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WOMEN'S RIGHTS: THE POSSIBLE IMPACT OF
PRIVATE MILITARY AND SECURITY COMPANIES

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Abstract

Armed conflict and occupation are by definition necessarily violent for all participants, be they civilians or combatants. However, for women it heralds an exacerbation in existing violence, discrimination and inequalities. While international humanitarian law (IHL) has dedicated or 'special' provisions for women, feminist legal scholars have done much to expose the gendered nature of this branch of international law. In recent decades, the United Nations' campaign of mainstreaming of women's issues has impacted significantly on relevant human rights law (HR Law), and the International Committee of the Red Cross (ICRC) has actively sought to investigate and address women's concerns. However, there has been limited flow through of these efforts in the sphere of private military and security companies (PMSCs).

This report provides but an overview of the main issues and legal concerns raised by the impact of the privatisation of war on women during military engagements. It is divided into four parts. Part I highlights how armed conflict and occupation generally have a detrimental effect upon the lives of women with particular reference to safety, displacement, health and economic disadvantage. Part II provides a summary of existing IHL and HR provisions in this field. Part III examines recent developments within the United Nations (and its members states), the work of the ICRC, and international criminal law jurisprudence shaping these existing protections. Part IV in conclusion considers the relevant Montreaux Document provisions in the light of these developments.

Women's Rights: The Possible Impact of Private Military and Security Companies

ANA FILIPA VRDOLJAK*

1. Introduction

Armed conflict and occupation are by definition necessarily violent for all participants, be they civilians or combatants. However, for women it heralds an exacerbation in existing violence, discrimination and inequalities. While international humanitarian law (IHL) has dedicated or 'special' provisions for women, feminist legal scholars have done much to exposed the gendered nature of this branch of international law.¹ In recent decades, the United Nations' campaign of mainstreaming of women's issues has impacted significantly on relevant human rights law (HR Law),² and the International Committee of the Red Cross (ICRC) has actively sought to investigated and address women's concerns.³ However, there has been limited flow on of these efforts into the sphere of private military and security companies (PMSCs).

To assist the PRIV-WAR project's current and projected work, this paper is divided into four parts. Part I highlights how armed conflict and occupation generally have a detrimental effect upon the lives of women with particular reference to safety, displacement, health and economic disadvantage. Part II provides a summary of existing IHL and HR provisions in this field. Part III examines recent developments within the United Nations (and its members states), the work of the ICRC, and international criminal law jurisprudence shaping these existing protections. Part IV in conclusion considers the relevant Montreaux Document provisions in the light of these developments.⁴

This paper provides but an overview of the main issues and legal concerns raised by the impact of the privatisation of war on women during military engagements. It has been prepared on the basis that it must be read and understood in the context of the other contributions of the PRIV-WAR project,⁵ in particular, the more detailed, general treatments of human rights and international humanitarian law, individual criminal responsibility and liability, state responsibility (and attribution), multinational corporations (MNCs), and remedies.

2. Women and Armed Conflict

The premise of 'special' provisions for women in IHL is that armed conflict and belligerent occupation impacts differently on women. This premise was difficult to substantiate because of the limitations in available data. Nonetheless, recent academic research and fact-finding by

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¹ See generally J. G. Gardam and M. J. Jarvis, *Women, Armed Conflict and International Law*, (2001).

² SC Res.1325, 31 October 2000, UN Doc.S/Res/1325 (2000), and *Fourth World Conference on Women, Action for Equality, Development and Peace, Beijing Declaration and Platform for Action*, UN Doc. A/Conf.177/20 (1995) (Beijing Platform for Action), para.136.

³ See Lindsey, *Women facing War: ICRC Study of the Impact of Armed Conflict on Women* (2001); and Statement of Renée Guisan, ICRC delegate to the Fourth World Conference on Women, Beijing, 4 September 1995, at <<http://www.un.org/esa/gopher-data/conf/fwcw/conf/una/950912110707.txt>> (viewed 10/04/09).

⁴ Montreaux Document on pertinent international legal obligations and good practices for States related to private military and security companies in armed conflict, 17 September 2008, UN Doc.S/2008/636.

⁵ PRIV-WAR (Privatization of War) collaborative research project coordinated by the European University Institute in cooperation with LUISS "Guido Carli" (Rome), Justus Liebig Universität Giessen; Riga Graduate School of Law; Université Panthéon-Assas (Paris II), Centre Thucydide; University of Sheffield and Utrecht University, funded by the European Union's FP7 Research Programme, at <<http://priv-war.eu/>>.

intergovernmental and non-governmental bodies have borne this assumption out in a number of key areas. When interpreting such information it is always crucial to bear in mind that women are not a monolithic group, rather their diverse experiences are coloured by a multitude of social, economic and cultural factors. However, a base commonality of experience in key areas like violence, displacement, health, and economic disadvantage provides grounds for reform of international law and practices of international organisations, states and PMSCs.

A. *Violence against Women (VAW)*

Women experience elevated levels of physical and mental violence during armed conflict and belligerent occupation which encompasses death, summary or arbitrary executions, torture, cruel, inhuman and degrading treatment, rape, forced prostitution, forced terminations and sterilizations and other forms of sexual assault, abduction, persecution, harassment of themselves and to their family members.

While all available statistics record that armed conflict and belligerent occupation generally have a disproportionate impact on civilian populations in respect of mortality, with women (and children) making up the majority of civilian deaths in effected territories. For example, a peer-reviewed John Hopkins School of Public Health-led survey of civilian deaths after the 2003 invasion of Iraq comparing deaths prior to the conflict found a substantial spike in violent deaths, especially among women and children.⁶ These findings were confirmed in a follow-up study covering the three years after the invasion which showed a significant increase in the number of civilian deaths.⁷ The civilian death toll since 2006 remains elevated.⁸ The proliferation of small arms (including firearms, landmines, car bombs, and suicide bombers) in militarised zones has amplified this trend, with both the John Hopkins and Iraq Body Count surveys showing that increasingly violent civilian deaths are attributable to such munitions. There are corollary statistics for injuries not occasioning death. In addition, the likelihood of extrajudicial killings rises exponential for women during armed conflict.⁹ While in conflicts in Mexico and Guatemala, evidence emerged of women being deliberately targeted because of their gender (femicide).¹⁰

Whilst rape and sexual violence are not solely experienced by women, data highlights that female civilians and combatants are at substantially increased risk of suffering such violence during armed conflict, occupation and civil unrest.¹¹ The growing awareness of the use of sexual violence especially

⁶ See Burnham *et al*, 'Mortality after the 2003 invasion of Iraq: a cross-sectional cluster sample survey', (11 October 2006), at <www.thelancet.com> (viewed 10/04/09).

