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**WOMEN FACING WAR
INTERNATIONAL RED CROSS**

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WOMEN FACING WAR

ICRC STUDY ON THE IMPACT OF

ARMED CONFLICT ON WOMEN

Executive Summary

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International Committee of the Red Cross (ICRC)

I. INTRODUCTION

A. BACKGROUND

The problems experienced by women in situations of armed conflict have received increased attention in recent years, both within and outside the International Red Cross and Red Crescent Movement. [1] The concern to address the problems faced by women more effectively has been reflected in resolutions pertaining to the Movement as a whole, and in more specific decisions taken within the ICRC.

In last two International Conferences of the Red Cross and Red Crescent (in 1996 and 1999), contain specific references to the protection of women, for example, the 26th International Conference in its resolution entitled "Protection of the civilian population in periods of armed conflict", urged that "strong measures be taken to provide women with the protection and assistance to which they are entitled under national and international law". [2]

At the 27th International Conference the ICRC pledged "to ensure that the specific protection, health and assistance needs of women and girl children affected by armed conflicts are appropriately assessed in its operations with the aim to alleviate the plight of the most vulnerable" and "to put emphasis throughout its activities on the respect which must be accorded to women and girl children ... actively disseminating the prohibition of all forms of sexual violence to parties to an armed conflict". [3] The issue of women affected by armed conflict has also been discussed recently among governments, both in the context of meetings focusing specifically on women (such as the 1995 Beijing Fourth World Conference on Women [4] and the "Beijing +5" Conference [5] held in New York in June 2000) and by forums with a broader agenda, such as the United Nations General Assembly and the United Nations Commission on Human Rights.

In its report to the Secretary-General, the UN Commission on the Status of Women points out that the Beijing Platform for Action stated that "international humanitarian law, which prohibits attacks on civilians, is at times systematically ignored, and human rights are often violated in armed conflict, affecting the civilian population, especially women, children, the elderly and the disabled". [6] Moreover, it stated that "although entire communities suffer the consequences of armed conflict and terrorism, women and girls are particularly affected because of their status in society and their sex". [7] A UN Security Council resolution was passed in October 2000, inviting the Secretary-General to carry out a study on the impact of armed conflict on women and girls, the role of women in peace-building and the gender dimensions of peace processes and conflict resolution. [8] Furthermore, within the UN system, there is an ongoing effort to integrate a *gender perspective* into all activities of the organization and in relation to all themes addressed. A number of non-governmental organizations have also contributed to raising international awareness on this subject, and several initiatives are being taken within academic circles to examine existing international law and its adequacy in today's armed conflicts.

B. THE ICRC'S SPECIAL PERSPECTIVE ON WOMEN AND WAR

1. The ICRC's role

While the study aims to identify the principal and most pressing needs of women in situations of armed conflict and to analyse the ICRC's response to those needs, it isto be noted that not every need falls within the ICRC's mandate. The ICRC's mandate is to protect the lives and dignity of victims of armed conflict and internal disturbances and to provide them with assistance, and to act as promoter and guardian of international humanitarian law.

In simple terms, the ICRC's mandate and activities are limited in terms of context, time and geography. For the most part, the ICRC's activities are carried out in situations of armed conflict – be it international or non-international. In addition, on the basis of the Statutes of the International Red Cross and Red Crescent Movement, the ICRC operates in situations of internal disturbances. It may also take any humanitarian initiative which comes within its role as a specifically neutral and independent institution and intermediary. Moreover, although the majority of its operations are carried out *during* armed conflicts, some of the ICRC's activities continue after the cessation of hostilities; such activities include, for example, the repatriation of prisoners of war or persons detained in relation to the hostilities, family reunification and the search for missing persons.

With regard to geographical limitations, the ICRC ordinarily operates in the territories of States that are themselves involved in an armed conflict or internal disturbances, or are affected by the direct results of such events. The ICRC may, in exceptional circumstances, principally as a result of massive influxes of refugees, also operate in the neighbouring States of countries stricken by armed violence, especially if it is the only humanitarian organization in the area. It will in principle cease its action when other humanitarian players are operational, except for specific activities such as the reestablishing of family links. Its activities may be prolonged if an element of threat remains as a result of hostilities.

