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MILITARY ADVISERS FOR GENDER AND FOR THE PROTECTION OF CHILDREN IN ARMED CONFLICTS

This article aims to analyse the legal framework set up by the United Nations for the protection of the rights of women and children in situations of armed conflict. We will also look at the most important implications for the armed forces as regards their participation in peacekeeping operations. These implications are particularly relevant for the education and training of military personnel and for the need to have military advisers specialised in the protection of women and children. Without these elements, the armed forces are unable to carry out their tasks effectively.

Experience in UN-sponsored peacekeeping operations has shown that any strategy from the side of the International Community to find a long-lasting solution must include two main elements: the protection of women and children from the direct and indirect violence of which they are victims, and the assurance of their participation in the peace process and post-conflict reconstruction.

Armed conflicts. International security. Peacekeeping operation. Post-conflict reconstruction. Protection of women. Protection of children. Protection of minors. Gender mainstreaming. Gender advisers. Child protection advisers. International Humanitarian Law.

MILITARY ADVISERS FOR GENDER AND FOR THE PROTECTION OF CHILDREN IN ARMED CONFLICTS

I. BACKGROUND

The National Security Strategy (NSS) of 2013 defines national security as being:

“The action of a state to protect the freedom and welfare of its citizens, to guarantee the defence of Spain and its constitutional principles and values, and, together with our partners and allies, to contribute to international security, fulfilling commitments made in this area.”¹

This definition sees the disappearance of the traditional division between internal and external security,² as security today is often an issue that reaches beyond state borders. The division is also rendered redundant due to the fact that the armed forces carry out actions inside a state’s national territory³. This overview applies in the context of a globalised world; and it is precisely this globalised world that is decisive for the international dimensions of international security – recognising that events that occur outside national borders can have a direct impact on our country; a country whose position and influence in the world is the result not only of its history and geography, but also of a constitutional system based on freedom and the respect of human dignity; a country whose regional and global impact is focused on achieving international stability, peace and security.

The NSS admits that armed conflicts continue to represent a major threat to security and that while they are currently mostly internal conflicts, they could both cause and exacerbate risks and threats to the security of the international community. Spain, in its role as a partner of the international organisations to which it belongs,

¹ Cabinet of the President of the Spanish Government: *National Security Strategy. A shared project*, 31/05/2013, p. 7.

² It is clear that globalisation led to new problems and needs in relation to national defence, including complex, diverse and wide-spread threats to security. *Vid.* BALAGUER CALLEJÓN, Francisco (Coord.): *Report on the legal framework of the new Armed Forces missions*, Coordination of authorities and regulatory protocols for action, CÁMARA VILLAR, Gregorio, *Revista Ejército*, no. 846, Sept. 2011, p. 40 and ss.

³ ORTEGA SANTIAGO, Carlos: “La dimensión constitucional de la guerra: Conflictos armados e intervenciones militares en el extranjero”, Real Instituto Elcano, DT N° 43/2004.

should have the capacity to participate in the management of crises and conflicts, and in peacekeeping and civilian protection operations, as well as in other operations that affect our shared values or which arise from commitments that have been made, especially to the UN.

The obligation to contribute to international security, fulfilling the commitments taken on by Spain, is part of the *defence of constitutional principles and values* referred to in this document. One of these is the defence of the rights contained in international Conventions and Treaties on human rights. The contribution of states to international security is firmly based on the respect of these rights and the guarantee that they will be fulfilled and protected on a global level. In order to do this, the UN Charter foresees diplomatic action (chapters VI and VII) and, where necessary, the use of force (chapter VII) – to which member states contribute with their military forces.

Spain has participated very actively and effectively in UN peacekeeping and peace enforcing missions since 1989. These missions are one of the main instruments of the state's external actions. The Spanish armed forces are a global benchmark for this type of action as regards the fulfilment of the United Nations Resolutions on human rights⁴. It is not surprising that on these missions soldiers are governed by three different types of regulations: from the application of ROEs⁵ subject to International Humanitarian Law, to the fulfilment of political and civil security functions, to the norms contained in the specific mandates for each mission. Each one of these regulatory areas requires specific training adapted to each hierarchical and operative level. Here we are referring particularly to two mandates that the Spanish forces apply in peacekeeping and peacebuilding missions: those related to the implementation of Security Council Resolution 1325 on gender mainstreaming and others referring to the protection of women in armed conflicts, and Resolutions 1261 (1999) and subsequent related resolutions concerning the protection of minors in armed conflicts.

As regards the first, our country has been one of the pioneers in fulfilling and implementing international policies, enthusiastically developing the Security Council Resolutions, both in missions carried out under the auspices of the UN, as well as under other regional organisations to which we belong. We hope this development will continue.

As regards the protection of minors in conflict situations, however, similar legal developments in order to fulfil the UN Resolutions are still absent; this despite the fact that it is a subject that has been developed by other allied countries. It is strange that there has been no similar effort made in the area of the protection of minors in armed conflicts because, just as with the protection of women, it should be considered

4 CESEDEN: *La actuación de las fuerzas armadas en la consolidación de la paz*, Cuadernos nº 3, Spanish Ministry of Defence, 2006.

5 *Rules of Engagement*

an important aspect of any general strategy for conflict resolution. Armed conflicts have cost the lives of more than two million children over the past decade and have maimed six million others. 20 million children have been displaced or are refugees, and one million are orphans. And this is without counting those who are kept as hostages or kidnapped to be trafficked. There is no system for registering births which means that many children cannot be identified or reintegrated into their families. The Convention on the Rights of Children is not applied, despite having been ratified almost universally. In armed conflicts, children suffer disproportionately, in many ways, and on a lasting basis – sowing the seed for the resurgence of the same conflicts in future generations.