⁷ See Burnham *et al*, 'The Human Cost of the War in Iraq: A Mortality Study 2002-2006', at <http://www.jhsph.edu/refugee/publications_tools/iraq/Human_Cost_of_WarFORMATTED.pdf> (viewed 10/04/09).

⁸ See Iraq Body Count, Documents Civilian Deaths from Violence, at <<http://www.iraqbodycount.org/database/>> (viewed 10/04/09). Also in respect of Afghanistan see O. O. Bilukha *et al*, 'Death and Injury from Landmines and Unexploded Ordnances in Afghanistan', 290(5) *Journal of American Medical Association* (2003), 650.

⁹ Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Philip Alson, Preliminary Note on the Mission to Afghanistan, 29 May 2008, UN Doc.A/HRC/8/3/Add.6, paras.19-23; and Report submitted by the Special Rapporteur on Violence Against Women, Its Causes and Consequences, M. Radhika Coomaraswamy, 26 January 1998, UN Doc.E/CN.4.1998/54 (1998 UN VAW Report), Part 1A, paras.9 and 10.

¹⁰ Indepth Study on All Forms of Violence Against Women, Report of the Secretary-General, 6 July 2006, UN Doc.A/61/122/Add.1, para.127.

¹¹ See Indepth Study, *ibid.*, Table 1, at 45; UN, '15 Years of the The UN Special Rapporteur on Violence Against Women, It Causes and Consequences (1994-2009) – A Critical Review' (2009) (15 years UNSRVAW Report), at 13, at <<http://www2.ohchr.org/english/issues/women/rapporteur/docs/15YearReviewofVAWMandate.pdf>> (viewed 10/03/09). Researchers of peacetime data on rape and sexual violence highlight that it is difficult to obtain accurate information, suspecting underreporting because of ongoing trauma, social stigma and fear of 'punishment' (e.g. honour killings, stoning). Underreporting is further exacerbated during armed conflict and occupation because of displacement and lack of access to health services: UN Department of Economic and Social Affairs, Statistics Division, *The World's Women 2005: Progress on Statistics*, UN Doc.ST/ESA/STAT/Ser.K/17 (2006), at 78. See also Reproductive Health Response in Conflict Consortium,

against women during the Bosnian conflict and in Rwanda in the 1990s, the military sexual slavery of Korean 'comfort' women by the Japanese during the Second World War, and the ongoing work of the UN Special Rapporteur on Violence Against Women since 1994 has led to greater consciousness of its deployment as a method of violence, brutality and warfare against the enemy and its civilian population.¹² The UN Special Rapporteur, Radhika Coomaraswamy, in her 1998 report, observed: '[S]exual violence against women ... is seen and often experienced as means of humiliating the opposition. ...It is battle among men fought over the bodies of women'.¹³ Sexual violence encompasses various acts including forced prostitution, sex trafficking, force sterilisations, forced abortions, forced impregnation and pregnancies and so forth.¹⁴ The evolution of the addressing the question of rape and sexual violence against women in contemporary international law and the UN system is examined in Part III below.

B. Displacement

The likelihood of death, injury and sexual violence, disease and infection, and discrimination especially economic disadvantage is exaggerated by displacement occasioned by armed conflict, belligerent occupation and civil unrest. The UN High Commissioner for Refugees' (UNHCR) latest statistics in 2007 recorded that there were 31.7 million refugees, asylum-seekers and internally displaced persons, of which there was sex-disaggregated data for 63%, and of these 49% were women.¹⁵ It noted that the net number of persons displaced by armed conflict, internally and internationally continued to rise compared to preceding years, with the data not presenting the full extent of numbers of persons including women displaced.¹⁶ Likelihood of death and physical and mental harm increase because of breakdown of familial, social and economic structures, lack of access to food, health care and other resources.¹⁷ The need to address the plight of women and girls within refugee camps and settlements was recognised in SC Res.1325 (2000) (para.12). Sex or gender is not a ground for the granting of asylum under the Convention relating to the Status of Refugees (Refugee Convention).¹⁸ The UNHCR adopted guidelines on gender-related persecution under of Article 1A(2) of the Refugee Convention urging states to give adequate weight to gender elements when assessing asylum applications.¹⁹

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Gender Based Violence Tools Manual For Assessment and Program Design, Monitoring and Evaluation in Conflict-affected Settings (2004).

¹² Preliminary Report submitted by the Special Rapporteur on Violence Against Women, Its Causes and Consequences, M. Radhika Coomaraswamy, 22 November 1994, UN Doc.E/CN.4.1995/42 (1994 UN VAW Report), paras.274-283; and Report of the UN High Commissioner for Human Rights, 'Systematic Rape, Sexual Slavery and Slavery-Like Practices during Armed Conflicts', 11 July 2006, UN Doc.A/HRC/Sub.1/58/23.

¹³ 1998 UN VAW Report, *supra* note 9, para.12. See also Report submitted by the independent expert on the situation of human rights in the Democratic Republic of the Congo, UN Doc.E/CN.4/2006/113, at 23 ('crimes that continue to be committed, particularly rape and sexual violence against women and children used as a weapon of war ...').

¹⁴ See Indepth Report, *supra* note 10; and Prosecutor v. Issa Hassan Sesay, Morris Kallon and Augustine Gbao (the RUF accused), Trial judgment, Special Court for Sierra Leone, Case No.SCSL-04-15-T, 25 February 2009.

¹⁵ UNHCR, *Statistical Yearbook 2007, Trends in Displacement, Protection and Solutions*, (December 2008), at 7-8; Lindsey, *supra* note 3, at 65ff; and World Health Organisation, 'Clinical Management of Rape Survivors: Developing Protocols for Use with Refugees and Internally Displaced Person' (2005).

¹⁶ *Ibid.*, at 11 and 33.

¹⁷ 1998 UN VAW Report, Part III D (1), *supra* note 9; and UNHCR, 'Handbook for the Protection of Women and Girls', (January 2008), 9-11.

¹⁸ 18 July 1951, in force 22 April 1954, 189 UNTS 150.

