

## PROTECTION OF WOMEN IN ARMED CONFLICT

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### I. INTRODUCTION

Women increasingly bear the major burden of armed conflict.' In recent years particular attention has been given to the question of violence against women in armed conflict.' The significance of these developments is considerable. However, the focus on violence-in particular on sexual violence'-tends to obscure other important aspects of women's experience of armed conflict that to date have been largely ignored.' The purpose of this comment is to consider a range of ways in which women are affected by armed conflict and to assess the adequacy of international law in protecting them. This issue is, in theory, on the international agenda. For example, the 1995 Beijing Platform for Action calls on "[g]overnments, the international community and civil society, including non-governmental organisations and the private sector... to take strategic action" in relation to the "[t]he effects of armed or other kinds of conflict on women, including those living under foreign occupation."<sup>5</sup> However, the available information is fragmented, making "strategic action" difficult to formulate.

Considerable work has been done regarding women and armed conflict by institutions concerned with human rights violations against women generally. Indeed, the process of identifying women's particular experiences and demonstrating the failure of the law to acknowledge them is more advanced in this context than in organizations focusing solely on armed conflict.' However, even when gender-based violence is addressed in these fora, the wider aspect of the problem is ignored.' Traditionally, reports and studies on the effects of armed conflict tend to incorporate women in the general category of civilians without regard to the different experiences of men and women civilians. The particular concerns of women have, to date, been regarded as peripheral in such analyses. For example, until recently, sexual violence against women was regarded as an inevitable aspect of armed conflict."

We now have evidence that women experience armed conflict in a different way than men.' These effects differ widely across cultures depending upon the role of women in particular societies. One thing is clear: armed conflict often exacerbates inequalities (in this context, those based on gender) that exist in different forms and to varying degrees in all societies'<sup>o</sup> and that make women particularly vulnerable when armed conflict breaks out. Of the more than one billion people living in poverty today, the great majority are women." They are, moreover, generally disadvantaged in terms of education and are considerably less mobile because of their traditional role in caring for others." Further, these inequalities continue after the cessation of hostilities. Women are often excluded from the reconstruction processes that take place after armed conflict as well as from peacebuilding initiatives."

The rules of International Humanitarian Law (IHL) are intended to provide protection for victims of armed conflict." This regime has been criticized as inadequate in performing its task in modern-day armed conflict. In addition, many practitioners and academics regard law as largely

irrelevant in armed conflict or place more confidence in the ability of human rights law, rather than IHL, to adapt itself to provide effective safeguards for the protection of the victims of armed conflict. Whatever the general inadequacies of IHL, it is clear that its provisions operate in a discriminatory fashion in relation to women."

## II. WOMEN'S EXPERIENCE OF ARMED CONFLICT

Armed conflict is by no means always negative in its impact on women. Indeed for some women it can be a time of empowerment as they take over roles traditionally performed by men." In some cases armed conflict removes abusive partners from the home and allows women the opportunity to develop new skills." Upon the cessation of hostilities, however, many of these advantages are lost.<sup>18</sup> Overall, an assessment of the effect of armed conflict on women requires a consideration of a wide variety of factors, the relevance and impact of which differ considerably among cultures and individual women within those cultures. It is easy to over-simplify the issues, and to misinterpret the impact on women of events that take place in conflict situations. Nevertheless, it is possible to identify some common themes that warrant closer scrutiny.

Overall, women are most likely to experience conflict as civilians. Many armed struggles, however, do involve a significant number of female combatants." Their treatment by the military institution reflects the subordinate position of women in society generally.<sup>20</sup> The experiences and needs of women combatants during captivity differ from that of men. Although the Third Geneva Convention provides for such matters as separate dormitories and conveniences for women prisoners of war, it does not deal adequately with issues such as reproductive health.<sup>21</sup>

As members of the civilian population women experience distinctive economic problems in armed conflict. In many cases women are separated from the men who traditionally may be their source of income. Lack of education and training, their role in caring for others, and general community attitudes makes it extremely difficult for women to support themselves financially.<sup>22</sup> In many cultures, moreover, it is women who have the most to gain from economic development, and are thus particularly disadvantaged when these resources are diverted during armed conflict.<sup>23</sup>

Many other cultural factors exacerbate the economic problems suffered by women in armed conflict. For instance, armed conflict often forces women from their homes. In fact, women civilians are generally the first to be evacuated when hostilities break out. Evacuation, although desirable in many ways, can lead to considerable hardship. Evacuees are generally exposed to foreign-and often inadequate-living conditions and, consequently, tend to be more prone to accidents, injuries, and disease. There may also be an increased risk of pregnancy as contraception is generally not readily available, and women are likely to be dislocated from many basic health services.<sup>24</sup> Further, refugees and internally displaced persons-a large percentage of whom are women and girl children<sup>25</sup>-are an almost inevitable result of armed conflict, and the problem is growing.<sup>26</sup> Evidence exists of widespread mistreatment of women in refugee camps.<sup>27</sup> These women also face distinctive problems that are largely unacknowledged as they attempt to rebuild their lives as refugees in a new country.<sup>28</sup>

The reproductive role of women generally makes them particularly vulnerable to shortages in medicine, reliable birth control, and medical treatment.<sup>29</sup> The absence of medical services and basic supplies has vastly different implications for women than for men. Male relief workers and officials have treated the provision of sanitary towels (or the appropriate items given the cultural practices of the women concerned) as a minor concern. This is not the reality for women—for women such matters are basic to their dignity and well being. Despite some resistance within the organization, The Office of the UN High Commissioner for Refugees (UNHCR) now ensures that sanitary towels are included in supplies to refugees.

Where food is scarce, women are more prone to malnutrition than men.<sup>30</sup> Cultural factors may contribute to this situation. For example, tradition often dictates that men are to eat first, followed by women.<sup>31</sup> The imposition of economic sanctions associated with armed conflict, moreover, exacerbates the special difficulties experienced by women during times of conflict. This phenomenon has been convincingly demonstrated by the sanctions regime imposed on Iraq during and after the Persian Gulf War.<sup>32</sup> Some have called for compulsory and continuous monitoring of the impact of sanctions upon children.<sup>33</sup> The same should apply for women. A significant proportion of official and non-governmental aid fails to reach women survivors.<sup>34</sup> Almost invariably, men are placed in charge of the decision-making process regarding humanitarian assistance and its distribution, despite the fact that women are generally far more experienced in food production, distribution, and preparation than men.<sup>35</sup> Consequently, women are frequently disadvantaged, either deliberately or because their needs are not properly understood.<sup>36</sup> Further, the balance of sexes in the teams of experts sent to provide humanitarian assistance contributes to the unequal treatment of women in such situations. UNHCR stresses the need to involve women in their operations in the field and confirms the difference that their involvement makes to the perception of women's particular problems.<sup>37</sup> However, to date the teams of experts have been dominated by male personnel who may not be particularly sensitive to problems faced by female survivors.

Similarly, the balance of sexes in fact-finding investigation teams dealing with sexual violence in armed conflict is determinative of whether women's stories are to be told. Methods of investigating and documenting human rights abuses often obscure abuses against women. For example, the UN "fact-finding" mission in Rwanda in **1994** somehow did not detect systematic sexual violence against women until nine months after the genocide when women began to give birth in unprecedented numbers.<sup>38</sup> It has been suggested in the context of the Rwandan conflict that due to the significance of rape in that culture it is not possible to investigate incidents of sexual violence as the women concerned are not willing to discuss their ordeals.<sup>39</sup> However, Human Rights Watch has found that the use of female investigators and interpreters makes a considerable difference to whether or not women are willing to speak out.<sup>40</sup>

Documentation of sexual abuse of women during and after warfare has increased<sup>41</sup> and the trauma suffered by victims of sexual abuse is now receiving greater consideration.<sup>42</sup> However, more support services need to be provided to women, particularly for dealing with the physical and psychological effects of their injuries. Some of the common issues women have to deal with are abortion (if it is available), abandonment of babies conceived during rape, and HIV and other infections.

