Women and Private Military and Security Companies

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I. Introduction

Recent press coverage of the role of private military and security companies (PMSCs) in conflict and post-conflict operations has invariably involved women. Female PMSC employees have brought actions against their employers for sexual assault; or have been civilian victims of private contractors operating forced prostitution rings. Armed conflict, belligerent occupation, and civil strife are by definition necessarily violent for all participants, be they civilians, combatants, or PMSC employees. However, for women it heralds an exacerbation in existing violence, discrimination, and inequalities. The increasing engagement of PMSCs in conflict, post-conflict, and transition situations in the provision of security and other services has brought their activities and operations starkly to the fore—particularly as they relate to women specifically and gender-related issues more generally.

Lack of clarity about the application of international law norms and inadequacies of existing regulatory regimes covering PMSCs have reinforced concerns about transparency and accountability in respect of gender-related violence, harassment, and discrimination. Whilst international humanitarian law and human rights law has dedicated or 'special' provisions for women, feminist legal scholars have done much to expose the gendered nature of these branches of international law. In recent decades, the United Nations' campaign of mainstreaming of women's issues

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1 US Department of Defence, Office of Inspector General, 'Efforts to prevent sexual assault/harassment involving DOD contractors during contingency operations', Report No D-2010-052 (10 April 2010), 1.
3 See S Schulz and C Yeung, Private Military and Security Companies and Gender (2008), 13–16.
has impacted significantly on relevant human rights law,⁵ and the International Committee of the Red Cross (ICRC) has actively sought to investigate and address women’s concerns.⁶ However, as explained below, there has been limited flow-on of these concerns into the sphere of PMSCs.

This chapter focuses on the main issues and legal concerns raised by the impact of the privatization of war on women, both as PMSC employees and civilians. Section II highlights how armed conflict, civil unrest, occupation, and transition generally have a detrimental effect upon the lives of women with particular reference to safety, displacement, health, and economic disadvantage. Section III provides a summary of existing international humanitarian law and human rights provisions in this field. Section IV 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. Section V considers the key recommendations of recent international and international initiatives covering PMSCs and women.⁷

II. Women, Armed Conflict, and Post-Conflict Situations

The premise of ‘special’ provisions for women in international humanitarian law and human rights law is that armed conflict, post-conflict, and transition impact differently on women. This premise is difficult to substantiate because of the limitations in available data.⁸ Nonetheless, recent academic research and fact-finding by 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.⁹ However, a base commonality of experience in key areas like violence, displacement, health, and economic disadvantage provides grounds for reform of international law and the practices of international organizations, states, and PMSCs.

A. Violence against Women (VAW)

Women, both as PMSC employees and civilians interacting with PMSCs, experience elevated levels of physical and mental violence during armed conflict, post-conflict and transition which encompass 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 to themselves and to their family members.

Whilst all available statistics record that armed conflict and occupation generally have a disproportionate impact on civilian populations in respect of mortality, women (and children) make up the majority of civilian deaths in affected 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. 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. The civilian death toll since 2006 has remained elevated. The proliferation of small arms (including firearms, landmines, car bombs, and suicide bombers) in militarized 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 exponentially for women during armed conflict. In conflicts in Mexico and Guatemala, evidence has emerged of women being deliberately targeted because of their gender (femicide). These trends can be extrapolated for private contractors, for instance, a survey in Israel indicated a link between incidents of domestic violence and homicide and firearms licensed to private security guards.

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14 ‘In-depth study on all forms of violence against women’, Report of the Secretary General, 6 July 2006, UN Doc A/61/122/Add1, para 127.
Whilst rape and sexual violence are not solely experienced by women, data highlights that female civilians, combatants, and by extension PMSC employees, are at a substantially increased risk of suffering such violence during armed conflict, occupation, and transition. The growing awareness of the use of sexual violence especially 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. The UN Special Rapporteur, Radhika Coomarawamy, in her 1998 report, observed: ‘sexual 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.’