¹⁹ UNHCR, 'Guidelines on International Protection: Gender-related Persecution within the Context of Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees', UN Doc.HCR/GIP/02/01, 7 May 2002, paras.5, 6 and 9. See also UNHCR, 'Sexual and Gender-Based Violence against Refugees, Returnees, and Internally Displaced Persons: Guidelines for Prevention and Response', May 2003, at 14 and 20.

Women are less frequently interned or detained than men, consequently when they are facilities are less likely to accommodate their needs.²⁰ Furthermore, when detention occurs there is a greater propensity for women to be subjected to gender-specific torture.²¹

C. Health

Disruption to societal structures and governmental services during armed conflict and belligerent occupation necessarily has a knock-on effect on provision of health services. Statistical data reveals that women are particularly affected in respect of treatment for long-term physical injuries and severe psychological trauma sustained during armed conflict.²² However, much focus in recent years has been placed on addressing the devastating impact of lack of access to treatment in the area of reproductive health, including family planning, safe motherhood, emergency obstetric care, protection against and treatment for sexual violence, prevention and treatment for sexually transmitted diseases like HIV/AIDS.²³

Women are at elevated risk of contracting sexually transmitted diseases including HIV/AIDS during armed conflict, belligerent occupation and civil strife through sexual violence including rape (and deliberate infection),²⁴ and transfusion of infected blood products during pregnancy or childbirth.²⁵ Women represent half of all persons living with HIV and account for 60% of new infections in Africa, with women experiencing gender-based violence three times more likely to be infected.²⁶ Thereafter their treatment is compromised by systemic discrimination, lack of information, lack of access to affordable treatment etc.²⁷ In turn, there is greater likelihood of women dying from the disease once they have contracted it.²⁸ GA Res.S-26/2, Declaration on Commitment on HIV/AIDS of 27 June 2001 recognised the particular vulnerability of women and girls and set a number of gender-specific targets concerning counselling and treatment.²⁹

²⁰ See Gardam and Jarvis, *supra* note 1 at 33-35; and Lindsey, *supra* note 3, at 164-65.

²¹ Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, M. Nowak, 15 January 2008, UN Doc.A/HRC/7/3, paras.41-43.

²² See Lindsey, *supra* note 3, at 119-120; The Impact of Armed Conflicts upon Children: Report Submitted pursuant to the resolution adopted by the General Assembly A/RES/48/157 to the Fifty First Session of the United Nations General Assembly, UN Doc.A/51/306, 26 August 1966, at 150; and UNHCR, 'Sexual Violence Against Refugees: Guidelines on Prevention and Response' (1995), Section 3.9.

²³ Palmer, *et al*, 'The emerging policy agenda for reproductive health services in conflict settings' 49 *Social Science and Medicine* (1999), 1691; UNFPR, *Manual for Reproductive Health Kit in Crisis Situations* (2nd edn, 2003); and WHO, *Reproductive Health during conflict and displacement: A Guide for Programme Managers*, (2000), at 10-15. See Policies and Practices that Impact on Women's Reproductive Rights and Contribute to, Cause or Constitute Violence against Women, UN Doc.E/CN.4/1999/68/Add.4; and Intersections of Violence Against Women and HIV/AIDS, UN Doc.E/CN.4/2005/72.

²⁴ NGO Working Group on Women, Peace and Security, 'Fact Sheet on Women and Armed Conflict', 23 October 2002, at <<http://www.iwgc.org/212.html>> (viewed 10/04/09)

²⁵ Lindsey, *supra* note 3, at 112.

²⁶ UNAIDS, *Report on the Global AIDS Epidemic 2008* (2008), at 14 and 72.

²⁷ 15 years UNSRVAV Report, *supra* note 11, at 22-23; UN Inter-Agency Standing Committee, 'Guidelines for HIV/AIDS intervention in emergency situations', (n.d.), at <http://data.unaids.org/Publications/External-Documents/IASC_Guidelines-Emergency-Settings_en.pdf> (viewed 10/04/09), at 9-11 and 32-33; and 1998 UN VAW Report, *supra* note 9 at Part II.

²⁸ UNAIDS, *supra* note 26 at 47.

²⁹ See also GA Res.60/1, 2005 World Summit Outcome, 16 September 2005, UN Doc.A/Res/60/1, para.57(d); and The Global Coalition on Women and Aids, *Keeping the Promise: An Agenda for Action on Women and AIDS*, (2006), at <http://data.unaids.org/pub/Booklet/2006/20060530_FS_Keeping_Promise_en.pdf> (viewed 10/04/09).

D. Economic Disadvantage

Although armed conflict and belligerent occupation may bring increased chances for women to enter paid employment and the public sphere, this opportunity is usually short lived and limited. Rather, these circumstances and post-conflict situations exacerbate the existing economic disadvantage and discrimination usually experienced by women.³⁰ In many areas of the world, women are primarily responsible for the development and maintenance of natural resources especially land to sustain themselves and their families. Armed conflicts especially when it results in the death of the relevant male family member (usually spouse) often leads to loss of ownership of land and eviction from their homes.³¹ Non-agricultural livelihood is effected by limited access to education, financing and systematic discrimination experienced by women more acutely during the social upheaval visited by such circumstances and its related effects like permanent or ongoing injury and trauma.³²

Economic disadvantage is also experienced by female combatants reflected in inequality in earnings compared to males; and under-representation in leadership roles (and exclusion from certain positions).³³

3. Women and IHL

Women are covered by general protections afforded under international humanitarian law, human rights law, and international criminal law and 'special' IHL protections. These later provisions in IHL cover women as victims of armed conflict and not the regime governing conduct of hostilities. Because of space restrictions, this paper is restricted to providing a brief description of these 'special' provisions.³⁴ However, it should be noted that SC Res.1325 (2000) requires that 'all parties to an armed conflict ... respect fully international law applicable to the rights and protection of women and girls, especially civilians, in particular the obligations applicable to them' under the 1949 Geneva Conventions and their 1977 Additional Protocols, the 1951 Refugee Convention and its 1967 Protocol, the Convention on the Elimination of All Forms of Discrimination Against Women of 1979 and its 1999 Optional Protocol, the Convention on the Rights of the Child and its two Optional Protocols, and the Rome Statute of the International Criminal Court.