Despite the fact that women are generally responsible for trying to rebuild families and communities after conflict, they are almost always excluded from decision-making processes regarding reconstruction.<sup>43</sup> This absence of women reflects the situation that exists in all cultures during times of peace and, moreover, in the United Nations system itself.<sup>44</sup> The inappropriateness of not taking into account the views of women is particularly marked in post-conflict situations where, typically, a high percentage of households are headed by women.<sup>45</sup>

Girl children are vulnerable in armed conflict in many of the same ways as women, but there are also factors that affect them specifically. To date, little attention has been given to this issue.<sup>46</sup> The primary focus in relation to children has been on raising the minimum age of participation in hostilities, an issue predominantly affecting boy children.<sup>47</sup> However, a recent study of children in armed conflict commissioned by the UN General Assembly has addressed some of these issues, although its focus is sexual violence against girl children.<sup>48</sup>

In more recent times, the media has fundamentally changed the way that armed conflict is viewed throughout the world. This has a particular impact on women.<sup>49</sup> A positive effect of this development has been the presence of women journalists in the conflict in the Former Yugoslavia, which is thought to have contributed to attention being focused on the incidence of sexual violence during those hostilities.<sup>50</sup> Nevertheless, overall the emphasis has traditionally been placed on the suffering and heroism of men. The glorification of the combatant is an integral part of the culture of warfare.<sup>51</sup> Generally, the trauma, experiences, and death of women as a result of armed conflict are disregarded. When, on the other hand, attention is paid to the experiences of women in armed conflict, it is frequently exploitative and damaging to the women concerned.<sup>52</sup>

The peacekeeping forces of the United Nations have kept up the unfortunate tradition of abuse of women. There are many reports of rape and sexual harassment by UN Peacekeepers—for example in Cambodia—as well as complicity in sexual abuse perpetrated by parties to the conflict.<sup>53</sup> These incidents raise unresolved questions regarding the extent to which the United Nations is bound by the provisions of IHL. The International Committee of the Red Cross (ICRC) has consistently argued for a broad approach to the applicable law and regards all the provisions of IHL as applicable when UN contingents resort to force, whether through peacekeeping or peace enforcement forces.<sup>54</sup> The United Nations, by contrast, continues to maintain its longstanding view that it is bound by the "fundamental principles and rules of international humanitarian law."<sup>55</sup>

The issue of compensation, although of significance to all victims of armed conflict, has particular manifestations in the context of women.<sup>56</sup> Compensation for individuals for the effects of armed conflict is not specifically addressed by IHL. Its provisions protect individuals within the confines of the traditional rules of state responsibility. In other words, harm to individuals is considered an injury to the state and is pursued on that level. States, however, are generally not willing to pursue claims where the individuals concerned have little political or economic status, which is the case with women.<sup>57</sup> Where particular States have adopted measures to provide compensation to victims of armed conflict, a gender perspective has been missing. One exception in this area is the United Nations Compensation Commission established by the

Security Council to deal with claims arising from the Persian Gulf conflict of 1990 and 1991.<sup>58</sup> The Commission recognizes claims for "serious personal injury," defined so as to include "mental pain and anguish" arising from sexual assault.<sup>59</sup>

In the context of enforcement, some progress has been made in taking particular concerns of women into account in the prosecution of sexual offenses. Such matters as the anonymity of victims and witnesses in trials for sexual assault and provision of victim support and counseling have been addressed.<sup>60</sup> These changes have not been readily accepted. For example, a perceived conflict exists between the demands of a fair trial and the protection of women as victims and witnesses.<sup>61</sup> The two are not necessarily inconsistent; it is the appropriate balance that should be addressed.<sup>62</sup> It is also important that there be gender balance in the composition of enforcement tribunals and their support staff.<sup>63</sup>

### III. HOW INTERNATIONAL LAW RESPONDS TO WOMEN AND ARMED CONFLICT

How has the law responded to women's experience of armed conflict? IHL contains general provisions protecting all civilians and a number of provisions affording women "special protection" during armed conflict.<sup>64</sup> Forty-three provisions of the Geneva Conventions and Protocols specifically deal with women and the effects of armed conflict.<sup>65</sup> However, they all deal with women in their relationships with others, not as individuals in their own right. Nineteen are, in fact, designed to protect children.<sup>66</sup> Those that deal with sexual offenses are couched in terms of offenses against women's honor.<sup>67</sup> Women's honor, as depicted in IHL, is constituted solely on the basis of certain sexual attributes, the characterizing features of which are what is seen as important to men, namely the chastity and modesty of women.<sup>68</sup> In contrast, the honor of men is a much more complex concept in IHL, encompassing both mind and bodily attributes.<sup>69</sup> The rules dealing with women are presented as less important than others. They are drafted in different language than the provisions protecting combatants and civilians generally, using the concept of "protection" rather than prohibition.<sup>70</sup> Their breach, moreover, is not treated as serious within the rules themselves in that they are not considered "grave breaches" of the Conventions and, until recently, no attempt had been made to enforce these rules, despite widespread breaches.<sup>71</sup>

When questions are raised as to the adequacy of these provisions the most frequent response is that the rules are sufficient and that what is needed is better enforcement.<sup>72</sup> Certainly better enforcement of all the rules of IHL is necessary. However, the basic problem is that the provisions are inherently discriminatory. No amount of enforcement can overcome this fundamental flaw in the system.

IHL fails to take account of women as subjects in their own right. It takes the experience of men as the starting point. In a world where women are not equals of men, a general category of rules based on the experience of men cannot respond to their situation.<sup>73</sup> Armed conflict affects men and women in fundamentally different ways, and laws that take the experience of men as the norm against which to construct the rules are unjust. Women may already receive special

protection under IHL—for example when they are pregnant or prisoners of war.<sup>74</sup> But these rules relate only to the sexual and reproductive aspects of women's lives viewed from a male perspective.

The failure to address many of the problems experienced by women as a result of armed conflict can be attributed to the boundaries of IHL. Increasingly, scholars are focusing on the unreality of the rigid divisions between human rights law, IHL, and refugee law.<sup>75</sup> Modern armed conflict involves the whole population and its effects are far reaching and long-term. IHL, with the exception of the Fourth Geneva Convention dealing with occupied territories, only applies while armed conflict continues.<sup>76</sup> For women in particular, the cessation of hostilities often marks just the beginning of their battle for survival, a process that is markedly different than the post-conflict experience of men.

Two examples of the operation of the boundaries of IHL illustrate how the law fails to consider the reality of warfare for women. The first illustration concerns the way in which a component of the rules themselves, the principle of proportionality, has been applied. The second example relates to economic sanctions.