The United Nations and the main regional organisations now understand that any long-lasting conflict resolution strategy must guarantee both the effective and the full protection of the rights of women and children, as well as their active participation in peace processes – during which the reconstruction of a state takes place. However, a clear imbalance or asymmetry can be observed in the protection of both groups, to the extent that the measures intended for the implementation of Resolution 1325 and subsequent related resolutions, as well as measures implementing Resolution 1261 and subsequent related resolutions are unbalanced. Perhaps this is due to the fact that it is “*common to use the expression ‘women and children’, as if they were one collective group. Linking them together ignores the huge differences between the two groups, which is essential when analysing the different problems they face and thus when finding approaches to tackle them.*”⁶

Spain has an Action Plan for the application of Resolution 1325 and JEMAD (Chief of Defence Staff) guidelines for the implementation of this resolution in the Spanish Armed Forces. NATO has likewise approved directives with the same aim, recognising that their application increases the operative effectiveness of the units – incorporating a gender adviser into the different levels and promoting courses for directed training of these personnel. The EU has also created directives focused on integrating a gender perspective into the capacities and procedures associated with the Common Security and Defence Policy⁷.

However, when we look for a similar treatment of the issue of the protection of children in armed conflicts in the area of security and defence, we don't find any of the measures quoted in the previous paragraph, or at least not with the same level of intensity. This is not coherent with the priority given to both areas of protection

6 PALACIÁN DE INZA, B.: “Mujer e infancia en el conflicto armado”, in ROBLES, Margarita and GARCÍA, Fernando (coord.): *Enfoque integral de las perspectivas de género en operaciones*, Granada: Editorial UGR, 2013, p. 72.

7 EUROPEAN PARLIAMENT: “Resolution on the 10th anniversary of UN Security Council resolution 1325 (2000) on Women, Peace and Security”, of 25 November 2010.

– woman and children – by the United Nations, and requires an urgent response to develop actions to the same level for the armed forces.

If we compare the current UN framework with the international treaties based on International Humanitarian Law (Geneva Conventions), we can see the different treatment given to women and to children. These differences lie not just in removing these groups from the generic term “civilian population”, but also when designing specific provisions and programmes for women and for children while still recognising that there may be some action areas where they do overlap or complement each other.

Keeping these points in mind, and on the basis of International Humanitarian Law, we will now present the general points to do with the protection of civilian populations in armed conflicts. Then, drawing on the regulatory framework developed by the UN, we will separately analyse issues relating to women and the training of gender advisers who have already been incorporated into international military contingents, and those related to children. In this way we will show the differentiated treatment given to the protection of minors in armed conflicts – where there is no plan to train and incorporate child protection advisers into the missions in which our armed forces are active. In order to do this we will study both situations to determine whether the functions of the gender advisers could be transferred to the figure of child protection adviser. We will also consider whether this could serve as a model or reference, and propose measures that should be adopted for its implementation.

2. PROTECTION OF THE CIVILIAN POPULATION IN ARMED CONFLICTS

The first point to consider here is International Humanitarian Law. The four Geneva Conventions of 1949 and the Additional Protocols of 1977 constitute the basic regulations upon which the protection of victims of armed conflicts is founded. In particular, the Fourth Convention on the protection of civilian personnel in times of war represents an important innovation, as it extends the protection offered to “out of combat” military personnel (injured or sick soldiers and prisoners of war) to civilian personnel⁸.

⁸ Article 3 of the IV Convention states that persons taking no active part in the hostilities shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria. The following acts are prohibited with respect to the above-mentioned persons: violence to life and person, in particular murder of all kinds, mutilation, cruel treatment, torture and torment, taking of hostages, outrages upon personal dignity, in particular humiliating and degrading treatment, as well as the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.

Explicit reference is made to women and children in the provisions on general protection and in the provisions on specially protected persons⁹. In general terms, attention is focused on pregnant women and mothers of children who have not yet attained the age of seven years¹⁰. The term “childhood” is applied to persons who have not yet attained the age of fifteen years, despite the fact that Art. 1 of the Convention on the Rights of the Child sets the age at eighteen.

Part Three of the IV Geneva Convention is dedicated to the status and treatment of protected persons, and states that “*Women shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault*” (art 27). Physical and moral coercion is expressly prohibited, as is “*any measure [...] as to cause the physical suffering or extermination of protected persons [...]*”¹¹. When talking about the treatment of detainees or of persons undergoing disciplinary punishment, it is stated that women shall be confined in separate quarters and shall be under the immediate supervision of women (articles 76 and 124). In the section dedicated to places of internment, it is stated that expectant and nursing mothers and children who have not yet attained the age of fifteen years shall be given additional food in proportion to their physiological needs (article 89). Preferential treatment is provided for in the cases of children, pregnant women and mothers with infants and young children in the processes of evacuation, repatriation, release, and hospitalisation in a neutral country during the course of hostilities (articles 17 and 132).

In occupied territories, the Occupying Power is made responsible for children and shall adopt a series of measures to guarantee their food, education and care, as well as their identification and registration of their parentage¹².

Additional Protocol I to the Geneva Conventions of 1949, signed in 1977, completes

9 The Convention provides for the possibility of designating hospital and safety zones and localities so organized as to protect from the effects of war, wounded, sick and aged persons, children under fifteen, expectant mothers and mothers of children under seven (art. 4)

10 *Vid.*, BARROW, A.: “Resolutions 1325 and 1820 of the Security Council: promoting gender issues in armed conflicts and in International Humanitarian Law”, *International Review of the Red Cross*, no. 877, 2010.

11 The prohibition on causing physical suffering does not only apply to murder, torture, corporal punishment, mutilation, and medical or scientific experiments not required for the medical treatment of a protected person, but also to any type of mistreatment by civilian or military agents.

12 Articles 24 and 50 establish special measures in favour of children, such as those to ensure that children under fifteen, who are orphaned or are separated from their families as a result of the war, are not left to their own resources, and that their maintenance, the exercise of their religion and their education are facilitated in all circumstances. Their education shall, as far as possible, be entrusted to persons of a similar cultural tradition. In addition “*the reception of such children in a neutral country for the duration of the conflict*” should be facilitated, and endeavours should be made to arrange for “*all children under twelve to be identified*”.

and reaffirms these measures, with the aim of developing them and guaranteeing their application. Chapter II is dedicated to the protection of women and children, who are considered the object of “*special respect*”. As regards children and adolescents, it demands all measures possible be taken to avoid the recruitment of persons who have not attained the age of fifteen years, it prohibits the death penalty for persons who have not attained the age of eighteen years, and regulates with greater detail the evacuation of children and their identification. The reference to the family as a nucleus whose unity should be maintained in the case of detention or internment, and facilitated in the case of dispersement, is significant.