Sexual violence encompasses various acts including forced prostitution, sex trafficking, forced sterilizations, forced abortions, forced impregnation, and pregnancies and so forth. Data has highlighted that PMSC employees are as likely to perpetrate such crimes as are regular armed forces. It is unsurprising given that, as noted above, PMSC recruits are often drawn from regular armed forces. For example, DynCorp Aerospace Technology UK Ltd employees were implicated in sex slavery in Bosnia by Human Rights Watch before a US congressional hearing.
in 2002.22 A subsequent US Department of Defence Inspector General report found the situation was fuelled by the lack of any requirement for private contractors to report or punish employees engaged in such conduct.23

Victims of such violence are not confined to civilian populations. Civil suits filed in the United States against PMSCs by women highlight that contractor employees can also be victims of sexual violence and harassment.24 The US Department of Defense (DOD) instigated an internal investigation into the reporting and prosecution of sexual assaults following an escalating disquiet pertaining to allegations concerning US military personnel in Iraq and Kuwait which led to the adoption of ‘Direction and Instruction for prevention, reporting and response’.25 A 2010 DOD audit precipitated by a Congressional request following the handling of a complaint of sexual assault against a Kellogg, Brown, and Root Services Inc (KBR) employee by other KBR employees at Camp Hope, Baghdad, found that the ratio of DOD contractors to military service personnel was equal in Iraq and Afghanistan.26 However, civilian contractors are not subject to the DOD Directive or Instruction.

The evolving responses to rape and sexual violence against women in contemporary international law and the UN system are examined in section III below.

B. Health

Women as PMSC employees and civilians are at an elevated risk of contracting sexually transmitted diseases through sexual violence including rape (and deliberate infection),27 and transfusion of infected blood products during pregnancy or childbirth.28 For countries in the midst of armed conflict or transition, disruption to societal structures and governmental services necessarily has a knock-on effect on provision of health services.29 Their treatment is compromised by systemic discrimination, lack of information, lack of access to affordable treatment etc.30 In

23 Ibid.
24 DOD Office of Inspector General (n 1 above).
26 DOD Office of Inspector General (n 1 above), 9.
28 Lindsey (n 6 above), 112.
turn, there is greater likelihood of women dying from the disease once they have contracted it. However, much focus in recent years has been placed on addressing the devastating impact of the lack of access to treatment in the area of reproductive health, including protection against and treatment for sexual violence, and sexually transmitted diseases.

Recent US military audits reveal the inadequacy of responses by PMSCs to psychological harm suffered by employees subjected to sexual assault and sexual harassment. Further, post-traumatic stress disorder (PTSD) manifest in private contractors returning from Iraq, can also impact adversely upon the physical and psychological well-being of their families, particularly when it manifests itself as domestic violence.

C. Displacement

A DOD report has noted testimony of former employees of PMSCs implicating other employees in human trafficking. The likelihood of death, injury, sexual violence, disease and infection, and discrimination, especially economic disadvantage, is aggravated by human trafficking and other forms of displacement occasioned by armed conflict, belligerent occupation, and civil unrest. The likelihood of death and physical and mental harm increases with the breakdown of familial, social, and economic structures; and lack of access to food, health care, and other resources. The need to address the plight of women and girls within refugee camps and settlements was recognized in Security Council Resolution 1325 (2000) (para 12). Sex or gender is not a ground for the granting of asylum under the

33 DOD Office of Inspector General (n 1 above), 14.
34 Study conducted by DynCorp indicated that 24% of its employees showed PTSD symptoms: see J Risen, ‘Contractors back From Iraq suffer trauma from battle’, The New York Times (5 July 2007).
36 DOD Office of Inspector General (n 22 above).
Convention Relating to the Status of Refugees (Refugee Convention). However, the UNHCR adopted guidelines on gender-related persecution under Article 1A(2) of the Refugee Convention urging states to give adequate weight to gender elements when assessing asylum applications.

Further, women are less frequently interned or detained than men; consequently, when they are, facilities are less likely to accommodate their needs. Furthermore, when detention occurs there is a greater propensity for women to be subjected to gender-specific torture. As security services are increasingly being contracted out to civilian companies rather than being undertaken by military forces or the police, there have been growing calls for PMSC employees to undergo mandatory gender-awareness training and for private contractors to increase their intake of female recruits and provide a work environment conducive to their retention.