International humanitarian law is at the core of the ICRC's protection activities. Its role as promoter and guardian of international humanitarian law has the following three facets: promotion and dissemination of the law; monitoring compliance with humanitarian law; and contribution to its development. In its role as promoter and guardian, the ICRC works for the "faithful application" of humanitarian law. In concrete terms, this means that its delegates monitor the application of humanitarian law by the parties to conflicts. If the law is violated, the ICRC attempts to persuade the relevant authority – be it a government or an armed opposition group - to modify its behaviour. The ICRC endeavours to build a constructive relationship with all parties involved in the violence and practises what could be called "discreet diplomacy". This being said, if all representations made confidentially fail to produce the desired results, the ICRC reserves its right to publicly denounce the violations. The aim of such public statements is not to single out the individuals responsible but rather to appeal to the parties to the conflict to respect humanitarian law. The ICRC may also appeal to other States to intervene with the parties concerned, as they are required to do by Article 1 common to the Geneva Conventions, which requires States not only to respect the Conventions but also to *ensure* that they are respected.

Through its Advisory Service on International Humanitarian Law, the ICRC also encourages States to adopt national legislation for the implementation and application of humanitarian law at national level. ICRC legal experts at its headquarters in Geneva and in the field provide States with technical assistance concerning, for example, legislation to prosecute violations of humanitarian law or protect the red cross and red crescent emblems.

The ICRC's role as guardian of humanitarian law also includes carrying out activities aimed at promoting and disseminating the law. Although primary responsibility for the teaching of humanitarian law lies with States, over the years the ICRC has developed considerable expertise in the field and ICRC delegates spread knowledge of humanitarian law by running courses, especially for armed and security forces, State employees and diplomats, and civilians in general, including young people.

A further important facet of the role of guardian of humanitarian law concerns new developments of the law. The ICRC has in fact performed this role since it was founded, as it was the initiator of the first Geneva Convention of 1864. The ICRC was also directly involved in the

drafting of subsequent international humanitarian law treaties, such as the Geneva Conventions of 1929 and of 1949, the Additional Protocols of 1977, the 1980 Convention on Certain Conventional Weapons and its Protocols, the 1997 Anti-personnel Mines Convention, the 1998 Rome Statute of the International Criminal Court (ICC) and the 1999 Protocol to the 1954 Convention on the Protection of Cultural Property.

2. Introduction to the law

The study identifies the applicable law governing situations of armed conflict, and in addition to identifying the rules protecting women, an assessment is made of whether these rules adequately protect and meet the needs of women. A presentation of the rules of international humanitarian law is also relevant to an understanding of the ICRC's operational response. Ensuring the faithful implementation of international humanitarian law is part of the ICRC's mandate. In this regard, international humanitarian law may serve as a yardstick for the assessment of the ICRC's response. Thus, each section of the study identifying a specific need contains a sub-section on the law, setting out the applicable norms of relevance to that need.

The principal focus of these sub-sections is international humanitarian law - the legal regime specifically developed to regulate armed conflicts – although there are also references to other relevant bodies of international law, principally human rights law and refugee law, which are relevant in as much as they are applicable in situations of armed conflict or internal disturbances and because they provide complementary protection.

The focus is on international law. That being said, the study draws attention to the fact that national law continues to apply during armed conflict and offers significant rights. In particular, at “administrative” level, it is national law rather than international law which provides and ensures the more substantial rights and structures, for example with regard to entitlement to documents, regulation of inheritance, etc. Situations also exist in which international law lays down broad obligations but leaves practical and detailed implementation to national law.

In addition to identifying relevant general and specific rules relating to women, the study also outlines the rules for the protection of children, the reason being that they provide important and specific protection for girls.

a) *International humanitarian law*

1) *What is international humanitarian law?*

International humanitarian law is the body of law which protects those not or no longer taking part in hostilities [9] and regulates the means and methods of warfare. It is applicable in international and non-international armed conflicts and is binding on both States and armed opposition groups. [10] International humanitarian law is also binding on troops participating in multilateral peacekeeping and peace-enforcement operations if they take part in the hostilities. [11]

Multilateral conventions dealing with specific aspects of the waging of war have existed since the end of the nineteenth century. Today, the principal instruments of international humanitarian law are the four Geneva Conventions of 1949, [12] their two Additional Protocols of 1977 - the first applicable in international conflicts and the second in non-international conflicts [13] - and numerous conventions restricting or prohibiting the use of specific weapons, such as the 1980 Convention on Certain Conventional Weapons and its four Protocols and the 1997 Convention on Anti-personnel Mines. [14] Mention should also be made of the 1954 Convention for the Protection of Cultural Property in the Event of Armed Conflict and its two Protocols, the first of 1954 and the second of 1999.