Early codification of IHL provided implicit and explicit protection for women. Article 46 of the Convention (IV) respecting the Laws and Customs of War on Land, and Regulations (1907 Hague Regulations) provides that during belligerent occupation: 'Family honour and rights, the lives of persons ... must be respected'.³⁵ The Commission on the Responsibility of the Authors of the War and

³⁰ 1998 UN VAW Report, *supra* note 9, Part I D.

³¹ Fahra, 'Women's right to land, property and housing', 7 *Forced Migration Review* (2000), 23.

³² Economic and Social Policy and its impact on Violence Against Women, R. Coomaraswamy, UN Doc.E/CN.4/2000/68/Add.5; and 'Summary: Informal Debate of General Assembly, Promotion of Gender Equality and empowerment of Women 6-8 March 2007', at <<http://www.un.org/ga/president/61/letters/Them.deb.gender-report.pdf>> (viewed 10/04/09).

³³ US General Accounting Office, *Gender Issues, Trends in Occupational Distribution of Military Women*, September 1999, GAO/NSIAS-99-212; UK Ministry of Defence, *Women in the Armed Forces: A Report by the Women in the Armed Forces Steering Group* (May 2002), at <http://www.mod.uk/NR/rdonlyres/A9925990-82C2-420F-AB04-7003768CEC02/0/womenaf_fullreport.pdf> (viewed 10/04/09); and *Mrs Sirdar v. Army Board and SofS for Defence*, ECJ Judgment C-273/97, 26 October 1999; and NATO, *Recruitment and Retention of Military Personnel* (RTO-RT-HRM-107), (2007).

³⁴ For more detailed and critical treatment, see Gardam and Jarvis, *supra* note 1 generally; Durham, 'International Humanitarian Law and the Protection of Women', in H. Durham and T. Gurd (eds), *Listening to the Silences: Women and War*, (2005), at 95; and Gardam, 'Women and Armed Conflict: The Response of International Humanitarian Law', *ibid.*, at 109.

³⁵ 18 October 1907, in force 26 January 1910, 208 *Parry's CTS* (1907) 77, 2(supp.) *AJIL* (1908) 90, being a replication of Art.46, Convention (II) with Respect to the Laws and Customs of War on Land and its annex: Regulations concerning the

on Enforcement of Penalties established by the 1919 Versailles Peace Conference listed rape and the abduction of women and girls for enforced prostitution as war crimes.³⁶

Under the non-discrimination provisions of the four 1946 Geneva Conventions and two 1977 Additional Protocols (Geneva Law), differentiated treatment on the grounds of sex is permissible as long as the effect is favourable to the effected targeted group.³⁷ These Articles are made subject to the tacit acknowledgement of the specific concerns of women addressed by the 'special' provisions concerning sexual violence, pregnant women and mothers of young children, female internees and female prisoners of war.

Common Article 3(1)(c) of the Geneva Conventions concerning 'outrages against personal dignity' and Article 14 of Geneva III Convention, and Articles 12 of Geneva I and II Conventions replicate the obligation contained in Article 46 of the Hague Regulations, that is, 'women shall be treated with the regard due to their sex'. The relevant ICRC commentary states:

[I]t is difficult to give any general definition of the 'regard' due to women. Certain points should, however, be borne in mind; ... these points are the following:

A. Weakness – this will have a bearing on working conditions ... and possibly on food;

B. Honour and modesty – The main intention is to defend women prisoners against rape, forced prostitution and any form of indecent assault ...

C. Pregnancy and child-birth – If there are mothers with infants among the prisoners, they should be granted early repatriation ... women who have given birth, while pregnant women should either enjoy special treatment, or, if their state of health permits, should also be repatriated.³⁸

These provisions do not impose obligations as such but supplement those relating to sexual violence and protection of pregnant women and mothers with young children.³⁹

Geneva Law has specific provisions pertaining to sexual violence against women. Article 27(2) of Geneva IV provides that: '[W]omen shall be especially protected against any attack of their honour, in particular against rape, enforced prostitution, or any form of indecent assault'.⁴⁰ This provision does not extend to the acts of the state of which women are nationals. Article 75(2)(b) of Additional Protocol I prohibits 'at any time and in any place whatsoever, whether committed by civilian or by military agents ... outrages upon personal dignity, in particular humiliating and degrading treatment, enforced prostitution and any form of indecent assault' against women and men.⁴¹ Rape is specifically mentioned in Article 76 covering women and children, which extends the protection afforded under Article 27 Geneva IV to all women on the territory of Parties to the conflict.⁴² In respect of non-

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Laws and Customs of War on Land, and Annex: Regulations, 29 July 1899, in force 4 September 1900, 187 *Parry's CTS* (1898–99) 429, 1(supp.) *AJIL* (1907) 129.

³⁶ 14 *AJIL* (1920) 95.

³⁷ See Art.12, Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (Geneva I), 12 August 1949, in force 21 October 1951, 75 UNTS 31; Art.2, Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (Geneva II), 12 August 1949, in force 21 October 1951, 75 UNTS 85; Art.16, Geneva Convention relative to the Treatment of Prisoners of War (Geneva III), 12 August 1949, in force 21 October 1951, 75 UNTS 135; Art.27, Geneva Convention relative to the Protection of Civilian Persons in Time of War (Geneva IV), 12 August 1949, in force 21 October 1951, 75 UNTS 287; Art.74, Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Additional Protocol I), 8 June 1977, in force 7 December 1978, 1125 UNTS 3; and Art.4, Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Additional Protocol II), 8 June 1977, in force 7 December 1978, 1125 UNTS 609.

³⁸ J. Pictet *et al*, *Geneva Convention Relative to the Treatment of Prisoners of War* (1960), at 147-148. For critique of the use of 'honour' to protect women within IHL see Lindsey, 'The Impact of Armed Conflict on Women', in Durham and Gurd, *supra* note 34 at 21.

³⁹ J. Pictet *et al*, *Geneva Convention Relative to the Protection of Civilian Persons in Time of War* (1958), at 385.

⁴⁰ *Ibid.*, at 205.

⁴¹ Y. Sandoz *et al*, (eds), *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949*, (1987), at paras.3133ff.

⁴² *Ibid.* at para.3151.

international conflicts, Article 4(2)(e) of Additional Protocol II requires that 'outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form or indecent assault ... against [All persons who do not take a direct part or who have ceased to take part in hostilities] are and shall remain prohibited at any time and in any place whatsoever.'