Additional Protocol II to the Geneva Conventions of 1949, also signed in 1977, reaffirms the provisions set out to provide children with the care and aid they require, particularly as regards their education, family reunification, assurance that children who have not yet attained the age of fifteen years are not recruited into the armed forces, and evacuation to safer areas.

From this regulation, we can come to the conclusion that the treatment granted by the Geneva Conventions to women and children in conflict situations is, in general, that of a non-participating civilian population most affected by the conflict, which is why measures and protection are foreseen for both groups. It doesn't make any distinction between the two groups, and places them in the same position of vulnerability. As regards women, however, the developments from the side of the United Nations go far beyond these strict limits and are a vital impulse for conflict resolution. It is an indisputable reality that armed conflicts have a very important gender dimension, as it is through the analysis of the gender issue that the traditional vision of these conflicts as neutral realities can be dismantled and the notion of the origin of armed conflicts as being independent from power structures can be challenged. Many conflicts come about due to the set-up of these structures – structures which exclude an important part of society: women.

This new general approach to issues related to women – now shifted to examine the situation of armed conflicts – has *generated* resolutions from the United Nations Security Council aimed at increasing awareness among the international community of the importance and urgency of protecting women and promoting their participation in all phases of armed conflicts, based on the assumption that this contribution is decisive for an effective and long-lasting solution to the causes and effects of conflicts.

To ensure that post-conflict reconstruction will lead to lasting peace, women should be treated in a special way and be incorporated into peace processes. This is why the United Nations strategies have focused on working with women for peace and on developing awareness of the gender perspective.

In the next section, we will analyse these resolutions. By applying a gender perspective, the international community's framework of actions on women, peace and security can be reconfigured to incorporate provisions for a broader and differentiated

treatment to guarantee their protection in armed conflicts.

3. THE PROTECTION OF WOMEN IN ARMED CONFLICTS AND GENDER ADVISERS IN MILITARY OPERATIONS

3.1 The gender perspective and its consideration in the resolution of armed conflicts

The social role of women in war is normally that of a passive subject, often invisible, and always a victim of the conflict. Most victims of war nowadays are civilians (women and children) rather than military personnel. Women and girls are often victims of rape, almost always mass rape, because they are used as a weapon between the two parties to the conflict, with the consequence being physical, moral and social damage suffered by these women. This situation, especially as a consequence of the genocide in Rwanda, led to rape being declared a “war crime”¹³ by the International Criminal Court. On many occasions during wars, the role of women has been that of peace brokers trying to bring an end to the conflict¹⁴. Obviously, the responsibility for the subsistence of children and the war-wounded falls to women. They have to take on the role that their societies normally allocate to men to then, once the conflict is over, return to their traditional roles in society without ever receiving any recognition or attention. Attention is, of course, paid to surviving men – combatants –, but women are ignored when it comes to their care, health, and rights.

It can be said that from the time of the birth of the United Nations until around 25 years ago, the international perspective on women, their protection and their place in the world, was not placed on the international agenda. The idea that there was a need to build a new society model where the culture of peace and gender equality were fundamental values only began to gain speed in the 1990s, despite the fact that the traditional vision of women in war or conflicts has remained much unchanged

13 TURSHEN, M. y TWAGIRAMARIYA, C. (eds), *What Women Do in Wartime*, Zed Press, 1998. Passim: United Nations reports, United National Development Fund for Women (UNIFEM), New York. GARRIDO CARRILLO, Francisco Javier y FAGGIANI, Valentina: *La aportación de España a la institución de una jurisdicción penal internacional*, Granada: Ed. Comares, 2013, pp. 108 and 109. DÍAZ CORVERA, Francisco: “La lucha contra la violencia de género: normativa y jurisprudencia internacional”, in ROBLES CARRILLO, Margarita (coord.): *Género, conflictos armados y seguridad*, Granada: Editorial UGR, 2012, pp. 213 and ss.

14 FERRIS, E.: *Women, War and Peace*, Life and Peace Research Report 14, Uppsala, 1993.

throughout history and among different societies.

The Fourth World Conference on Women in Beijing in 1995 represented a turning point in the treatment of gender issues. Following the conference in Beijing, the transformation of the situation of women started to be considered as an issue that affected the whole of society. For the first time, there was a general acceptance that a sectorial approach wasn't enough, but rather that the subject should be included in all state policies¹⁵.

The conference unanimously approved the Declaration and Platform for Action, which incorporated a new mechanism for action called “*gender mainstreaming*”. Mainstreaming implies incorporating the gender perspective as a common tool when designing, implementing and evaluating public policies in all areas. To be able to apply the gender perspective, there must first be a comprehensive review of societies, looking at and analysing the foundations, causes and structures of inequality. This means, then, that attention is not just focused on women and their legal or social situation, but also on how to reorganise institutions and adopt political and economic decisions to promote equality, which will in turn affect society as a whole.¹⁶

“The fundamental change arising from Beijing was the recognition of the need to move the focus of attention from women onto the concept of gender, admitting that the structure of society and relations between men and women within it should be re-evaluated. Only through a fundamental restructuring of society and institutions will it be possible to fully potentiate the role of women, to allow them to take their due place as equal participants in all aspects of life. This change reaffirmed the fact that the rights of women are human rights and that gender equality is an issue of universal interest, beneficial for all”¹⁷.

3.2 United Nations Security Council Resolution 1325 and its subsequent development

15 NGOs and associations took a very clear lead role at the conference. The conference was the global meeting point for a large number of feminists and women's associations from across the world.

16 PÉREZ VILLALOBOS, M^a Concepción: *Mujer, paz y seguridad. El tratamiento del género en las Fuerzas Armadas*, Granada: Editorial UGR, 2013, pp. 61 and 62.