D. Economic Disadvantage

Existing data highlights that female combatants experience significant economic disadvantage compared to their male counterparts and this is reflected in inequality in earnings; and underrepresentation in leadership roles (and exclusion from certain positions). As PMSC employees are predominantly recruited from the military and police service, these trends are replicated in these companies, with women segregated and confined to unskilled and repetitive work.

Armed conflict and post-conflict situations exacerbate the existing economic disadvantage and discrimination usually experienced by local women. 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. Rape of women has been used as a means of disrupting and halting...
agricultural activity and food supplies.\textsuperscript{48} Non-agricultural livelihood however is affected by systematic discrimination which is experienced by women more acutely during such social upheaval and its related effects, like permanent or ongoing injury and trauma.\textsuperscript{49} With the underrepresentation of female PMSC recruits, this situation is further amplified in operations involving traditional societies where local women may be forbidden from interacting with male contractors.\textsuperscript{50}

## III. Women and International Humanitarian Law

Whilst women are covered by general protections afforded under international humanitarian law, human rights law, international criminal law, and ‘special’ international humanitarian law protections, the limitations of these provisions for the protection of female PMSC employees and female victims of PMSCs is widely acknowledged.\textsuperscript{51} This section provides a brief overview of these ‘special’ provisions.\textsuperscript{52} It should be noted that Security Council Resolution 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 international humanitarian law provided implicit and explicit protection for women. Article 46 of the Convention (IV) respecting the Laws and Customs of War on Land, and the 1907 Hague Regulations provide that during belligerent occupation: ‘Family honour and rights, the lives of persons . . . must be respected.’\textsuperscript{53} The Commission on the Responsibility of the Authors of the War and on Enforcement of Penalties established by the 1919 Versailles Peace

\textsuperscript{48} UN Doc A/HRC/11/6/Add6(2009), para 62.
\textsuperscript{50} Schulz and Yeung (n 3 above), 4.
\textsuperscript{51} Ibid, 10–11; and DOD Office of Inspector General (n 1 above).
\textsuperscript{52} For more detailed and critical treatment, see Gardam and Jarvis (n 4 above) generally; H Durham, ‘International humanitarian law and the protection of women’ in H Durham and T Gurd (eds), \textit{Listening to the Silences: Women and war} (2005), 95; and J Gardam, ‘Women and armed conflict: The response of international humanitarian law’, ibid, 109.
\textsuperscript{53} 18 October 1907, in force 26 January 1910, 208 \textit{Parry’s CTS} (1907) 77; 2(sup) (1908) AJIL 90, being a replication of Art 46 of the Convention (II) with Respect to the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land, and Annex: Regulations, 29 July 1899, in force 4 September 1900, 187 \textit{Parry’s CTS} (1898–99) 429, 1(sup) (1907) AJIL 129.
Conference listed rape and the abduction of women and girls for enforced prostitution as war crimes.  

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 affected targeted group.  

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 12 of Geneva III Convention, and Article 27 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’. 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.

The Geneva Conventions have specific provisions pertaining to sexual violence against women. Article 27(2) of Geneva IV provides that: ‘women shall be especially protected against any attack of their honour, in particular against rape, enforced prostitution, or any form of indecent assault’. This provision does not extend to 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. Rape is specifically mentioned in Article 76 covering women and children, which extends the protection afforded under Article 27 of Geneva IV to all women on the territory of Parties to the conflict. In respect of non-international conflicts, Article 4(2)(e) of Additional

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54 14 (1920) AJIL 95.
59 Ibid, para 3151.
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 mention 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 potential to 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’.60 Taking this beyond the context of armed conflict and belligerent occupation, it is listed as a crime against humanity in the Rome Statute,61 with similar provisions included in the statutes of recent international and hybrid criminal tribunals.62 In addition, the Rome Statute includes gender as one of the discriminatory grounds for prosecution.63 The jurisprudence of the international criminal tribunals in respect of sexual violence is discussed in section III below.