Neither the grave breaches provisions within the 1949 Geneva Conventions, nor Additional Protocol I, specifically mentioned rape or sexual violence. Nonetheless, Article 147 of Geneva IV Convention covering 'torture or inhuman treatment, including biological experiments, wilfully causing great suffering or serious injury to body or health' and Article 85(3)(b) concerning injury to civilians have the potentially be read broadly to cover such acts. In addition, the Rome Statute defines war crimes to include 'rape, sexual slavery, enforced prostitution, force pregnancy ... enforced sterilisation, or any other form of sexual violence also constituting a grave breach of the Geneva Convention.'⁴³ Taking it beyond the context of armed conflict and belligerent occupation, it is listed as a crime against humanity in the Rome Statute,⁴⁴ with similar provisions included in the statutes of recent international and hybrid criminal tribunals.⁴⁵ In addition, the Rome Statute includes gender as one of the discriminatory grounds for persecution.⁴⁶ The jurisprudence of the international criminal tribunals in respect of sexual violence is discussed in Part III below.

Geneva Law also provides special protection for women during pregnancy, as mothers and in their role as care givers for children (and the sick and elderly). While this emphasis on the 'traditional' role of women by IHL has been criticised by feminist scholars,⁴⁷ the reality is that it remains a role which women fulfil especially during armed conflict and belligerent occupation and it is important that special provisions address it covering medical treatment, food, safety repatriation, and penal law and the death penalty. These provisions relating to protection and respect are also afforded the wounded, sick and aged.⁴⁸ Article 38(5) and 50 of Geneva IV Convention requires that pregnant women and mothers of children under seven years are granted preferential treatment like the nationals of the relevant state. The ICRC commentary notes that preferential treatment 'may cover the granting of supplementary ration cards, facilities for medical and hospital treatment, special welfare treatment, exemption from certain forms of work, protective measures against the effects of war, evacuation, transfer to a neutral country, admission to hospital and safety zones and localities, etc.'⁴⁹ Likewise, Article 50 Geneva IV covering children extends such protections to this category of women in occupied territories, where the Occupying Power cannot hinder the treatment which has previously been granted. The Declaration on the Protection of Women and Children in Emergency Situations of 1974 recognised that 'women and children belonging to civilian populations and finding themselves in circumstances of emergency and armed conflict ... or who live in occupied territories, should not be

⁴³ Arts 8(2)(b)(xxii) (international conflict) and 8(c)(vi) (non-international conflict), Rome Statute of the International Criminal Court, 17 July 1998, in force 1 July 2002, UN Doc.A/CONF. 183/9; 37 ILM 1002 (1998); 2187 UNTS 90 (Rome Statute). See also Art.4(g) Statute of the International Criminal Tribunal for Rwanda, SC Res.955 of 8 November 1994 as adopted and amended to SC Res.1717 of 13 October 2006 (ICTR Statute); Art.3(e), Art.2(g), Statute of the Special Court for Sierra Leone, in Agreement between the United Nations and the Government of Sierra Leone on the Establishment of a Special Court for Sierra Leone, SC Res.1315 of 14 August 2000, 2178 UNTS 138 (Statute of the Special Court for Sierra Leone) with Art.15(4) requiring the office of the prosecutor given due consideration to the appointment of staff including prosecutors and investigators experienced in gender-related crimes.

⁴⁴ Art.7(g), Rome Statute.

⁴⁵ Art.5(g) (Crimes Against Humanity), Updated Statute of the International Criminal Tribunal for the Former Yugoslavia, GA Res.827 of 25 May 1993, amended by GA Res.1166 (1998), 1329 (2000), 1411 (2002), 1431 (2002) 1481 (2003), 1597 (2005) and 1660 (2006) (ICTY Statute); Art.3(h), ICTR Statute; Art.2(g), Statute of the Special Court for Sierra Leone; Art.5(rape), Law on the Establishment of Extraordinary Chambers in the Court of Cambodia for the Prosecution of Crimes committed during the period of Democratic Kampuchea, with the inclusion of amendments as promulgated on 27 October 2004 (NS/RKM/1004/006).

⁴⁶ Art.7(3), Rome Statute.

⁴⁷ Gardam and Jarvis, *supra* note 1 .

⁴⁸ Arts.16, 18(civilian hospitals), 20, 21 (vehicles conveying), 23 (aircraft evacuating) and 27 Geneva IV; and Art.12(1) Geneva I.

⁴⁹ Pictet, *supra* note 39 (GIV), at 249.

deprived of shelter, food, medical aid, or other inalienable right...’⁵⁰ Article 91 of Geneva IV (covering internees) provides that: ‘Maternity cases ... suffering from serious diseases, or whose condition requires special treatment, a surgical operation or hospital care, must be admitted to any institution where adequate treatment can be given and shall receive care not inferior to that provided for the general population.’ Article 127 of the same instrument states: ‘maternity cases shall not be transferred if the journey would be seriously detrimental to them, unless their safety imperatively so demands’.

Provisions in relation to grant of food to such women is also covered by Article 23 Geneva IV concerning the free passage of essential foodstuffs (and medicines) to expectant mothers and maternity cases; Article 89 Geneva IV states that expectant and nursing mothers must be given additional food relative to their physiological needs; and Article 70 of Additional Protocol I bestows priority on distribution of relief on expectant mothers, maternity cases and nursing mothers.

Also, Parties to a conflict are encouraged to established practices for the physical safety of pregnant women and mothers of small children (Article 14 Geneva IV) including local agreement for their evacuation from besieged areas (Article 17). Related to this, is the requirement under Article 132 Geneva IV, Parties are required to try to reach agreements for the ‘release, the repatriation, the return to places of residence or the accommodation in a neutral country of certain classes of internees, in particular ... pregnant women and mothers with infants and young children ...’.