17 <http://www.un.org/es/globalissues/women/#1325> (last viewed: 18/08/2013). In order to follow up on the fulfillment of commitments undertaken in Beijing, the UN Commission on the Status of Women organised three further meetings at its headquarters (New York): in June 2000 (Beijing+5), in February 2005 (Beijing+10), and in March 2010 (revisión of Beijing+15). The commitments undertaken at the IV Conference were reaffirmed, but progress made was not as significant as in Beijing. <http://www.cinu.org.mx/temas/mujer/confmujer.htm> (last viewed: 18/08/ 2013).

This is a document that is focused in its entirety on the development of the gender perspective in the area of armed conflicts and peacebuilding. It therefore refers to two of the main problems that women face on a global level: first, the impact that armed conflict has on women and young girls; and second, the role that women can play in peacebuilding. These are two fundamental issues to ensure advances in “empowerment” in peacekeeping and peacebuilding activities – allowing women real access to power structures, because “*peace is inextricably linked to equality between men and women*”, as the resolution states. The assumption is, then, that women and the gender perspective are relevant for peacebuilding, in areas such as the negotiation of peace accords, implementation of peacekeeping operations, planning and operation of refugee camps, or consolidation of social reconstruction processes following a military conflict¹⁸.

The resolution was adopted unanimously and is the most important resolution in favour of women, peace and security. Its dense content requires continuous work so as to be able to develop with the times. Following Resolution 1325, the Security Council adopted Resolutions 1820 (2008), 1888 (2009), 1889 (2009), 1960 (2010) and 2106 (2013)¹⁹. The latest resolution, adopted in June 2013, is directed mainly at combating sexual violence against women in armed conflicts. It affirms categorically that “*sexual violence, when used or commissioned as a method or tactic of war or as a part of a widespread or systematic attack against civilian populations, can significantly exacerbate and prolong situations of armed conflict and may impede the restoration of international peace and security*”²⁰.

A significant point is the reference this resolution makes to two figures with “distinct” roles: “Gender Advisers” and “Women Protection Advisers”, and the importance given to their adequate training and deployment. In particular, Gender Advisers should “ensure that gender perspectives are mainstreamed in policies, planning and implementation by all mission elements”²¹ in all United Nations peacekeeping and humanitarian operations, and this requires that “comprehensive gender training of all relevant peacekeeping and civilian personnel”²² be assured. The Security Council reiterates the need for “all predeployment and in-mission training of troop- and police-contributing country contingents to include training on sexual and gender-based violence, which also takes into account the distinct needs of children”, and encourages an “increase [in] the number of women recruited and deployed in peace operations”²³. Contingents should be subject to a “policy of zero

18 PÉREZ VILLALOBOS, M^a Concepción: *Mujer, paz y Seguridad. El tratamiento del género en las Fuerzas Armadas*, Op. cit., p. 72.

19 <http://www.un.org/womenwatch/feature/wps/index.html#docs> (last viewed: 18/08/ 2013).

20 United Nations, Resolution 2106(2013), of 24 June, § 1.

21 United Nations, Resolution 2106(2013), of 24 June, § 8.

22 United Nations, Resolution 2106(2013), of 24 June, § 8.

23 United Nations, Resolution 2106(2013), of 24 June, § 14.

*tolerance on sexual exploitation and abuse*²⁴ for cases of such conduct that could occur during the missions.

The resolution also calls for the effective participation of women in disarmament, demobilisation and reintegration processes, as well as in security and justice sector processes.

As regards Resolution 1325, it is important for Member States to not only assume responsibility for its implementation, but also to guarantee its integration into national policies and training programmes. Currently, an increasing number of governments is developing national actions plans for the implementation of this resolution and of other related resolutions; among the main measures included in these plans are the incorporation of the gender perspective in the training of military personnel, particularly personnel sent on peacekeeping operations, and in development aid packages for countries in conflict. Some governments are also training high representatives to deal with issues relating to gender, to promote the representation of women, and to better reach them in conflict zones.

As two of the principal regional security organisations, NATO and the European Union have their own plans for the implementation of Resolution 1325, in coordination with the UN guidelines, to better incorporate the gender perspective in peacekeeping operations²⁵.

Spain is one the leading countries as regards the development of gender equality policies, following a delay of more than 30 years compared to other countries. It has been pioneer in drafting a National Action Plan for the implementation of Resolution 1325, with one of the key strategic points being the training of Gender Advisers who are then placed in units deployed abroad²⁶.

3.3 Implementation of Resolution 1325 by the Spanish Armed Forces

JEMAD Guidelines 6/2011 for the implementation of Resolution 1325 are the guidelines to be followed by our Armed Forces, both in the preparation as well as in the conduct of the operations in which they are participating. This code focuses on the training of gender advisers. The gender adviser is responsible for helping the Force

24 United Nations, Resolution 2106(2013), of 24 June, § 15.

25 UN, Department for Peacekeeping Operations (DPKO/DFS): *Integrating a Gender Perspective into the Work of the United Nations Military in Peacekeeping Operations*, 2010.

26 “Action Plan of the Spanish Government for the implementation of UN Security Council Resolution 1325 (2000) on Women, Peace and Security”, 2007

Commander be able to detect when men and women are affected in different ways by a military situation or operation, based purely on their gender. This figure should be an expert in issues relating to gender, and should be able to integrate the provisions stemming from Resolution 1325 into the different phases of military operations. Spain already has a training programme for field gender advisers, and has been sending these experts on missions to Afghanistan and Somalia since 2011.

NATO introduced the role of Field Gender Adviser in 2009²⁷ as an essential element for the implementation of SCR 1325/2000 in operations in which NATO military forces participate. The main functions of the FGA in our Armed Forces are as follows:²⁸

Instruction and training

- Include training plans for the Forces on the implementation of SCR 1325 and related regulations.
- Ensure that units receive training on the subject of the gender perspective in exercises and manoeuvres.
- Hold seminars and invite experts to information sessions which will help to ensure a better and more comprehensive integration of SCR 1325 and the gender perspective in operations.

Relations with other stakeholders

- Interact and work together with local authorities, police and religious authorities, as well as women's associations present in the field of operations.
- Share and exchange information on the gender perspective with other international organisations present in the field of operations, such as the UN, OSCE, EU, International Red Cross, NGOs.