The Geneva Conventions also provide special protection for women during pregnancy, as mothers and in their role as care givers for children (and the sick and elderly). Whilst this emphasis on the ‘traditional’ role of women by international humanitarian law has been criticized by feminist scholars,64 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, and penal law and the death penalty.

Given that security operations relating both to civilians and prisoners of war are increasingly being contracted to PMSCs, commentators have emphasized the need for these companies to ensure adequate numbers of female employees and the provision of gender-awareness training for all staff. International humanitarian law provides that female civilian internees are also afforded special protection even when they are not pregnant or mothers with dependant children. Article 75(5) of Additional Protocol I requires that female internees 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 of 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 of Geneva IV). In addition, female internees shall only be searched by a woman (Article 25 of Geneva IV). When disciplinary punishment is meted out to female internees, their sex should be a factor taken into account (Article 119 of Geneva IV). The protections afforded female prisoners of war is more limited than those extended to female civilian internees.

IV. Prohibition of Sexual Violence

The ‘special’ provisions in respect of women in international humanitarian law 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 section focuses on efforts to address violence against women as an example, to illustrate how international criminal law, the advocacy of NGOs like ICRC, and the UN’s mainstreaming of women’s issues have shaped the law and best practice in military and security operations generally.

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66 Arts 23 and 89 of Geneva IV; and Art 70 of Additional Protocol I.

67 Arts 14, 17, and 132 of Geneva IV.

68 Art 76(2)–(3) of Additional Protocol I; and Art 6(4) of Additional Protocol II. 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, para 3167. See also Art 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), 52, UN Doc A/6316 (1966), 999 UNTS 171.

69 See Schulz and Yeung (n 3 above), 3.

70 Arts 14, 25, 29, 97, and 108 of Geneva III.
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 (ICTR) have done much not only for the enforcement of international humanitarian law 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. 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...including reports of...organised and systematic detention and rape of women'. The jurisprudence of these tribunals has not only extrapolated from the notion of rape and other sexual violence (including enslavement and sexual slavery) as being not only war crimes, and crimes against humanity per se, but has included them within the definition of persecution (on the grounds of gender even though not explicitly contained in their respective governing statutes), torture, and genocide.

71 Art 5(g) ICTY Statute; Arts 3(h) and 4(g) ITCR Statute. The Tokyo International Military Tribunal referred to sexual crimes in its indictment; both the Nuremberg and 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 Art II(1)(c) of the 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.

72 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 (n 1 above), 148–60.


76 Akayesu, trial judgment (n 73 above), para 594; Semanza, trial judgment (n 75 above), paras 482–5; and Prosecutor v Anto Furundžija, IT-95-17/1-A, appeals judgment, 21 July 2000, para 111. Cf Kunarac, trial judgment (n 73 above), paras 473, 482, 497; and Kovač trial judgment (n 73 above), para 139 making a distinction between the definition of torture under international humanitarian law and human rights law, with the later found to be too restrictive. See also UN Doc A/HR/7/3.

77 Gacumbitsi, trial judgment (n 75 above), paras 259–92; Akayesu, trial judgment (n 73 above); and Musema, trial judgment (n 75 above), para 933.
International Humanitarian Law

This jurisprudence has aided and reinforced the ongoing transformation occurring within international law in understanding and redefining violence against women. Feminist legal scholars and the UN Special Rapporteur on Violence against Women (who has presented reports on this topic since 1994) have cautioned against international humanitarian law reinforcing patriarchal notions of female sexuality and failing to address the violence visited by rape and other forms of sexual violence.\(^{78}\) It was noted that by protecting the victim’s ‘honour’ international humanitarian law 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 emphasized 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.\(^{79}\) 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 affected the understanding of sexual violence against women in international law, especially international humanitarian law, but it has had an impact upon the appointment of judicial officers,\(^{80}\) 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;\(^{81}\) the tailoring of remedies to the needs of women and girls;\(^{82}\) the involvement and needs of women in repatriation and rehabilitation, and post-conflict reconciliation and reconstruction efforts.\(^{83}\)


\(^{80}\) Art 36(8)(a)(iii) and (b) of the Rome Statute.