The principle of proportionality is a central aspect of IHL. The treaty rule of proportionality can be found in Article 51 (5)(b) of Protocol I, where indiscriminate attacks are defined so as to include those "which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated."<sup>77</sup> This provision does not require that factors such as long-term civilian casualties, either from injuries at the time of attack or from resulting starvation and disease, be taken into account in determining what is a proportionate attack. Neither are commanders required to assess to what extent attacks will lead to the displacement of the civilian population and the creation of a refugee problem.<sup>78</sup> To some extent these factors might be regarded as more appropriately the province of the law on the use of force. That is, in the overall planning of a military campaign leaders should always consider whether such results are warranted by the requirements of self-defense or the restoration of international peace and security.<sup>79</sup> As things stand, however, long-term effects of attacks and the potential dislocation of civilians are not limiting factors in either the law on the use of force or IHL. This failure to recognize and take account of the whole picture of what happens after an armed attack affects women particularly.

The use of economic sanctions illustrates the increasingly random impact of the boundaries within which IHL operates. The effects of this phenomenon on women are distinctive and unacknowledged.<sup>80</sup> On several recent occasions, sanctions have been associated with enforcement actions of the Security Council as an integral part of the overall solution to international conflict.<sup>81</sup> The deleterious impact of economic sanctions on the civilian population is documented.<sup>82</sup> The particular effects of such measures on women, however, is largely overlooked although well-illustrated by the Persian Gulf conflict where a mandatory sanctions regime has continued long after the cessation of armed hostilities.<sup>83</sup>

There are no rules of IHL that specifically regulate economic sanctions during armed conflict.<sup>84</sup> Some provisions of IHL are, however, relevant in this context. Starvation is a prohibited method

of warfare under Articles 54 of Protocol I and 14 of Protocol II; this principle is arguably a customary rule.<sup>85</sup> Article 70 of Protocol I provides for relief actions in certain circumstances.<sup>86</sup> Additionally, Articles 23 and 55 of the Fourth Geneva Convention impose certain obligations on contracting States or occupying powers in relation to the provision of essential supplies to the civilian population.<sup>87</sup> However, these rules only apply while the armed conflict is in progress or, in the case of the Fourth Convention, during occupation. After the conflict, arguably, no relevant law applies."<sup>88</sup>

Thus the economic sanctions still in place against Iraq, as part of the overall solution to the threat to international peace and security posed by that state, are outside any rules of armed conflict. Furthermore, the source of these sanctions is the powers of the Security Council under Chapter VII of the United Nations Charter.<sup>89</sup> Decisions of the Security Council under Chapter VII impose mandatory obligations on states. Under Article 103 of the Charter these obligations prevail over any other treaty obligations that states may have, including those of IHL.<sup>90</sup> Moreover, it is questionable whether the Security Council itself is bound by any limitations derived from IHL.<sup>91</sup>

#### IV. THE WAY FORWARD

Improvements in the protection offered to women by IHL should be based on evidence of the effects of armed conflict on women in a wide variety of situations and conflicts, both civil and international.<sup>92</sup> Considerable differences of opinion exist as to what law has to offer in ameliorating the impact of armed conflict.<sup>93</sup> Doubts also exist as to the ability of law to achieve fundamental change for women. Maybe all that will be achieved, as Christine Chinkin puts it, is "a triumph of form over substance."<sup>94</sup> On the other hand, law generally serves to reinforce existing societal structures, in this case, discrimination against women.<sup>95</sup> It therefore, at the very least, has a significant symbolic role to play in any improvements for the position of women in armed conflict.

One option is to reform the rules of IHL to adequately address the inherent discriminatory operation of the provisions. However, in the current international political climate a fear exists that to open up reform of IHL may threaten the maintenance of useful existing rules. Another possible approach is to encourage a reinterpretation of the existing provisions of IHL to take account of gender perspectives and changing interpretations of the rules. The Special Rapporteur on Violence Against Women, in her report on armed conflict, recommends that the Geneva Conventions should be re-examined and reevaluated so as to "incorporate developing norms on violence against women during armed conflict."<sup>96</sup> Of particular relevance in this context, in light of the work of the International Criminal Tribunals for the Former Yugoslavia and Rwanda, is the question of the place of rape in the system of grave breaches.

A focus on a reconceptualization of the existing rules is consistent with the idea of mainstreaming gender issues that was reiterated in the Beijing Platform for Action.<sup>97</sup> Paragraph 143 reads: "[i]n addressing armed or other conflicts, an active and visible policy of mainstreaming a gender perspective into all policies and programs should be promoted so that before decisions are taken an analysis is made of the effects on women and men, respectively."<sup>98</sup>

This process, already under way in the field of human rights,<sup>99</sup> can be extrapolated to the provisions of IHL in a number of ways. For instance, a revision of the ICRC commentaries on the Geneva Conventions and Protocols could be undertaken to provide a gender perspective on their provisions and to take into account the changing interpretations of the rules. These documents are regarded as an important source for interpreting the Conventions and the Protocols. The commentaries on the Conventions, however, were written some forty years ago and incorporate ideas and concepts that are now outdated. An illustration is the commentary on Article 12 of the Second Geneva Convention—"women shall be treated with all consideration due to their sex"<sup>100</sup> - which states: "[w]hat special consideration? No doubt that accorded in every civilised country to beings who are weaker than oneself and whose honor and modesty call for respect."<sup>101</sup> The commentaries, moreover, in some cases, no longer accurately reflect the interpretations of the provisions as adopted by states.<sup>102</sup>

Another method of mainstreaming gender perspectives into IHL is the adoption of an initiative for the better dissemination of the rules relating to women, to be undertaken by the state parties to the Geneva Conventions and Protocols in consultation with the ICRC. Dissemination is a treaty obligation of these States.<sup>103</sup> The training of peacekeepers in IHL and the treatment of women in armed conflict is a topic that requires attention both from the United Nations itself and from States supplying peacekeeping forces.<sup>104</sup> Such undertakings in relation to dissemination, moreover, are consistent with paragraph 33 of the Beijing Platform for Action which refers to the need to "[e]nsure respect for international law, including humanitarian law, in order to protect women and girls in particular."<sup>105</sup>

Some progress is being made in the context of reconstruction and peacebuilding initiatives after the cessation of hostilities. Paragraph 135 of the Beijing Platform for Action refers to the need to ensure:

[t]he equal access and full participation of women in power structures and their full involvement in all efforts for the prevention and resolution of conflicts .... If women are to play an equal part in securing and maintaining peace, they must be empowered politically and economically and represented adequately at all levels of decision-making.<sup>106</sup>

Several States and Agencies are pursuing these initiatives—for example, the Canadian Government,<sup>107</sup> the UN Division for the Advancement of Women,<sup>108</sup> and the UNHCR.<sup>109</sup>

Simply including women in post-conflict resolution or peacebuilding initiatives can be perceived as an "add women and mix" approach that has been unsuccessful in achieving any transformation in the existing structures.<sup>110</sup> Anne Gallagher writes that the new approach to mainstreaming gender perspectives in the human rights field is so-called "transformative mainstreaming," a process that is designed to achieve fundamental change.<sup>111</sup> One of the assumptions that frequently underlies initiatives designed to include women in public roles is that women are intrinsically more peaceful and cooperative than men. This assumption is problematic because it reinforces stereotypes of women that limit their options and fail to take account of their diverse potentials. A less contentious justification for the inclusion of women in these activities is one of

simple justice. Their lives are what is being dealt with; thus they should have a say in any decisions that are made.

It may be advantageous to continue the process of focusing attention specifically on women but in a way that takes account of the various roles they perform in societies and not merely as mothers and sexual objects. Thus, comprehensive guidelines on the treatment of women in armed conflict could be adopted under the auspices of the ICRC.<sup>112</sup>

Finally, a forum is needed to discuss the way forward for the better protection of women in armed conflict. Increasingly, the topic is on the agenda of a widespread variety of bodies, both governmental and nongovernmental. However, their activities are fragmented and need to be drawn together.