The cases of pregnant women and women with dependant infants who are ‘arrested, detained or interned for reasons related to the armed conflict’ must be ‘considered with the utmost priority’ (Article 76(2), Additional Protocol I).⁵¹ While the application of the death penalty to them is prohibited in respect of non-international conflicts (Article 6(4) Additional Protocol II) and Parties to an international conflict shall avoid its application to ‘the maximum extent feasible’ for offences arising from the conflict (Article 76(3), Additional Protocol I).⁵²

Female civilian internees are also afforded special protection under Geneva Law even when they are not pregnant or mothers with dependant children. Article 83 Geneva IV Convention covering internees and Article 83 Geneva III Convention concerning prisoners of war requires generally that the location of places of detention be made safe. In respect of female internees, Article 75(5) Additional Protocol I requires that they be provided with quarters separate to that of men and under immediate female supervision, and where families are detained or interned ‘they shall whenever possible, be held in the same place and accommodation as a family unit’. Equivalent provision relating to non-international armed conflict is found in Article 5 Additional Protocol II. Where women are interned with men who are not members of their family as an ‘exceptional and temporary measure’ they must be provided with ‘separate sleeping quarters and sanitary conveniences’ (Article 85 Geneva IV). In addition, female internees shall only be searched by a woman (Article 25 Geneva IV). When disciplinary punishment is meted out to female internees, their sex should be a factor taken into account (Article 119, Geneva IV).

Protections afforded female prisoners of war is more limited than those extended to female civilian internees. In addition to the general provisions covering all prisoners of war, Geneva III Convention requires the provision of ‘separate dormitories’ from male POWs (Article 25),⁵³ ‘separate

⁵⁰ GA Res.3318(XXIX), 14 December 1974, para.6. See also Declaration on the Elimination of Violence Against Women, GA Res.48/104, 20 December 1993, expressed ‘alarm[] that opportunities for women to achieve legal, social, political and economic equality in society are limited *inter alia*, by continuing and endemic violence’.

⁵¹ Sandoz *et al*, *supra* note 41, at para.3155: stating that mothers with dependant children ‘differs from case to case and from culture to culture ... Thus all infants are covered who require the presence and care of their mothers and have not yet acquired full independence.’

⁵² The ICRC commentary suggesting that despite the qualified phrasing, it constitutes a prohibition on the execution the death penalty until the child is no longer dependent: *Ibid.*, at para.3167. See also Article 6(5) of the International Covenant on Civil and Political Rights, 16 December 1966, in force 23 March 1976, GA Res. 2200A (XXI), 21 UN GAOR Supp. (No.16) at 52, UN Doc.A/6316 (1966), 999 UNTS 171.

⁵³ The ICRC Commentary, Pictet, *supra* note 38, at 195, provides that: ‘The dormitories must therefore be separated, and male prisoners must not have access to the dormitories of women prisoners, either with or without their consent. The

conveniences' (Article 29), treated with 'all regard to their sex' (Article 14), and those undergoing disciplinary punishment 'shall be confined to separate quarters from male prisoners of war and shall be under the immediate supervision of women' (Article 97, and Article 108 in respect of convicted prisoners of war).

4. Prohibition of Sexual Violence

The 'special' provisions in respect of women in IHL today can only be understood within the context of the significant developments which have occurred within international law and international institutions, since they were initially drafted. This Part focuses on efforts to address violence against women as an example, to illustrate how international criminal law, the advocacy of NGOs like ICRC, and UN's mainstreaming of women's issues have shaped the law and best practice in this area.

A. Jurisprudence of International Criminal Tribunals

The work of the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda have done much not only for the enforcement of IHL and international criminal law but also the evolution of the interpretation of existing law, particularly the recognition of rape as a grave breach. Both governing statutes list rape as a crime against humanity and the ICTR enumerates it and other forms of sexual violence as a violation of Common Article 3 of the 1949 Geneva Conventions.⁵⁴ The Security Council when adopting the ICTY statute expressed 'once again its grave alarm at continuing reports of widespread and flagrant violations of international humanitarian law occurring within the territory of the former Yugoslavia, and especially in the Republic of Bosnia and Herzegovina, including reports of ... organised and systematic detention and rape of women ...'.⁵⁵ The jurisprudence of these tribunals has not only extrapolated upon the notion of rape,⁵⁶ and other sexual violence (including enslavement and sexual slavery),⁵⁷ as not only a war crime, and a crime against humanity per se, but have extended it to be included in the within the definition of persecution (on the grounds of gender even though not explicitly contained in their respective governing states),⁵⁸ torture,⁵⁹ and genocide.⁶⁰

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Detaining Power is responsible for executing this provision. Strictly speaking, this paragraph refers only to dormitories and the quarters as a whole need not necessarily be separated; the Detaining power is, however, at liberty to provide separate quarters if it deems fit and in order more easily to fulfil the other requirements of the Convention with regard to women prisoners'.

⁵⁴ Art.5(g) ICTY Statute; Arts 3(h) and 4(g) ('Outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault'), ICTR Statute. The Tokyo International Military Tribunal referred to sexual crimes in its indictment, both the Nuremberg and Tokyo Tribunals held evidence in respect of them, but neither mentioned rape in their judgments. Rape had also been listed as a crimes against humanity in Article II(1)(c), Control Council Law No.10, 20 December 1945, *Official Gazette of the Control Council of Germany*, no.3, 22 covering the trial of war criminals by the Allied military governments, but no charges relating to rape were brought under this law.

⁵⁵ SC Res.827, 25 May 1994, UN Doc.A/RES/827. For summary of the UN investigations of reports of sexual violence during the early years of the Yugoslav and Rwandan conflicts, see Gardam and Jarvis, *supra* note 1, at 148-160.

⁵⁶ Prosecutor v. Jean-Paul Akayesu, Trial Judgment, Case No.ICTR-96-4-T, 2 September 1998, para.688; Prosecutor v. Zejnil Delalić *et al* Trial Judgment, Case No.IT-96-21-T, 16 November 1998 (Čelibići), para.495; Prosecutor v. Anto Furundžija, Trial Judgment, Case No.IT-95-17/1-T, 10 December 1998, para.271; Prosecutor v Dragoljub Kunarac *et al*, Trial Judgment, Case No.IT-96-23-T and IT-96-23-/1-T, 22 February 2001, paras.460 and 495; and Prosecutor v. Miroslav Kvočka *et al*, Trial Judgment, Case No.IT-98-30-T, 2 November 2001.

⁵⁷ Kunarac *et al*, Trial Judgment, *supra* note 56, at paras.540 and 542. See 'Systematic Rape, Sexual Slavery and Slavery-Like Practice during Armed Conflict, Report of the UN High Commissioner for Human Rights', 11 July 2006, UN Doc.A/HRC/Sub.1/58/23.