\(^{81}\) Art 42(9)of the Rome Statute; for ICTY and ICTR see UN Division for the Advancement of Women, ‘Sexual violence and armed conflict: United Nations response’, <http://www.un.org/womenwatch/daw/public/w2apr98.htm>, accessed on 8 April 2009; and Art 15(4) of the 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.


B. International Committee of the Red Cross and Red Crescent

The protection of women has always been part of the remit of the ICRC. This has now been extended to cover gender and PMSCs with the finalization of the Montreux Document. 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 organization has 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. 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 Geneva Conventions, and the gradual acknowledgement of sexual violence against women. The ICRC stressed the need to enforce international humanitarian law 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 recognizing that systematic rape was being used ‘as a tactic of war and terrorism’. Its 2001 Women Facing War report targeted specific areas of concerns for female civilians, including safety (covering personal safety, sexual violence, freedom from arbitrary displacement, and freedom of movement), and legal issues (personal documentation, access to effective remedy). This report formed the basis of subsequent documents detailing legal developments concerning international humanitarian law obligations and enforcement, and best practice in these areas including violence against women. 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. For example, the US Uniform Code of Military Justice (UCMJ) defines sexual assault committed by DOD civilians and contractors accompanying armed forces in contingency operations as a criminal offence punishable by court martial. The effectiveness of the application of these provisions and their extension to non-US companies has been

90 DOD Office of Inspector General (n 1 above), 2. The contracts are also covered by the US Military Extraterritorial Jurisdiction Act (MEJA), 35.
challenged.91 These advances in respect of military and security operations generally form the background to the specific recommendations for PMSCs contained in the Montreux Document, discussed below, adopted through the efforts of the ICRC.

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 organizational reform. The Declaration on the Protection of Women and Children in Emergency and Armed Conflict adopted by the General Assembly in 1974 did 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. However, CEDAW does require states parties to take appropriate measures to eliminate discrimination against women by any person, organization, or enterprise.92

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. The UN Declaration on the Elimination of Violence against Women adopted the following year which requires states to ‘exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women’ whether perpetrated by the state or private persons.93 This declaration recognizes that women are especially vulnerable to violence during armed conflict. Also in 1993, the Vienna Declaration and Programme of Action stated that the violation of the human rights of women during armed conflict ‘including murder, systematic rape, sexual slavery, and forced pregnancy, require a particularly effective response’.94

As mentioned above, the Platform of Action adopted by the Fourth World Conference on Women in Beijing in 1995 also address this issue. The Beijing Declaration also reiterated the obligation on states to exercise due diligence in preventing, investigating, and prosecuting sexual violence against women by non-state actors.95 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 United Nations’ movement for mainstreaming issues related to women following the Beijing Conference, including peacekeeping and building operations. Most UN organs, its agencies, and increasingly member states are reporting their progress in the implementation of Resolution 1325. Furthermore, the Security-General delivered in the Indepth 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’
- comprehensive services for victims of sexual violence
- 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’ to enable victims of violence to seek redress and relax asylum requirements for such persons.

V. Recent Recommendations Covering PMSCs

In her 2001 report on violence against women perpetrated or condoned by states during armed conflict, UN Special Rapporteur Radhika Coomaraswamy made special mention of the ‘particular difficulties in enforcing international standards with regard to non-State actors’ and called on additional pressure to be placed on them to comply with international humanitarian law.100 Recent international initiatives (like the Montreux Document on Pertinent International Legal Obligations for States Related to PMSCS in Armed Conflict, and OSCE-UN Instraw Toolkit on Gender and PMSCs) and national reviews and recommendations (for example, the US DOD Inspector General audits) in response to growing awareness of the lack of regulation covering PMSCs, particularly in their dealings with

97 In-depth Study (n 14 above), para 227.
98 Ibid, para 334.
99 Ibid, para 382.
100 UN Doc E/CN4/2001/73, para 47.
women, have emphasized four areas requiring urgent action: vetting personnel, education and ongoing training of personnel, reporting, and investigation and accountability.