## V. CONCLUSION

IHL is an ancient, conservative, and relatively inflexible area of international law. The number of challenges posed to its relevance and effectiveness in the last half century has been bewildering.<sup>113</sup> It now must meet the demands of women to truly reflect their life experiences. The ICRC, a deeply conservative organization, has special responsibility for the development of IHL and is in danger of losing the initiative in many areas where it should be at the forefront of developments. The ICRC is finally recognizing the need to address the specific needs of women in armed conflict. However, a serious commitment to real change is needed. As the traditional guardian of IHL, the ICRC must take concrete steps to make the law relevant to the lives of the majority of the world's population.

### Notes:

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1. See Statement of Renée Guisan, Member of the Int'l Comm. of the Red Cross, to the Fourth World Conference on Women, Beijing, China, 4 Sept. 1995, available on <<http://www.icrc.org/irceng.nsf/3c31e92a906daf86412561f60050d211/8a19d95f10b98fe641256251002d8360?OpenDocument>> (visited 18 Nov. 1999); Fourth World Conference on Women: Action for Equality, Development, and Peace, Beijing Declaration and Platform for Action, U. N. GAOR, U. N. Doc. A/CONF. 177/20 (1995), reprinted in REPORT OF THE FOURTH WORLD CONFERENCE ON WOMEN (1995) (recommended to the UN General Assembly by the Committee on the Status of Women on 7 Oct. 1995) [hereinafter Beijing Platform for Action]. See also Report to the Secretary-General on Humanitarian Needs in Kuwait and Iraq in the Immediate Post-Crisis Environment by a Mission to the Area Led by Mr. Martti Ahtisaari, Under-Secretary-General for Administration and

Management, Dated 20 March 1991, U.N. SCOR, U.N. Doc. S/22366 (1991); AMNESTY INTERNATIONAL, REPORT ON THE GULF WAR (1991); HUMAN RIGHTS WATCH, NEEDLESS DEATHS IN THE GULF WAR (1991), HARVARD STUDY TEAM REPORT: PUBLIC HEALTH IN IRAQ AFTER THE GULF WAR (1991); HARVARD STUDY TEAM REPORT: HEALTH AND WELFARE IN IRAQ AFTER THE GULF CRISIS (1991) [hereinafter HEALTH AND WELFARE IN IRAQ].

2. See, e.g., Report of the Special Rapporteur on Violence Against Women, Its Causes and Consequences, Ms. Radhika Coomaraswamy, Submitted in Accordance with Commission on Human Rights Resolution 1997/44, U.N. ESCOR, Comm'n on Hum. Rts., 54111 Sess., Agenda Item 9(a), U.N. Doc. E/CN.4/1998/54 (1998); Preliminary Report of the

Special Rapporteur on the Situation of Systematic Rape, Sexual Slavery and Slavery-like Practices During Periods of Armed Conflict, Ms. Linda Chavez, U.N. ESCOR, Comm'n on Hum. Rts., 48th Sess., Agenda Item 15, U.N. Doc. E/CN.4/Sub.2/1996/26 (1996). See also Vienna Declaration and Programme of Action, U.N. GAOR, World Conf. on Hum. Rts., 48th Sess., 22d plen. mtg., part I, U.N. Doc. A/CONF.157/24 (1993), reprinted in 32 I.L.M. 1661 (1993); Declaration on the Elimination of Violence Against Women, adopted 20 Dec. 1993, G.A. Res. 48/104, U.N. GAOR, 48th Sess., 85th plen. mtg., U.N. Doc. A/RES/48/104 (1993), reprinted in HUMAN RIGHTS AND DISABLED PERSONS: ESSAYS AND RELEVANT HUMAN RIGHTS INSTRUMENTS 416 (Theresia Degener & Yolana Koster-Dreese eds., 1995); Beijing Platform for Action, *supra* note 1, ¶¶131, 136.

3. See, e.g., HUMAN RIGHTS WATCH, UNTOLD TERROR: VIOLENCE AGAINST WOMEN IN PERU'S ARMED CONFLICT: A REPORT BY AMERICAS WATCH AND WOMEN'S RIGHTS PROJECT (1992); AMNESTY INTERNATIONAL, BOSNIA-HERZEGOVINA: RAPE AND SEXUAL ABUSE BY ARMED FORCES (1993); 2 HELSINKI WATCH, WAR CRIMES IN BOSNIA-HERZEGOVINA 18, 163-86 (1992); Final Report of the Commission of Experts Established Pursuant to Security Council Resolution 780 (1992), U.N. SCOR, U.N. Doc. S/1994/674/Annex (1994) (considering the issue of rape and sexual assault at ¶¶ 58-60, 232-53); AFRICAN RIGHTS, RWANDA: DEATH, DESPAIR AND DEFIANCE, (rev. ed. 1995); HUMAN RIGHTS WATCH WOMEN'S RIGHTS PROJECT, HUMAN RIGHTS WATCH GLOBAL REPORT ON WOMEN'S HUMAN RIGHTS 100-38 (1995) (relating to sexual assault of refugees and displaced women); HUMAN RIGHTS WATCH, SHATTERED LIVES: SEXUAL VIOLENCE DURING THE RWANDAN GENOCIDE AND ITS AFTERMATH (1996) [hereinafter SHATTERED LIVES].
4. An exception to this focus on sexual violence is the work of ECOSOC, particularly in relation to Palestinian women and children in occupied territories. See, e.g., Situation of Women and Children in the Occupied Arab Territories, U.N. ESCOR, Comm'n on Hum. Rts., 22d plen. mtg., U.N. Doc. E/RES/1982/18 (1982); Situation of Palestinians Within and Outside the Occupied Territories, U.N. ESCOR, Comm'n on Hum. Rts., 19th plen. mtg., U.N. Doc. E/RES/1984/18 (1984); Situation of Palestinian Women, U.N. ESCOR, Comm'n on Hum. Rts., 15th plen. mtg., U.N. Doc. E/RES/1988/25 (1988); Situation of Palestinian Women, U.N. ESCOR, Comm'n on Hum. Rts., 13th plen. mtg., U.N. Doc. E/RES/1990/11

(1990); Situation of and Assistance to Palestinian Women, U.N. ESCOR, Comm'n on Hum. Rts., 12th plen. mtg., U.N. Doc. E/RES/1991/19 (1991); Situation of and Assistance to Palestinian Women, U.N. ESCOR, Comm'n on Hum. Rts., 40th plen. mtg., U.N. Doc. E/RES/1992/16 (1992); Situation of and Assistance to Palestinian Women, U.N. ESCOR, Comm'n on the Status of Women, 43d plen. mtg., U.N. Doc. E/RES/1993/15 (1993); Palestinian Women, U.N. ESCOR, Comm'n on the Status of Women, 51 st plen. mtg., U.N. Doc. E/RES/1995/30 (1995). See also ECOSOC resolutions dealing with women and children in Namibia. E.g., Women and Children in Namibia, U.N. ESCOR, Comm'n on the Status of Women, 15th plen. mtg., U.N. Doc. E/RES/1988/24 (1988); Women and Children in Namibia, U.N. ESCOR, Comm'n on the Status of Women, 15th plen. mtg., U.N. Doc. **E/RES/1989/31 (1989)**; Women and **Children** in Namibia, U.N. ESCOR, Comm'n on the Status of Women, 13th plen. mtg., U.N. Doc. E/RES/1990/6 (1990). See also HUMAN RIGHTS WATCH, THE HUMAN RIGHTS WATCH GLOBAL REPORT ON WOMEN 's HUMAN RIGHTS 1-96 (1995).

