (xxii)(b)). The range of gender-specific crimes are also extended within the definition of crimes against humanity to include "rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity," provided that these crimes are "committed as part of a wide-spread or systematic attack directed against any civilian population, with knowledge of the attack" (Rome Statute, art 7(g). The Rome Statute further defines enslavement as "the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children" (Rome Statute, art 3 (2)(c)).

The Rome Statute is an important step in providing adequate protection to women during armed conflict from trafficking and sexual abuse. However, to date, the ICC has only opened up investigations in four situations – northern Uganda, Central Africa Republic, Democratic Republic of Congo, and Darfur – all of which have

been highly controversial. It has issued public arrest warrants for 12 people, 6 of which remain free. In northern Uganda, the ICC issued arrest warrants for 5 top rebel leaders – two of which have died since the indictments – for crimes against humanity which fall under Article 7 of the Rome Statute, including murder, sexual slavery, imprisonment, rape and mutilation. The ICC referral has raised fundamental questions about whether ICC involvement is the appropriate response, given the fact that peace has not been reached in northern Uganda. Many people believe that the simultaneous pursuit of peace and justice is only delaying a resolution of the conflict.

## Conclusion

Taken together, the Trafficking Protocol, international refugee law, the Guiding Principles, international humanitarian law and international criminal law provide a good normative framework for protecting women who have been trafficked during conflict but they still lack strong legal enforcement measures. Although legally binding, the language in the Trafficking Protocol is weak in assigning responsibilities for the protection of trafficking victims to governments. International refugee law is also legally binding, but does not protect those who do not cross an international border in search of safety or those fleeing civil wars, ethnic conflicts, and generalized violence. The UNHCR guidelines on the application of the Refugee Convention to people who have been trafficked provide a useful interpretive legal guidance, but are not legally binding.

The Guiding Principles fill many of the gaps in setting out a legal framework for addressing the protection of victims who are trafficked internally, but they are not legally binding except to the extent that the Principles are based on existing international law. International humanitarian law is also very useful in addressing the protection needs of women during conflict, but offers fewer protections for women during internal armed conflict than to those affected by inter-state conflicts. Finally, the codification of gender-related crimes within the definition of war crimes and crimes against humanity marks an important step in protecting women against trafficking for sexual slavery during conflict. However, the ICC is controversial in nature and has only issued arrest warrants for high profile perpetrators of the most serious crimes. Although important, this is unlikely to deter the foot soldiers and criminal enterprises from continuing their abuse and exploitation of women during conflict.

Constraints of sovereignty undoubtedly make it difficult to enforce compliance with any of the international norms that have been adopted to protect women from becoming trafficking victims during conflict. To return to Finnemore (1996), states must be “socialized to accept new norms, values and perceptions of interest by international organizations.” Understanding the interconnections between human trafficking and conflict is a first step towards developing a more comprehensive approach to combating the problem and providing more effective protection to the victims.

## Notes

1. Based on interviews that Martin conducted in the camps in 1986
2. Interviews conducted by Martin in Belgrade, June 3–5, 2001. For more analysis of trafficking in Serbia, see “Philip Martin, Susan Martin and Patrick Weil, *Managing Migration: The Promise of Cooperation*, Lanham, MD: Lexington Books, 2006.”

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