Analysis and advice to the Force Commander

- Analyse available measures to deal with gender violence of all types in conflict situations.
- Directly support the commander on gender issues and the implementation of SCR 1325 (prevention, protection and participation of women in peacebuilding and security tasks).

27 NATO BI-SC Directive 40-01 *Integrating UNSCR 1325 and gender perspectives in the NATO command structures including measures for protection in armed conflict*, of September 2009.

28 CARVAJAL CERVERA, Ignacio: "El asesor de género en operaciones", in ROBLES CARRILLO, Margarita (coord.): *Género, conflictos armados y seguridad. La asesoría de género en operaciones*, Op. cit., pp. 293 to 306.

Selection of personnel

- Advise and participate in civil personnel selection processes.
- Advise on the use of mixed teams for carrying out certain tasks to enable a better exchange of information, knowledge and intelligence, and to gain a higher level of credibility and acceptance among the population.

Planning, running and evaluation of operations

- Establish general guidelines for integration, awareness-raising and training in gender issues and in the application of SCR 1325, for which an annex to the Order of Operations should be drafted.
- Establish the necessary plans to ensure fulfilment of the Order of Operations as regards the gender perspective, including obtaining information from other areas, particularly Intelligence, Civil-Military Cooperation (CIMIC), Public Information Officer (PIO), Policy Advisers (POLAD), Cultural Advisers (CULAD) and Legal Advisers (LEGAD).
- Work together with other sections of the headquarters in the planning, running and evaluation of operations.
- Prepare reports and analyses on planned actions and the results obtained, as well as supervise the implementation of measures related to the implementation of the gender perspective.

Armed Forces Code of Conduct

- Integrate the culture of the respect and protection of the rights of women and girls in armed conflicts into the standards of practice of NATO members.
- Support NATO commanders in investigation processes related to the application of the code of conduct, particularly processes dealing with gender-based violence, rape or any form of sexual abuse.

4. MANDATE FOR THE PROTECTION OF CHILDREN IN ARMED CONFLICTS. CHILD PROTECTION ADVISERS

4.1 The Regulatory Framework on the rights and the protection of children in armed conflicts

In 1994, the United Nations General Assembly adopted a resolution²⁹ calling upon the Secretary General to nominate an independent expert to carry out a study examining the effects of armed conflicts on minors. Graça Machel, an educator from Mozambique and an international child-rights advocate, was chosen to lead the study. The study titled “Impact of Armed Conflict on Children”³⁰, a landmark document, was presented to the General Assembly in 1996 and is the basis for all subsequent regulations.

The Machel Study categorically and dramatically affirms that “war violates every right of a child - the right to life, the right to be with family and community, the right to health, the right to the development of the personality and the right to be nurtured and protected. Many of today’s conflicts last the length of a “childhood”, meaning that from birth to early adulthood, children will experience multiple and accumulative assaults. Disrupting the social networks and primary relationships that support children’s physical, emotional, moral, cognitive and social development in this way, and for this duration, can have profound physical and psychological implications”³¹.

In 2009, UNICEF³² cited more than one billion children under the age of 18 as living in places where there was an armed conflict or a post-conflict situation. Around 300 million of these were under the age of five. At least 18 million children had abandoned their homes and today are still living as refugees or are internally displaced. All of these children suffer from the direct consequences of the conflicts and the long-term effects on their development and well-being. Around two million children have died and six million have suffered serious injuries as a direct result of hostilities.

There are, however, some conflicts where aggression against children takes on a particularly brutal and cruel dimension, transforming them not only into victims but also protagonists of armed conflicts. They are recruited as combatants, as child soldiers, fighting at very young ages. They also face sexual violence, including rape, which is used as another weapon of war.

Following the Machel Study, the United Nations Security Council adopted the first resolution on the protection of children in situations of armed conflict – resolution 1261 (1999), of the 25 August. Subsequently, Resolutions 1314 (2000); 1379 (2001);

29 General Assembly Resolution “Protection of children affected by armed conflicts” (A/RES/48/157), of 7 March 1994.

30 Report to the General Assembly “Impact of Armed Conflict on Children” (A/51/306), of 26 August 1996.

31 Report to the General Assembly “Impact of Armed Conflict on Children” (A/51/306), of 26 August 1996, §30

32 UNICEF: *Childhood and Conflict in a Changing World. Machel Study 10-Year Strategic Review*, New York, April 2009.

1460 (2003); 1539 (2004); 1612 (2005); 1882 (2009); 1998 (2011), and 2068 (2012) were adopted which, taken as a whole, have created a general framework for the protection of children affected by armed conflicts and the understanding that aggression against them has long-term consequences for lasting peace, security and development, and that protection of children should be considered an important aspect for any general strategy for the resolution of conflicts.

Resolution 1261(1999) lists a set of crimes against children that have been detected in the most recent conflicts, underlining the targeting of children in situations of armed conflict, including killing and maiming, sexual violence, abduction and forced displacement, recruitment and use of children in armed conflict in violation of international law, and attacks on objects protected under international law, including places that usually have a significant presence of children such as schools and hospitals³³. Among the measures to eradicate these practices, the resolution puts forward a series of activities that make up the axis of all subsequent United Nations actions in this area:

- a) To take into account the protection, welfare and rights of children during peace negotiations and throughout the process of consolidating peace in the aftermath of conflict.
- b) To take special measures to protect children, in particular girls, from rape and other forms of sexual abuse and gender-based violence and to take into account the special needs of the girl child in the delivery of humanitarian assistance.
- c) To intensify efforts to ensure an end to the recruitment and use of children in armed conflict in violation of international law through political and other efforts, including promotion of the availability of alternatives for children to their participation in armed conflict.
- d) To facilitate the disarmament, demobilization, rehabilitation and reintegration of children used as soldiers.
- e) To take into account the particular needs of children in the delivery of humanitarian assistance, especially medical and educational services, the rehabilitation of children who have been maimed or psychologically traumatized, and child-focused mine clearance and mine-awareness programmes.
- f) To ensure that personnel involved in United Nations peacemaking, peacekeeping and peacebuilding activities have appropriate training on the protection, rights and welfare of children.