5. Beijing Platform for Action, *supra* note 1 91 44.
6. This process is particularly marked in the context of the work of the United Nations High Commission on Refugees (UNHCR) in relation to refugee women. See UNHCR, Policy on Refugee Women, in UNHCR GUIDELINES ON THE PROTECTION OF REFUGEE WOMEN (1991) [hereinafter UNHCR GUIDELINES]; UNHCR, SEXUAL VIOLENCE AGAINST REFUGEES: GUIDELINES ON PREVENTION AND RESPONSE (1995) [hereinafter SEXUAL VIOLENCE AGAINST REFUGEES]. See also Christine Chinkin, Feminist Interventions into International Law, 19 ADEL. L. REV. 13, 16 (1997).
7. See generally Julie Mertus & Pamela Goldberg, A Perspective on Women and International Human Rights after the Vienna Declaration: The Inside/Outside Construct, 26 N.Y.U.J. INT'L L. & Pol. 201 (1994).
8. See Christine Chinkin, Rape and Sexual Abuse of Women in International Law Issues, 5 Eur. J. Int'l L. 326 (1994). Many other examples exist of the invisibility of women's experience of armed conflict. See Judith Gardam, Women and the Law of Armed Conflict: Why the Silence?, in 46 INT'L & COMP. L.Q. 55, 59-61 (1997).
9. Interview with Dorothy Thomas, Human Rights Watch, New York (June 1996); Interview with Louise Doswald-Beck, ICRC, Geneva (June 1997); Interview with **Ariane** Brunet, Women's Rights Coordinator, Canada Programme, International Centre for Human Rights and Democratic Development, Montreal (Nov. 1997).
10. Interview with Marco Sassoli, formerly of the Division for Promotion of International Humanitarian Law, Delegate to Academic Circles, ICRC, Geneva (June 1997). **See also** Beijing Platform for Action, *supra* note 1, 9f 136.
11. The feminization of poverty was a key area of concern at the Beijing Conference. See *Beijing Platform for Action*, *supra* note 1, Tyf 47-59. See also African Platform for Action adopted by the Fifth Regional Conference on Women, held at Dakar from 16 to 23

- November 1994, U.N. ESCOR, Comm'n on the Status of Women, 39th Sess., 'fl 25, U.N. Doc. E/CN.6/1995/5/Add.2 (1994); Report of the Secretary-General, *Second Review and Appraisal of the Implementation of the Nairobi Forward-looking Strategies for the Advancement of Women*, U.N. ESCOR, Comm'n on the Status of Women, 39th Sess., Agenda Item 3(b), q 92, U.N. Doc. E/CN.6/1995/3/Add.1 (1995).
12. See INT'L COMM. OF THE RED CROSS, *WOMEN & WAR* (1995), available on <<http://www.icrc.org/icrceng.nsf/8ec4e051a8621595c12564670032d7ef/63fa9b7bbd8e677e4125622d0033eOd9?OpenDocument>> (visited 18 Nov, 1999).
13. In the context of Palestinian women, see Hilary Charlesworth, *International Human Rights Law: Prospects and Problems for Palestinian Women*, in HUMAN RIGHTS: SELF-DETERMINATION AND POLITICAL CHANGE IN THE OCCUPIED PALESTINIAN TERRITORIES 79, 81-85 (Stephen Bowen ed., 1997). See also Anonymous, Stop Press: *Emergency Appeal*, Women in Somalia, 3-4 CHANGING THE WORLD: A NEWS BULLETIN ON WOMEN'S MOVEMENTS AROUND THE WORLD AND CHANCE'S ACTIVITIES 8 (1992); Tosca Looby, Women in *Bougainville*, 42 REFRACTORY GIRL 66, 66-67 (1992).
14. See Geneva Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the field, 12 Aug. 1949, 6 U.S.T. 3114, 75 U.N.T.S. 31 (entered into force 21 Oct. 1950) (*entered into force for U.S. 2 Feb. 1956*) [hereinafter Geneva I]; Geneva Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, 12 Aug. 1949, 6 U.S.T. 3217, 75 U.N.T.S. 85 (*entered into force 21 Oct. 1950*) (*entered into force for U.S. 2 Feb. 1956*) [hereinafter Geneva II]; Geneva Convention (III) Relative to the Treatment of Prisoners of War, 12 Aug. 1949, 6 U.S.T. 3316, 75 U.N.T.S. 135 (*entered into force 21 Oct. 1950*) (*entered into force for U.S. 2 Feb. 1956*) [hereinafter Geneva III]; Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War, 12 Aug. 1948, 6 U.S.T. 3516, 75 U.N.T.S. 287 (*entered into force 21 Oct. 1950*) (*entered into force for U.S. 2 Feb. 1956*) [hereinafter Geneva IV]. Protocol (I) Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977, 1125 U.N.T.S. 3 (*entered into force? Dec. 1978*), *reprinted in* 16 I.L.M. 1391 (1977) [hereinafter Protocol I]; Protocol (II) Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977, 1125 U.N.T.S. 609 (*entered into force 7 Dec. 1978*), *reprinted in* 16 I.L.M. 1442 (1977) [hereinafter Protocol II].
15. See Gardam, *supra* note 8, at 67-77.
16. See GAIL BRAYSON & PENNY SUMMERTIELD, *OUT OF THE CAGE: WOMEN'S EXPERIENCES IN TWO WORLD WARS* (1987); Sarah Fishman, *Waiting for the Captive Sons of France: Prisoner of War Wives, 1940-1945*, in *BEHIND THE LINES* 182 (Margaret Randolph Higonnet et al. eds., 1987); Janna Thompson, *Women and War*, 14 *WOMEN'S STUD. INT'L F.* 63 (1991).

17. See Alexandra McLeod, *Marking Time* in Tuzla MANCHESTER GUARDIAN WKLY., 26 May 1996.
18. See Hibaaq I. Osman, Somalia: Will Reconstruction Threaten Women's Progress?, Ms. MAGAZINE, Mar./Apr. 1993, at 12; Report of the Expert of the Secretary-General, Ms. Graça Machel, Submitted Pursuant to General Assembly Resolution 48/157, U.N. GAOR, 51st Sess., y[ 88, U.N. Doc. A/51/306 (1996) [hereinafter *Machel*]; Fishman, supra note 16, at 193; Penny Summerfield, *Women in the Two World Wars*, 23 HISTORIAN 3 (1989).
19. See UNITED NATIONS, *Women: Victims of Violence, Advocates of Peace*, in WOMEN: CHALLENGES TO THE YEAR 2000, at 65, U.N. Sales No. E.91.1.21 (1991); Francoise Krill, The Protection of Women in International Humanitarian Law, 249 INT'L REV. RED CROSS 337 (1985).
20. See *Gender-based Persecution: Report of the Expert Group Meeting*, U.N. GAOR, Division for the Advancement of Women, 9 52, U.N. Doc. EGM/GBP/1997/Report (1997), available on <gopher://gopher.un.org:70/00/esc/cn6/1998/armedcon/GBP97 .EN> (visited 18 Nov. 1999) [hereinafter *Report of the Expert Group Meeting*]. See also CANADIAN CENTRE FOR FOREIGN POLICY AND DEVELOPMENT, OPTIONS: REPORT ON THE ROUNDTABLE ON GENDER AND PEACEBUILDING 36 (1997) (discussing the different needs of women with regard to demobilization).
21. See Geneva 111, supra note 14, arts. 14, 25, 29.
22. See Report of the Special Rapporteur on Violence Against Women, Its Causes and Consequences, Ms. Radhika Coomaraswamy, Submitted in Accordance with Commission on Human Rights Resolution 1995/85, Economic and Social Consequences, U.N. ESCOR, Comm'n on Hum. Rts., 52d Sess., Agenda Item 9(a), addendum 2, § 1, U.N. Doc. E/CN.4/1996/53/Add. 2 (1996). See also Beijing Platform for Action, supra note 1, qq 72-81, 152-66 (detailing the inadequacy of the education of women, not just during armed conflict).
23. See JEANNE VICKERS, WOMEN AND WAR 25, 90 (1993).
24. See UNHCR GUIDELINES, supra note 6, at 7, 51-54.
25. See Beijing Platform for Action, supra note 1, ¶ 136 (estimating that 80 percent of refugees are women). See also Carolyn Moorhead, *Hostage to the Male Agenda*, INDEX ON CENSORSHIP, July/Aug. 1995, at 68; Adam Jones, *Gender and Ethnic Conflict in Ex-Yugoslavia*, 17 ETHNIC & RACIAL STUD. 115, 119 (1994).
26. See *Machel*, supra note 18, qq 26, 62-64.
27. See UNHCR, THE STATE OF THE WORLD'S REFUGEES, 91 76 (1993) (hereinafter THE STATE OF THE WORLD'S REFUGEES); SEXUAL VIOLENCE AGAINST REFUGEES, supra note 6; Anonymous, *Human Rights are Women's Rights*, 25 AMNESTY INT'L REPORT, 1995, at 3-4.