First, the Montreux Document recommends that past conduct of the PMSCs or their personnel, including reliable attested record of sexual offences, become criteria for awarding of contracts.\textsuperscript{101} Such a requirement is imperative because regulation of PMSCs remains primarily confined to self-regulation and contractual obligations.\textsuperscript{102} The UN-Instraw Report simply requires that PMSCs improve ‘vetting standards . . . to ensure [that] those who have committed human rights violations or gender-based violent crimes be excluded’.\textsuperscript{103}

Secondly, most recent initiatives have placed primary emphasis on the need to strengthen recruitment, deployment, and ongoing gender-awareness training. 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”’.\textsuperscript{104} The Montreux Document requires contracting, host, and territorial states, when selecting and authorising PMSCs, to take into account that their personnel are:

sufficiently 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.\textsuperscript{105}

The UN-Instraw Review makes a similar recommendation. The 2010 DOD Inspector General audit in the United States found that, of the ten DOD contractors reviewed, eight ‘did not have policies or training requirements for sexual assault prevention and response’ and that contractor employees were being processed through pre-deployment sites with these training requirements.\textsuperscript{106} In its recommendation, the DOD has recommended that contractual requirements be designed to ensure that civil contractors ‘are aware of the DOD definition of sexual assault and require contractors to report sexual assault to Military law enforcement’.\textsuperscript{107} To this end, the framework established under Resolution 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 examples of good practice should tailor their existing programmes and serve as examples for other states.\textsuperscript{108}

\begin{itemize}
\item\textsuperscript{102} Schulz and Yeung (n 3 above), 9.
\item\textsuperscript{103} Ibid, 17.
\item\textsuperscript{104} Lindsey-Curtet et al (n 88 above), 7.
\item\textsuperscript{105} Montreux Document (n 107 above), paras 128, 130.
\item\textsuperscript{106} DOD Office of Inspector General (n 1 above), i.
\item\textsuperscript{107} Ibid.
\end{itemize}
Thirdly, PMSCs should report gender-based violence to the appropriate civilian and military authorities. The UN-Instraw Review recommended that states and PMSCs develop national and international standards for the monitoring and reporting of sexual and physical violence perpetrated by PMSCs particularly in post-conflict situations. The DOD Inspector General audit found that only one of the ten respondents had an external reporting procedure to military law enforcement, with three respondents explicitly indicating they did not have such a procedure. The Sexual Assault Advisory Council established by the DOD is presently considering how reporting requirements currently in place for military personnel can be extended to encompass DOD civilians and contractors.

Fourthly, recent initiatives in this field have emphasized the need for accountability of PMSCs. Special Rapporteur Coomaraswamy ended her 2001 report by recommending states ensure that perpetrators of war crimes and human rights abuses are prosecuted and victims are eligible for compensation. The Montreux Document reaffirms that this obligation to prosecute covers contracting, home, and territorial states. As noted previously, there has been a push to extend the application of codes of military justice in respect of sexual assault to cover civilian contractors. For example, the US Uniform Code of Military Justice already covers acts perpetrated by DOD civilians and contractors accompanying US forces in contingency operations.

VI. Conclusion

It is clear that if current trends persist, security and related operations previously undertaken by armed forces and police will predominantly be provided by private contractors. For civilian populations, particularly women, who are dependent on effective security in post-conflict and transition situations for their physical and psychological well-being, the effective regulation and accountability of PMSCs are imperative. For this reason, recent reviews of the activities of PMSCs and existing regulatory regimes have emphasized the need for gender-awareness education, and recruiting and retention of female employees.

Feminist scholars and women’s NGOs have done much to raise awareness concerning women’s issues cross the board and have pushed 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 sexual violence (particularly during armed conflict and civil unrest) on

109 Schulz and Yeung (n 3 above), 17.
110 DOD Office of Inspector General (n 1 above), 8, Table 1.
111 DOD Office of Inspector General (n 1 above), 14.
112 UN Doc E/CN4/2001/73, para 135.
113 UN Doc S/2008/636, paras 6, 12, 17, 21.
114 Schulz and Yeung (n 3 at p.4.)
women. 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 privatization of war and 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 for their own protection, for the protection of civilians with whom they interact, and to reinforce the effectiveness of their operations.