The Secretary General's first progress report to this Resolution³⁴ describes horrifying

33 United Nations Resolution 1261 (1999), of 30 August, § 2.

34 Report 712/2000, of 19 July 2000.

figures on violence against children in conflicts since its adoption. The adoption of an optional protocol to the Convention on the Rights of the Child concerning their participation in armed conflicts was called for. This Protocol was adopted on 25 May 2000. The same report shows how the legal regulations adopted up until that date should be sufficient to protect minors in situations of war, but that very often parties to the conflict do not respect the commitments. Based on this statement, the report argues that the International Community should guarantee that any deliberate aggression to children will not remain unpunished. Among the proposed measures, the report recommended that Member States that provide military, economic or political aid to parties to a conflict should only do so on the condition that the fundamental rights of children be respected.

Resolution 1314 (2000) sets out a number of provisions and measures to reaffirm, reiterate and strengthen the commitments taken on by the International Community with Resolution 1261. The new resolution refers back to the Optional Protocol to the Convention on the Rights of the Child, which was adopted a few months previously and which includes provisions on the participation of children in armed conflicts. One of the innovative elements introduced is a call to, where appropriate, involve children in and listen to their opinions on peace negotiations and peace agreements, as well as the commitment to ensure the presence of advisers to protect them in future operations. It also recommends that regional organisations provide appropriate training to members of their peace operations on the rights and protection of women and children.

By applying the gender perspective, the importance of considering the special needs and vulnerabilities of girls affected by armed conflict in all situations is emphasised: heads of families, orphans, victims of sexual exploitation and soldiers. Special attention should be paid to their rights, protection and wellbeing in all policies and programmes.

It also raises awareness of the need to curb cross-border activities deleterious to children in times of armed conflict, such as the cross-border recruitment and abduction of children, the illicit movement of small arms and the illicit trade in natural resources.

The UN Secretary General's Progress Report³⁵ makes special mention of military child protection advisers deployed in conflict zones. It refers specifically to the situation in the Democratic Republic of Congo, stating that child protection advisers deployed with MONUC should ensure consistent and systematic monitoring and reporting on the conduct of the parties to the conflict as concerns their child protection obligations under international humanitarian and human rights law and the commitments they have made.

35 Document A/56/342-S/2001/852, of 17 September 2001.

This is an additional recommendation to another included in the previous report, which states that Member States are asked to ensure that training be provided to troops and military personnel in advance of their deployment to United Nations peacekeeping operations³⁶.

Resolution 1379 (2001) confirms the UN's determination to pay maximum attention to the issue of the protection of children in armed conflicts, including explicit measures in the mandates for peacekeeping operations, such as the use of advisers specialised in this subject. This resolution, like the previous resolutions, builds on other international agreements that refer to specific aspects of the protection of children, which is even more vital in situations of armed conflicts. Two of these international agreements are Convention 182 of the International Labour Organisation concerning the prohibition of the worst forms of child labour, and the Ottawa Treaty on the prohibition of the use, stockpiling, production and transfer of anti-personnel mines and on their destruction.

As well as reiterating the points already considered in the two previous resolutions, Resolution 1379 (2001) calls for particular attention and adequate resources to be devoted to the rehabilitation of children affected by armed conflict, particularly their counselling, education and appropriate vocational opportunities, as a preventive measure and as a means of reintegrating them into society; in order to achieve this, the development of local capacity to address post-conflict child rehabilitation and reintegration should be supported.

As a summary then, there is a need for better coordination of the use of the legal, political, diplomatic, financial and material instruments that the International Community has at its disposal for the protection of child victims of armed conflicts. These instruments should be used to end the impunity of those responsible for genocide, crimes against humanity, war crimes or other crimes committed against children. To ensure this is done, the resolution calls upon the UN to prepare a list of parties to armed conflicts who recruit or use minors in violation of the applicable international obligations.

The progress report to this Resolution³⁷ reconfirms the fact that the role of advisers is fundamental to ensure that the section of the mandate of peacekeeping operations on the protection of children is upheld, and to advise the heads of mission in different countries, such as in the Congo and Sierra Leone where some progress has already been made. In fact, the Special Court for Sierra Leone already has jurisdiction over crimes committed against children.

By 2003, protection had been incorporated into mandates, peacekeeping mission

³⁶ Document A/55/163-S/2000/712, recommendation 36.

³⁷ Document S/2002/1299, of 26 November 2002.

reports, and training of personnel. The creation of the post and the deployment of child protection advisers in peacekeeping missions was a reality³⁸. The same year, Resolution 1460 (2003) underlined the need to evaluate violations of rights and abuses committed in armed conflicts, including the illicit exploitation and trafficking of natural resources and the illicit trafficking of small arms in conflict zones. It considered the link between the two phenomena to be well documented, and pointed out the urgent need to verify that the protection, rights and well-being of children were integrated into peace processes, peace agreements and post-conflict recovery and reconstruction phases.

Similarly, it raised the issue of finding specific proposals to more effectively and efficiently monitor, within the current UN system, the application of international resolutions and provision for the comprehensive protection of children in armed conflicts. It also looked at the identification of best practices to incorporate all the specific needs in disarmament, demobilisation, rehabilitation and reinsertion programmes, including an evaluation of child protection advisers in peacekeeping and peace support operations and in negotiations on the recruitment and use of children in armed conflicts.

Resolution 1539 (2004) recognises that, despite advances in the drafting of standards and principles, there has been no advance in the protection of children affected by armed conflicts. This justifies the warning tone used in its drafting, including time limits of three months for the parties that are infringing international legal regulations in this area to adopt solid initiatives to remedy the situation.

The resolution requests the Secretary General to devise an action plan for a systematic and comprehensive monitoring and reporting mechanism, in order to provide timely, objective, accurate and reliable information on the recruitment and use of child soldiers, the killing and maiming of children, rape and other sexual violence mostly committed against girls, abduction and forced displacement, denial of humanitarian access to children, attacks against schools and hospitals as well as trafficking, forced labour and all forms of slavery and all other violations and abuses committed against children affected by armed conflict. As a reventive measure, it recognises the important role of schools in order to prevent re-recruitment of children.