28. See, e.g., SUSAN FORBES MARTIN, *REFUGEE WOMEN 6-15 (1991)*. See also *Beijing Platform for Action*, *supra* note 1, 9 137.
29. See *European Community Investigative Mission into the Treatment of Muslim Women in the Former Yugoslavia: Report to European Community Foreign Ministers*, U.N. SCOR, Annex I, U.N. Doc. 5/25240 (1993); FORBES MARTIN, *supra* note 28.
30. See Anonymous, *Sisterhood is Global*, 3 MS. MAGAZINE, Sept./Oct. 1992, at 10; Looby, *supra* note 13, at 67. See also *implementation of Article 21 of the Convention on the Elimination of All Forms of Discrimination Against Women: Report to the Committee on the Elimination of Discrimination Against Women on the Work of the World Health Organization in the Area of Women, Health and Development*, U.N. GAOR, Comm. on the Elimination of Discrimination Against Women, Annex, 5[ 8, U.N. Doc. CEDAW/C/1996/3/Add.1 (1995), available on <gopher://gopher.un.org:70/00/ga/cedaw/15/1996-3a1.en> (visited 18 Nov. 1999).
31. In 1995, the International Committee of the Red Cross (ICRC) reported that 38 percent of Kabul's residents surveyed in January of that year suffered from malnutrition. The figure was much higher amongst girls, because in Afghan culture boys are fed first, and girls frequently receive only leftovers. See UNHCR GUIDELINES, *supra* note 6, at 49.
32. See, e.g., Bela Bhatia et al., *Unheard Voices: Iraqi Women on War and Sanctions*, CHANGE INTERNATIONAL REPORTS: THINKBOOK VIII (1992). See also HEALTH AND WELFARE IN IRAQ, *supra* note 1 (detailing the impact of the Gulf conflict on women's everyday lives).
33. See *Machel*, *supra* note 18, ¶¶ 127-30.
34. See Joan Fitzpatrick, *The Use of International Human Rights Norms to Combat Violence Against Women*, in HUMAN RIGHTS OF WOMEN: NATIONAL AND INTERNATIONAL PERSPECTIVES 532 (Rebecca J. Cook ed., 1994); Fred Pelka, *Voices from the War Zone*, 55 THE HUMANIST, Mar./Apr. 1995, at 6-10.
35. See UNHCR GUIDELINES, *supra* note 6, at 49.
36. See THE STATE OF THE WORLD'S REFUGEES, *supra* note 27, at 87 (detailing the vulnerability of households headed by women); *Machel*, *supra* note 18, ¶ 77.
37. See UNHCR GUIDELINES, *supra* note 6; *Machel*, *supra* note 18, ¶ 71 (recommending that women should be the initial point of control for food distribution systems undertaken by the World Food Program). See also HUMAN RIGHTS WATCH, *SHATTERED LIVES*, *supra* note 3, at 25.

38. See Anne Gallagher, *Ending the Marginalization: Strategies for Incorporating Women into the United Nations Human Rights System*, 19 Hum. RTS. Q. 283, 292 n.31 (1997).
39. See SHATTERED LIVES, *supra* note 3, at 25.
40. See UNHCR GUIDELINES, *supra* note 6, at 50.
41. For an account of rape in warfare over the centuries, see SUSAN BROWNMILLER, *AGAINST OUR WILL: MEN, WOMEN AND RAPE* 31-132 (1975).
42. See, e.g., UNHCR, *DRAFT GUIDELINES ON EVALUATION AND CARE OF VICTIMS OF TRAUMA AND VIOLENCE* (1993); *Machel*, *supra* note 18, 9I 107. *But see* Ustinia Dolgopol, *A Feminist Appraisal of the Dayton Peace Accords*, 19 ADEL. L. REV. 59, 66-68 (1997) (criticizing the Dayton Peace Accords for the lack of support offered to victims of sexual violence in the Former Yugoslavia).
43. For example, Palestinian women were excluded from the transitional process to self-rule. *See, e.g., Palestinian Women's Organizations Struggle Against the Exclusion of Women from the Transitional Process*, WOMEN'S WATCH, June 1996, at 3.
44. See Hilary Charlesworth, *Transforming the United Men's Club: Feminist Futures for the United Nations*, 4 TRANSNAT L. L. & CONTEMP. PROBS. 421 (1994).
45. It is estimated that women make up 50 percent of heads of households in Rwanda. See SHATTERED LIVES, *supra* note 3, at 2.
46. See Rebecca J. Cook, *Elimination of Sexual Apartheid: Prospects for the Fourth World Conference on Women*, ISSUE PAPERS ON WORLD CONFERENCES, No. 5, June 1995. See also Report of the Administrative Committee on Coordination: *Social, Humanitarian and Human Rights Questions: Advancement of Women*, U.N. ESCOR, Agenda Item 5(e), U.N. Doc. E/1996/16 (1996) (dealing with the advancement of women).
47. See *Machel*, *supra* note 18, 9f 62; Stephane Jeannot & Joel Mermet, *The Involvement of Children in Armed Conflict*, 322 INT'L REV. RED CROSS 105 (1998).
48. See *Machel*, *supra* note 18, q[ q 67, 76, 89-107.
49. See Anonymous, *supra* note 13, at 8; Simona Sharoni, *Every Woman is an Occupied Territory: the Politics of Militarism and Sexism and the Israeli-Palestinian Conflict*, 1 J. CINDLER STUD. 459 (1992).
50. See Cynthia Enloe, *Afterword, Have the Bosnian Rapes Opened up a New Era of Feminist Consciousness?*, in *MASS RAPE: THE WAR AGAINST WOMEN IN BOSNIA-HERZEGOVINA* 219 (Alexandra Stiglmeier ed., 1994).
51. See Judith Gardam, *Gender and Non-Combatant Immunity*, 3 TRANSNAT'L. & CONTEMP. PROBS. 345, 348-49 (1993).