⁵⁸ Prosecutor v. Duško Tadić, Trial Judgment, Case No.IT-94-1-T, 7 May 1997, para.715; Prosecutor v. Vlatko Kupreskić, Trial Judgment, Case No.IT-95-16-T, 14 January 2000, para.627; Kvočka Trial Judgment, *supra* note 56, paras.196-197, 233-234; Prosecutor v. Radislav Krstić, Trial Judgment, Case No.IT-98-33-T, 2 August 2001, paras.617-618; Furundžija, Trial

This jurisprudence has aided and reinforced the ongoing transition occurring especially within international law in understanding and redefining violence against women during armed conflict and belligerent occupation. Feminist legal scholars and the UN Special Rapporteur on Violence Against Women (who has presented reports on this topic since 1994) have cautioned against IHL reinforcing patriarchal notions of female sexuality and failing to address the violence visited by rape and other forms of sexual violence.⁶¹ It was noted that by protecting the victim's 'honour' IHL was reaffirming stereotypical notions of women concerning purity, chastity and virginity, linking the crime to the morality of the victim and reinforcing the shame associated with such acts. Instead, they promoted a reinterpretation which emphasised the role of rape and other forms of sexual violence as a weapon of violence during the armed conflict against combatants and civilians used by state militaries, militia, peacekeeping forces and other non-state actors. This transition from rape as a crime against honour (Geneva IV), to recognition of rape in limited form (Additional Protocols), through to its recognition within the definition of persecution and torture in the jurisprudence of contemporary international criminal tribunals has facilitated this transformation, which is reflected in the Rome Statute.

This transformation has not only effected the understanding of sexual violence against women within international law, especially IHL, it had an impact upon prosecution and enforcement procedures and practices of international courts through the recruitment and training of investigatory and prosecutorial staff in gender issues and gender-related crimes;⁶² the tailoring of remedies to the needs of women and girls;⁶³ the involvement and needs of women in repatriation and rehabilitation, and post-conflict reconciliation and reconstruction efforts.⁶⁴

B. International Committee of the Red Cross and Red Crescent

The protection of women has always been part of the remit of the ICRC. However, until the late twentieth century, women were often subsumed within the general category of civilian populations, or the sub-category of 'women and children'. However, the organisation had from time to time addressed the specific concerns of women, for example, during the Second World War it raised awareness of the needs of female prisoners of war, and this was then reflected in Geneva III Convention.⁶⁵ It was instrumental in garnering recognition that rape during the Yugoslav conflicts constituted 'wilfully causing great suffering or serious injury to body and health' being a grave breach under the 1949

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Judgment, *supra* note 56 at para.172; and Prosecutor v. Zejnil Delalić *et al.* Appeals Judgment, Case No.IT-96-21-A, 20 February 2001 (Čelibići Appeals Judgment).

⁵⁹ Akayesu, Trial Judgment, *supra* note 56, at para.594; and Prosecutor v. Anto Furundžija, Appeals Judgment, Case No.IT-95-17/1-A, 21 July 2000, para.111. Cf. Kunarac, Trial Judgment, *supra* note 56, at paras.473, 482 and 497, and Kvočka Trial Judgment, *supra* note 56, at para.139 making a distinction between the definition of torture under IHL and HR law, with the later found to be too restrictive. See also UN Doc.A/HRC/7/3.

⁶⁰ Akayesu, Trial Judgment, *supra* note 56.

⁶¹ Report of UN Special Rapporteur on Violence Against Women, Y. Ertürk, Mission to the Democratic Republic of the Congo, 28 February 2008, UN Doc.A/HRC/7/6/Add.4; and 1998 UN VAW Report, Part I.

⁶² In respect of the ICTY and ICTR see UN Division for the Advancement of Women, 'Sexual Violence and Armed Conflict: United Nations Response', at <<http://www.un.org/womenwatch/daw/public/w2apr98.htm>> (viewed 8/04/09); and Art.15(4) Statute of the Special Court for Sierra Leone requires the office of the prosecutor to give due consideration to the appointment of staff including prosecutors and investigators experienced in gender-related crimes.

⁶³ For example, in the context of the 1990 Gulf War, see UN Compensation Commission Decision No.3, Personal Injury and Mental Pain and Anguish, in R. Lillich (ed.), *The United Nations Compensation Commission*, (1995), at 404; and UN, Reports and Recommendations Made by the Panel of Commissioners Concerning Part One of the Second Instalment of Claims for Serious Personal Injury or Death (Category 'B' Claims), S/AC.26/1994/4, 15 December 1994, at 10, para.17. See Gardam and Jarvis, *supra* note 1, at 87-92.

⁶⁴ SC Res.1325, para.8. See 'Women and Peace and Security, Report of the Secretary-General', 25 September 2008, UN Doc.S/2008/622.

⁶⁵ ICRC, *Women and War* (1995).

Geneva Conventions,⁶⁶ and the gradual acknowledgement of sexual violence against women.⁶⁷ The ICRC stressed the need to enforce IHL provisions, the reaffirmation that rape conducted in armed conflict was a war crime, and the need to specially train investigators and prosecutors.

In 1995, the ICRC contributed to the Fourth World Conference on Women, with the Beijing Platform for Action Critical Area E: Women and Armed Conflict recognising the specific impact of armed conflict and terrorism on women and girls. It stated in part: 'Parties to the conflict often rape women with impunity sometimes using systematic rape as a tactic of war and terrorism.'⁶⁸ In 1998, it initiated a global study on the impact of armed conflict on women, the *Women Facing War* report was delivered in 2001. While acknowledging the changing role of women, the impact of armed conflict on women as combatants and civilians, and the recent developments in IHL, human rights law and international criminal law, it targeted specific areas of concerns for female civilians, namely, safety (personal safety, sexual violence, freedom from arbitrary displacement, and freedom of movement); food and water; sources of livelihood; shelter (shelter, clothing); health; hygiene and sanitation; maintenance of the family unit; education and training (includes access to information); religious and cultural practices; social issues; legal issues (personal documentation, access to effective remedy). This paper formed the basis of subsequent documents detailing legal developments concerning IHL obligations and enforcement, and best practice in these areas including violence against women.⁶⁹ Going forward, the ICRC projected the need to reinforce the role of women in peacekeeping and stability operations, and target amendments to military manuals and military training.⁷⁰