³⁸ The same year, the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict came into force. This protocol required State Parties to set the minimum age for obligatory recruitment and direct participation in hostilities at eighteen years, and to raise the minimum age for voluntary recruitment as stated in article 38.3 of the Convention on the Rights of the Child, and to adopt realistic measures to ensure that members of the armed forces who have not yet attained the age of eighteen years do not participate directly in hostilities. Similarly, the Rome Statute of the International Criminal Court entered into force in July 2002 and classifies the recruitment of persons under the age of fifteen years for active participation in hostilities as a war crime (art. 8.2.b),xxvi).

And finally, it reiterates the need for specific provisions for the protection of children in the mandates of United Nations peacekeeping operations, including the deployment of child protection advisers (CPAs) whose number and roles should be systematically assessed during the preparation of each operation.

The resolution welcomes recent initiatives for the protection of children affected by armed conflicts from the side of supranational organisations, such as the Economic Community of West African States (ECOWAS) and the European Union³⁹.

The resolution, picking up on what is stated in previous resolutions, expresses the determination of the Council to practise a zero-tolerance policy on sexual exploitation and abuse by peacekeeping personnel participating in peacekeeping operations. It insists on the importance of preventive measures which include predeployment awareness training. As regards child protection advisers, it states that there has been a comprehensive assessment undertaken on the role and activities of CPAs with a view to drawing lessons learned and best practices.

Finally, it welcomes the progress made by some regional and subregional organizations by recognising the importance of including the issue of the protection of children into their advocacy, policies and programmes and by establishing monitoring and reporting mechanisms, as well as setting up, within their structures, specialised bodies which include trained child protection staff to carry out these roles in their peace and field operations.

Resolution 1882 (2009), although it does recognise that some progress has been made thanks to the implementation of measures and mechanisms that have been developed since the adoption of Resolution 1261, also expresses the deep concern of the United Nations that after a decade “children continue to account for a considerable number of casualties resulting from killing and maiming in armed conflicts including as a result of deliberate targeting, indiscriminate and excessive use of force, indiscriminate use of landmines, cluster munitions and other weapons and use of children as human shields and [...] about the high incidence and appalling levels of brutality of rape and other forms of sexual violence committed against children, in the context of and associated with armed conflict including the use or commissioning of rape and other forms of sexual violence in some situations as a tactic of war”.

To deal with this situation, the Council reaffirms its confidence in the activities and recommendations of the Working Group on Children and Armed Conflict; it also calls for the implementation of monitoring and reporting mechanisms, including the drawing up of lists of parties in situations of conflict that contravene international law

39 EU: “Update of EU Guidelines on Children and Armed Conflict”, General Affairs Council, 16 June 2008. The promotion and respect of the rights of children are a priority for EU policies in the area of human rights within the framework of the Common Foreign and Security Policy, and for policies in the area of development cooperation and humanitarian aid.

applicable to this protection. Likewise, it gives priority to issues related to children in post-conflict recovery and reconstruction planning, programmes and strategies

The Security Council highlights with interest the adoption of a directive on child protection policy by the UN Department of Peacekeeping Operations, which should serve as a guide for the systematic incorporation of this issue into peacekeeping missions.

Resolution 1998 (2011) underlines “the need for alleged perpetrators of crimes against children in situations of armed conflict to be brought to justice through national justice systems and, where applicable, international justice mechanisms and mixed criminal courts and tribunals in order to end impunity”. It also pays special interest to measures to tackle attacks as well as threats of attacks against schools and/or hospitals, and protected persons in relation to them (teachers, health personnel) that have led, in some cases, to the closure of schools and hospitals.

Included in the tasks mandated to the Working Group on Children and Armed Conflict and to the Special Representative for Children and Armed Conflict, is that of considering a broad range of options for increasing pressure on persistent perpetrators of violations and abuses.

Resolution 2068 (2012) assumes and reiterates the general principles that, following on from 1261 and subsequent resolutions, have been shaping the integral framework for the protection of children in armed conflicts.

4.2 Implementation in the Spanish Armed Forces

Just as the adoption of the gender perspective in peacekeeping operations has led to a series of actions being undertaken by participating armed forces, so has the implementation of the United Nations resolutions had repercussions for personnel, preparation and military operative procedures. The analysis that we presented in the previous section shows a series of duties which directly affect the armed forces – whether as primary actors or when working in cooperation with other local actors or the International Community.

In order for the measures for the protection of children in armed conflict situations to be truly effective, there must, as a prerequisite, be provision for quality training and education of the participating personnel at all hierarchy levels. In the same way as was done for the protection of women, this preparatory work should be developed in the general syllabuses, in specialisation courses, in the preparatory stages before deployment of units, and in field operations. We consider the training of military personnel as child protection advisers to be a priority. This role is mentioned in all of the resolutions and we are now going to try and define its profile.

Child protection advisers are specialised personnel sent to missions to help in the fulfilment of United Nations mandates. All members of peacekeeping operations should carry out a role in the protection of children from the effects of war. Military personnel in particular have a key role to play in the detection and reporting of violations of the rights of children, in the identification, liberation and disarmament of children recruited by military forces or armed groups, in the tracking of war criminals, and in providing a safe environment that will allow other players involved in the protection and rehabilitation of children to fulfil their roles. The exercise of this role, which entails contributing to the preparation, planning and conduct of military operations, also demands providing appropriate advice to the Force Commander and the Operation Headquarters that, following the lines of initiatives adopted in other areas such as the gender adviser, should be delivered by specially trained personnel.

The fundamental responsibilities of the child protection adviser include:

- a) Advising the Force Commander on general provisions to do with the protection of children in armed conflict and on the specificities of the international mandate for the mission.
- b) Ensuring that the provisions are included in the unit's work procedures and in the planning of each operation, and applying a global vision that covers all operative areas: intelligence, logistics, medical aid, civil-military cooperation, etc.
- c) Giving training or contributing to the preparation of training programmes on the protection of minors for military personnel to be deployed on peacekeeping or peacebuilding operations. Ensure continuity in training during the mission.
- d) Establishing and maintaining relations for information sharing and cooperation with other local and international actors who are carrying out child protection roles in the armed conflict zone.
- e) Establishing and maintaining contact with the parties to the conflict, working together with them on the drafting and application of action plans to ensure compliance with international mandates and agreements so as to end the systematic violation of the rights of children.
- f) Monitoring and reporting the most serious violations, participating in the United Nations Monitoring and Reporting Mechanism.