52. See SEXUAL VIOLENCE AGAINST REFUGEES, *supra* note 6, at 71 .
53. See Anne Orford, *The Politics of Collective Security*, 17 *MICR. J. INT'L L.* 373, 377-79 (1995); Julianne Peck, *The U.N. and the Laws of War: How Can the World's Peacekeepers Be Held Accountable?*, 21 *SYRACUSE J. INT'L L. & CoM.* 283, 283 (1995) (detailing allegations of rape by UN soldiers in Bosnia-Herzegovina).
54. See INTERNATIONAL COMMITTEE OF THE RED CROSS, INTERNATIONAL CONFERENCE FOR THE PROTECTION OF WAR VICTIMS: REPORT ON THE PROTECTION OF WAR VICTIMS, *reprinted in* 296 *INT'L REV. RED CROSS* 391, 428-29 (1993).
55. E.g., Kofi A. Annan, Secretary-General, Observance by *United Nations Forces of International Humanitarian Law*, SECRETARY-GENERAL'S BULL., 6 Aug. 1999, 9f 1.1, U.N. Doc. ST/SGB/1999/13. Section 7 of the Bulletin includes protections for women against attacks, including rape and other forms of sexual violence. *Id.* 9f 9I 7.2-7.3.
56. The importance of compensation for women victims of armed conflict has been acknowledged on several occasions. See, e.g., Beijing Platform for Action, *supra* note 1, 9 124(c), (d) & (h); Peace: Measures to Eradicate Violence Against Women in the Family and Society: Report by the Secretary-General, U.N. ESCOR, Comm'n on the Status of Women, 38th Sess., Agenda Item 5(c), T 72, U.N. Doc. E/CN.6/1994/4 (1994); Chavez, *supra* note 2, T 'U 74-79; Report on the Situation of Human Rights in Rwanda Submitted by Mr. *Rene Degni-Séqui*, *Special Rapporteur of the Commission on Human Rights*, Under Paragraph 20 of Resolution S-3/1 of 25 May 1994, U.N. ESCOR, Comm'n on Hum. Rts., 52d Sess., Agenda Item 10, 9I 141, U.N. Doc. E/CN.4/1996/68 (1996).
57. See Chinkin, *supra* note 8, at 326.
58. See *Determination of Ceilings for Compensation for Mental Pain and Anguish* (Decision No. 8), U.N. SCOR, U.N. Compensation Comm'n, Governing Council, 4th Sess., U.N. Doc. S/AC.26/1992/8 (1992), *reprinted in* UNITED NATIONS COMPENSATION COMMISSION 421 (Richard B. Lillich ed., 1995).
59. *Id.*
60. See *Prosecutor v. Tadic*, Decision on *the Prosecutor's Motion Requesting Protective Measures For Victims and Witnesses*, Int'l Crim. Tribunal for the Former Yugoslavia, U.N. Doc. IT-94-1 (1995), available on <<http://www.un.org/icty/tadic/trialc2/decision-el100895pm.htm>> (visited 18 Nov. 1999); Rome Statute of the International Criminal Court, U.N. Diplomatic Conf. of Plenipotentiaries on the Establishment of an Int'l Crim. Ct., arts. 43(6) & 57(3)(c), U.N. Doc A/CONF.183/9 (1998), *reprinted in* 37 *I.L.M.* 999 (1998) [hereinafter *Rome Statute*]. See also Christine Chinkin, *Due Process and Witness Anonymity*, 91 *AM. J. INT'L L.* 75, 78-79 (1997); Patricia Visser Sellers & Kaoru

Okuizumi, *Intentional Prosecution of Sexual Offences*, 7 TRANSNAT'L L. & CONTEMP. PROBS. 47 (1997); NETHERLANDS MINISTRY OF FOREIGN AFFAIRS, CONFERENCE REPORT SUMMARY: REPORT OF THE INTERNATIONAL CONFERENCE OF EXPERTS: 50 YEARS UNIVERSAL DECLARATION OF HUMAN RIGHTS: PREVENTING AND COMBATING VIOLENCE AGAINST WOMEN 59] 14 (1998).

61. See Theodor Meron, *The Yugoslav Tribunal: Use of Unnamed Witnesses Against Accused*, 90 AM. J. INT'L L. 235 (1996).
62. Chinkin, *supra* note 6, at 78-79.
63. See *Report of the Expert Group Meeting*, *supra* note 20, q 51; Rome Statute, *supra* note 60, art. 36(8)(a)(iii).
64. For a description of the system of IHL in relation to women, see Mala Tabory, *The Status of Women in Humanitarian Law*, in INTERNATIONAL LAW AT A TIME of PERPLEXITY 941 (Yoram Dinstein ed., 1989); Krill, *supra* note 19.
65. *Id.*
66. *See, e.g.*, Protocol I, *supra* note 14, arts. 70(1), 76(2). *See also* COMMENTARY ON THE ADDITIONAL PROTOCOLS OF 8 JUNE 1977 TO THE GENEVA CONVENTIONS OF 12 AUGUST 1949, 822, 893-95 (Yves Sandoz et al. eds., 1987); MICHAEL BOTH ET AL., NEW RULES FOR VICTIMS OF ARMED CONFLICTS: COMMENTARY ON THE TWO 1977 PROTOCOLS ADDITIONAL TO THE GENEVA CONVENTIONS OF 1949 470 (1982) (relating to Protocol I, art. 76(2)).
67. See Geneva IV, *supra* note 14, art. 27(2) (stating that "[w]omen shall be especially protected against any attack of their honor, in particular against rape, enforced prostitution, or any form of indecent assault.")
68. *See* Geneva I, *supra* note 14, art. 12 (stating that "women shall be treated with all consideration due to their sex"). One commentator defines this article as the "consideration which is accorded in every civilized country to beings who are weaker than oneself and whose honor and modesty call for respect." INT'L COMM. of THE RED CROSS, COMMENTARY: I GENEVA CONVENTION FOR THE AMELIORATION OF THE CONDITION OF THE WOUNDED AND SICK IN ARMED FORCES IN THE FIELD 140 (Jean S. Pictet ed., 1952) (eng. trans.).
69. See Judith G. Gardam, *An Alien's Encounter With the Law of Armed Conflict*, in SEXING THE SUBJECT of LAW 233, 250 (Ngairé Naffine & Rosemary J. Owens eds., 1997). G, 70. See Gardam, *supra* note 8, at 57. rr 71. *Id.*
72. *See, e.g.*, Advancement of Women and Implementation of the Outcome of the Fourth World Conference on Women, Statement by the ICRC to the General Assembly 3d Comm., 53d

Sess., Agenda Items 103-04 (15 Oct. 1998), available on <<http://www.icrc.org/icrceng.nsf/c1256212004ce24e4125621200524882/d366866e92d>>