C. Mainstreaming Women's Issues within the United Nations

The slow response to women's issues, particularly violence against women by the ICRC was likewise reflected within the United Nations. However, when it did gradually respond the developments have largely been felt in the field of human rights, international criminal law and UN organisational reform. The Declaration on the Protection of Women and Children in Emergency and Armed Conflict adopted by the General Assembly in 1974 does not explicitly refer to sexual violence during armed conflict, nor did the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) adopted five years later. As with the ICRC, the UN response coincided with the outrage engendered by the sexual violence evidenced during the Yugoslav and Rwandan conflicts. The notion of violence against women as a violation of human rights was finally reflected in the general recommendation on 'Violence Against Women' adopted by the Committee monitoring CEDAW in 1992, and the UN Declaration on the Elimination of Violence Against Women adopted the following year.⁷¹ This declaration recognises that women are especially vulnerable to violence during armed conflict. Also in 1993, the Vienna Declaration and Programme of Action stated that: 'Violations of the human rights of women in situations of armed conflict are violations of fundamental principles of international human rights and humanitarian law. All violations of this kind, including murder, systematic rape, sexual slavery, and forced pregnancy, require a particularly effective response.'⁷² During this period, the Commission on Human Rights appointed a Special Rapporteur on Violence Against Women, its Causes and Consequences, and the UN Sub-commission on the Prevention of Discrimination and the Protection of Minorities appointed a Special Rapporteur on the Situation of Systematic Rape, Sexual

⁶⁶ ICRC, *Update on Aide*, memoire of 3 December 1992. See also *Final Declaration of the International Conference for the Protection of War Victims*, para.13, in 296 ICCR (1993) 337.

⁶⁷ Resolution 2B, *Final Declaration of the International Conference for the Protection of War Crimes*, in 310 ICCR (1996) 63.

⁶⁸ Para.135, Beijing Platform for Action 1995.

⁶⁹ Lindsey-Curtet *et al*, *Addressing the Needs of Women Affected by Armed Conflict: An ICRC Guidance Document*, (March 2004), Part 1.2.

⁷⁰ ICRC, *International Humanitarian Law and Gender, Report Summary, International Expert Meeting "Gender Perspectives of International Humanitarian Law"*, 4-5 October 2007, Stockholm, (2007).

⁷¹ GA Res.48/104, 20 December 1993.

⁷² Art.38, Vienna Declaration and Programme of Action, adopted by World Conference on Human Rights on 25 June 1993,

Slavery and Slavery-like Practices. Their ongoing periodic reports have been crucial to raising awareness of the nature, extent and prevalence of this and related issues, and campaigning for legal reforms. As mentioned above, the Platform of Action adopted by the Fourth World Conference on Women in Beijing in 1995 also address this issue. From this initiative arose Resolution 1325 adopted by the Security Council on 31 October 2000, which continues to guide the work of the UN and its member states in this area. Article 11 of Resolution 1325 ‘emphasizes the responsibility of all States to put an end to impunity and to prosecute those responsible for genocide, crimes against humanity, and war crimes including those relating to sexual and other violence against women and girls, and in this regard *stresses* the need to exclude these crimes, where feasible from amnesty agreements.’

These developments need to be understood within the broader movement within the United Nations of mainstreaming issues related to women following the Beijing Conference.⁷³ Most UN organs, its agencies and increasingly member states are reporting their progress in the implementation of Res.1325. Furthermore, the Security-General delivered in the In-Depth Study on all forms of Violence against Women in 2006 which enumerated several areas in need of reform including ‘surveillance of sexual violence in conflict and post conflict situations, with due attention to ethical and safety considerations, is needed urgently in order to establish more effective prevention and remedial services’,⁷⁴ comprehensive services for victims of sexual violence,⁷⁵ and the need to bridge the gap between international and national laws especially in respect of ‘protect[ing] women in conflict, post-conflict and refugee and internally displaced persons settings where women are particularly targeted for violence and their ability to seek and receive redress is restricted and adopt a gender sensitive approach to asylum’.⁷⁶

5. Some Observations

The Montreaux Document requiring contracting, host and territorial states when selecting and authorising PMSCs to take into account that their personnel are: [S]ufficiently trained, both prior to deployment and on an ongoing basis, to respect relevant national, international humanitarian and human rights law; and to establish goals to facilitate uniformity and standardisation of training requirements. Training could include general and task- and context-specific topics, preparing personnel for performance under the specific contract and in the specific environment, such as ... gender.⁷⁷

Gender has been defined by the ICRC as ‘culturally expected behaviour of men and women based on roles, attitudes and values ascribed to them on the basis of their “sex”’.⁷⁸ In addition, another criteria is past conduct of the PMSCs or its personnel including reliable attested record of sexual offences.⁷⁹ The framework established under Res.1325 should be extended to encompass PMSCs and the EU, Council of Europe and countries like Denmark, the United Kingdom, and Sweden which are viewed as good practice should tailor their existing programmes and serve as examples for other states.

⁷³ See Bunch, ‘Women and Gender’, in T. G. Weiss and S. Daws, *The Oxford Handbook on the United Nations*, (2007) 496, at 501; UN-STRAW, *Securing Equality: Engendering Peace: A Guide to Policy and Planning on Women, Peace and Security (UN SCR 1325)*, (2006); and NGO Working Group on Women, Peace and Security, *From the Local to the Global: Making Peace Work for Women* (2006), Chapter 2.

⁷⁴ In-depth Study, *supra* note 10, at para.227.

⁷⁵ *Ibid.*, at para.334.

⁷⁶ *Ibid.*, at para.382.

⁷⁷ Montreaux Document on pertinent international legal obligations and good practices for States related to private military and security companies in armed conflict, 17 September 2008, UN Doc.S/2008/636, at 14, 20 and 25.

⁷⁸ Lindsey-Curtet *et al*, *supra* note 69, at 7.

⁷⁹ Montreaux Document, *supra* note 77, at 13, 19 and 24.

Feminist scholars and women's NGOs have done much to raise awareness concerning women's issues cross the board and push for law reform within the United Nations and its member states in the last half century. Nowhere has this work been felt more clearly than in challenging and changing understandings of the impact of armed conflict on women, especially in realm of sexual violence. Much of this work focuses on breaking down the divide between private/unregulated and public/regulated. Consequently, the gains made in recent years should not be eroded by stealth through the privatisation of war through its contracting out to PMSCs. It is incumbent on states that PMSCs and their personnel come within the ambit of the relevant legal standards.