The participation of child protection advisers in the Monitoring and Reporting Mechanism, established by Resolution 1612 (2005) is of critical importance to guarantee the flow of information to the highest levels of the United Nations and for the general coordination of the child protection system⁴⁰. The six grave violations of

40 The Monitoring and Reporting Mechanism is established in country-situations where parties to

international law in this area are listed below:

- Recruitment or use of children as soldiers.
- Killing or maiming of children.
- Rape or sexual violence against children.
- Abduction of children.
- Attacks against schools or hospitals.
- Denial of humanitarian access for children.

The information provided by this Mechanism helps with decision making and the adoption of measures at all levels, applied to the context of ongoing peace processes and the existing cooperation framework between the United Nations, national governments and other parties to the conflict⁴¹. Child protection advisers should have sufficient knowledge of the instruments used in the application of these measures, mainly the Action Plans with the parties to the conflict, established by Resolution 1539 (2004). An important reference point for their responsibilities can be seen in the experience gained in the deployment of missions, such as:

- UN Mission in South Sudan (UNMISS)
- African Union/UN Hybrid Operation in Darfur (UNAMID)
- UN Organisation Stabilisation Mission in the Democratic Republic of Congo (MONUSCO)
- UN Stabilisation Mission in Haiti (MINUSTAH)
- UN Assistance Mission in Afghanistan (UNAMA)
- UN Mission in Liberia (UNMIL)
- UN Operation in Côte d'Ivoire (ONUCI)

conflict have been listed in the annexes of the annual report of the Secretary General on children and armed conflict. In the past, only parties that recruit and use children were included in the annexes of the annual report. In 2009 and 2011, the Security Council decided to also list armed forces and groups who kill and maim children, commit sexual violence against children, and attack schools and hospitals. The MRM stops when all parties in a country situation have been de-listed and all violations against children have stopped.

⁴¹ This mechanism should work with the participation of national governments and the corresponding UN bodies, and national and international civil society. By cooperating with each other, all measures that are adopted should have the aim of supporting and complementing the actions for protection and rehabilitation that the national governments have assumed.

CONCLUSIONS

Over the past decade, the United Nations has been pushing for more effective commitments from the International Community as regards the protection of women and children in situations of armed conflict. Through Security Council Resolutions and other provisions, we have seen the development of a complementary regulatory framework to existing international humanitarian law, such as the Geneva Conventions of 1949 and their Additional Protocols of 1977, the Statutes of the International Criminal Court, and other binding legal regulations.

The priority given to women and children is justified by the new face of armed conflicts, characterised by the particularly cruel and intense impact they have on them. They become victims of all types of attacks which make them the groups with the highest level of deaths, injuries, displaced persons, refugees and violations of all basic human rights. Another characteristic of recent conflicts, due to the fact that most are internal conflicts, has been the use of attacks on women and children as true “weapons of war”, applied extensively and deliberately as offensive tactics with the aim of threatening, demoralising and causing as much psychological harm as possible to the opponent – often a different ethnic or social group.

Alongside these humanitarian reasons, the United Nations has included in its work the new conceptual and legal approaches from the conventions on women and children that have had an important impact in all areas (cultural, social, labour, welfare, etc.) linked with the Millennium Goals, proposed at the start of this century. As well as calling for an integrated and cross-cutting approach to all issues affecting women and children, this movement calls for real involvement of both groups in the construction of societies, and particularly societies affected by armed conflict.

This new approach with differentiated treatment for the issues that affect women and those that affect children can be seen in the groups of Security Council Resolutions referred to in this article: the series that starts with Resolution 1325 (2000) on women, peace and security, and the series that opens with Resolution 1261 (1999) on children and armed conflict. What is significant is that, when examining them together, there are very few cross references between the two subject areas. Differentiation between the two areas of protection is also very clear when looking at the measures, structures and procedures outlined.

This translates into the need to ensure that personnel participating in peacekeeping operations, and particularly military personnel, are given specific training on each area, without trying to find “shortcuts” in training programmes. The training of gender advisers and child protection advisers for deployment should be given special attention. These two roles have recently been incorporated into UN missions and have proven to be of fundamental importance for the on-the-ground implementation of the general

and specific measures that are part of the UN mandates for each mission. As well as their advisory role to the heads of missions and operations, and as contact persons for the parties to the conflict and other actors present in the zone, these advisers play a decisive role in the implementation of monitoring and reporting procedures on compliance with mandates and agreements.

The progress that has been made in the area of the gender perspective can be used as a model and reference to guide necessary actions for the protection of children in armed conflict. For Spain, this would mean undertaking the following measures, among others:

- a) Drafting an Action Plan for the implementation of Resolution 1261 and subsequent related resolutions, which should include decisive action from the side of our country to implement the content of the resolutions in the international organisations of which we are members, particularly the EU and NATO. Measuring progress on compliance with this Plan would be done through periodic progress reports.
- b) Ensuring that the protection of women and of children is seen as being an important aspect of any strategy for a long-lasting solution to armed conflicts in the National Security Strategy.
- c) Adopting JEMAD Guidelines for the implementation of the UN Resolutions in the Spanish Armed Forces, with special attention paid to the training of military personnel in these subjects, and targeted training for military contingents to be deployed in peacekeeping operations.
- d) Incorporating the role of military child protection adviser that, just as in the case of the gender adviser, could have different profiles and responsibilities depending on the level they are working at. In all cases, special attention should be paid to the training of advisers who will be deployed on the ground as they will be responsible for monitoring and reporting on compliance with measures adopted by the International Community and for reporting any violations that are discovered.
- e) Stimulating the participation of civil society, particularly the University community, think tanks and research centres, in the development of new proposals and options to achieve greater efficiency in the protection of women and children in armed conflicts. These groups should work together with the armed forces and other actors to discuss the implementation of these measures in specific cases and scenarios.

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