72. 18001412566a4004eb94c?OpenDocument> (visited 18 Nov. 1999).
73. Equality theory is still the preferred mode of liberal theorists for accommodating the demands of women for change. In the area of international law see, for example, Fernando R. Teson, *Feminism and International Law: A Reply*, 33 VA. J. INT'L L. 647 (1993).
74. See generally Krill *supra* note 19.
75. See generally THE PROBLEM OF REFUGEES IN THE LIGHT OF CONTEMPORARY INTERNATIONAL LAW ISSUES (Vera Gowlland-Debbas ed., 1995).
76. See EDWARD K. KWAKWA, THE INTERNATIONAL LAW OF ARMED CONFLICT: PERSONAL AND MATERIAL FIELDS OF APPLICATION 18 (1992).
77. See, Protocol I, *supra* note 14, art. 51(5)(b). See also Judith Gail Gardam, *Proportionality and Force in International Law*, 87 AM. J. INT'L L. 391, 406-10 (1993) (for a discussion of proportionality requirements in the law on the use of force).
78. For a discussion of the situation of refugee women, many of whom acquire this status as a result of armed conflict, see Lucy BONNERIEA, SHAMING THE WORLD: THE NEEDS OF WOMEN REFUGEES 5-6 (1995); Christiane Berthiaume, *Do We Really Care?* 100 UNHCR REFUGEE WOMEN 11 (1995).
79. See Gardam, *supra* note 77 (for a discussion of the relationship between proportionality in the law on the use of force and IHU).
80. See *The Relationship between Economic Sanctions and Respect for Economic, Social and Cultural Rights*, General Comment No. 8, U.N. ESCOR, Comm. on Econ., Soc. & Cult. Rts., 17th Sess., U.N. Doc. E/C.12/1997/8 (1997) (discussing transcending the boundaries of human rights law in the context of economic sanctions).
81. See Sebastian Bohr, *Sanctions by the United Nations Security Council and the European Community*, 4 EUR. J. INT'L L. 256 (1993); W. Michael Reisman & Douglas L. Stevick, *The Applicability of International Law Standards to United Nations Economic Sanctions Programmes*, 9 EUR. J. INT'L L. 86, 101-24 (1998).
82. See generally VERA GOWLLAND-DEBBAS, COLLECTIVE RESPONSES TO ILLEGAL ACTS IN INTERNATIONAL LAW: UNITED NATIONS ACTION IN THE QUESTION OF SOUTHERN RHODESIA (1990); Lori Fisler Damrosch, *The Civilian Impact of Economic Sanctions*, in ENFORCING RESTRAINT: COLLECTIVE

INTERVENTION IN INTERNAL CONFLICTS 274 (Lori Fisler Damrosch ed., 1993); Reisman & Stevick, *supra* note 81, at 96-124.

83. See Anonymous, *supra* note 30.
84. The general question of the compatibility of sanctions with the requirements of IHL, and in particular the prohibition against starvation as a method of warfare, indicates that the requirements of IHL are being breached in spirit if not in fact. For a discussion of the Security Council's practice in relation to sanctions and the requirements of IHL, see Hans Peter Gasser, Collective Economic Sanctions and International Humanitarian Law: An Enforcement Measure under the United Nations Charter and the *Right of Civilians to Immunity: an Unavoidable Clash of Policy Goals?*, 56 ZEITSCHRIFT FÜR AUSLÄNDISCHES OFFENTÜCHES RECHT UND VÖLKERRECHT 871, 884-90 (1996). See also Reisman & Stevick, *supra* note 81 (discussing the application of the principles of necessity, proportionality, and discrimination to the imposition of economic sanctions by the United Nations).
85. See Protocol I, *supra* note 14, art. 54; Protocol II, *supra* note 14, art. 14. See also Rene Provost, Starvation as a Weapon: Legal Implications of the United Nations *Food Blockade Against Iraq and Kuwait*, 30 COLUM. J. TRANSNAT'L L. 577, 628-34 (1992).
86. See Protocol I, *supra* note 14, art. 70.
87. See Geneva IV, *supra* note 14, arts. 23, 55.
88. See Universal Declaration on the Eradication of Hunger and Malnutrition, *adopted 17 Dec. 1974*, G.A. Res. 3348, U.N. GAOR, 29th Sess., U.N. Doc. E/Conf.65/20 (1974), reprinted in HUMAN RIGHTS; SIXTY MAJOR GLOBAL INSTRUMENTS (Winston E. Langley ed., 1992).
89. See U.N. CHARTER art. 41, signed 26 June 1945, 59 Stat. 1031, T.S. No. 993, 3 Bevans 1153 (entered into force 24 Oct. 1945).
90. See *id.* art. 103.
91. As things stand at the moment, the United Nations is not bound by the treaty rules of IHL. The extent to which it is bound by customary principles remains unresolved. Cf. Reisman & Stevick, *supra* note 81, at 95, 127. See also Theodor Meron, Prisoners of War, Civilians and Diplomats in the *Gulf Crisis*, 85 AM. J. INT'L L. 104 (1991) (expressing concern about the differences in standards between the requirements of the Fourth Geneva Convention and those put in place by Security Council Resolution 661 of 6 Aug. 1990).
92. The study by Gra~a Machel on the effect of armed conflict on children is a precedent. See Machel, *supra* note 18.

93. See, e.g., Beijing Platform for Action, *supra* note 1, q[ 132 (acknowledging that international humanitarian law is at times systematically ignored).
94. Chinkin, *supra* note 6, at 18.
95. See Judith Gail Gardam, *A Feminist Analysis of Certain Aspects of International Humanitarian Law*, 12 AUSTL. Y.B. INT' L L. 265 (1992).
96. See Coomaraswamy, *supra* note 2, q[ 95.
97. See Beijing Platform for Action, *supra* note 1, J 'R 222, 231. This process commenced with the demand expressed in the Vienna Declaration that "the equal status of women and the human rights of women . . . be integrated into the mainstream of United Nations system-wide activity" and "form an integral part of United Nations human rights activities." See also Gallagher, *supra* note 38, at 292 n.31.
98. *Id.*
99. See Jane Connors, *Mainstreaming Gender Within the International Framework (1996)* (unpublished paper delivered to the Law and the Social Inclusion of Women Conference, University of Warwick) (on file with authors); Gallagher, *supra* note 38, at 292 n.31; Christine Ainetter Brautigam, *Mainstreaming a Gender Perspective in the Work of the United Nations Human Rights Treaty Bodies*, ASIL PROC., Apr. 1997, at 389-94.
100. Geneva II, *supra* note 14, art. 12.
101. COMMENTARY ON GENEVA CONVENTION II FOR THE AMELIORATION OF THE CONDITION OF WOUNDED, SICK AND SHIPWRECKED MEMBERS OF ARMED FORCES AT SEA 92 (Jean S. Pictet ed., 1960).
102. An example is the interpretation of the phrases "wilfully causing great suffering or serious injury to body and health" and "torture and inhumane treatment," both of **which** currently constitute grave breaches of the Conventions.
103. See, e.g., Protocol I, *supra* note 14, art. 83.
104. For signs of progress in this area, see Annan, *supra* note 55.
105. See Beijing Platform for Action, *supra* note 1, q 33.
106. *Id.* Q 135.
107. See generally CANADIAN CENTRE FOR FOREIGN POLICY AND DEVELOPMENT, *supra* note 20.

108. See *id.*
109. See UNHCR, *Rebuilding a Future Together*, UNHCR REFUGEE WOMEN (1997); UNHCR, *IMPLEMENTING THE BEIJING PLATFORM FOR ACTION 1 7-19* (1998).
110. See Chinkin *supra* note 6, at 23.
111. Gallagher, *supra* note 38 at 288.
112. In Oct. 1999, the ICRC decided to develop and implement guidelines regarding the protection and assistance of women in conflict situations. See Update on ICRC's Initiative to Better *Respond to* the Needs and Resources of Women Affected by Armed Conflicts, 29 Oct. 1999, available on <<http://www.icrc.org/icrceng.nsf/5cacfdf48ca698664125624200363295/7d20b9263cab7582412568190042e673?OpenDocumenttb>> (visited 18 Nov. 1999).
113. Two examples of such challenges are the development of weapons of mass destruction and the vast increase in non-international conflicts.