At the time of writing there are 189 States party to the four Geneva Conventions and 159 and 151 to Additional Protocols I and II respectively.

It should not be forgotten that an important body of customary rules of international humanitarian law also exists. Most of these customary rules correspond to existing treaty norms, but they often have a wider field of application. Indeed, most of the treaty rules are applicable to international armed conflict only, while many rules of customary international law are applicable to both types of conflict. It is important to note that the ICRC has been requested by the 26th International Conference of the Red Cross and Red Crescent Movement to prepare a study on customary international law. This study will be published in 2002 and could not, as a result, be taken into account in the present study.

Finally, it should be pointed out that humanitarian law establishes mechanisms to ensure that the rules aimed at protecting the victims of armed conflict and restricting means and methods of warfare are respected. Humanitarian law holds individuals responsible for violations of humanitarian law which they commit, or order to be committed. It requires that those responsible for serious violations be prosecuted and punished. In conformity with the four Geneva Conventions of 1949 and Additional Protocol I of 1977, States are obliged to suppress all violations of these instruments. They have special obligations relating to certain serious violations called "grave breaches". [15]

Reference is made to an important development in the repression of violations of international humanitarian law. The Geneva Conventions require States to prosecute or extradite persons suspected of having committed grave breaches of the Conventions, although prosecutions have been few. Similarly, at the international level, with the notable exception of the military tribunals established in Nuremberg and Tokyo at the end of the Second World War, no mechanism existed for trying those accused of violations of international humanitarian law entailing individual responsibility. However, the atrocities committed in the conflicts in the former Yugoslavia and in Rwanda in the 1990s forced the international community to address this issue as a matter of urgency.

In 1993 and 1994 the Security Council established two *ad hoc* international criminal tribunals; the first to prosecute serious violations of international humanitarian law committed in the former Yugoslavia, and the second to prosecute similar violations as well as genocide in Rwanda. [16] Crucial in the fight against impunity for war crimes, these bodies have also played an important role in the interpretation and development of international humanitarian law. Additionally, the tribunals gave new impetus to the establishment of a permanent criminal court, culminating with the adoption in July 1998 of the Statute of the International Criminal Court. [17] The jurisprudence of these *ad hoc* tribunals and the adoption of the Rome Statute developed considerably the notion of war crimes, including serious violations in case of non-international armed conflict.

2) *General and specific protection*

The starting point of any discussion on the protection afforded to women by international humanitarian law is the fact that they are entitled to the same protection as men – be it as combatants or as civilians or persons *hors de combat*. In addition, recognizing their specific needs, international humanitarian law grants women additional protection and rights. The principal rules of general protection are first set out and then the rules specifically for the benefit of women. This first chapter focuses mainly on the rules relating to civilians. Those relating to combatants either actively taking part in hostilities or *hors de combat* because they are sick, wounded, shipwrecked or captured are presented in greater detail in the section of

the study focussing on *Female combatants/Involvement of women in hostilities* and the chapter on *Detention*.

General protection

- Non-discrimination

One of the basic tenets of international humanitarian law is that the protection and guarantees it lays down must be granted to all without discrimination. Thus all four Geneva Conventions and both Additional Protocols provide that the specific categories of persons they protect must be “treated humanely (...) without adverse distinction founded on sex ...” [18]. This is a prohibition on discrimination and not on differentiation. Indeed, different treatment of men and women and the recognition that women may have additional, specific needs is reflected in the provisions of international humanitarian law granting women special rights and protection. Distinctions on the basis of sex are thus prohibited only to the extent that they are unfavourable or adverse.

- Principle of humane treatment

Another category of rules which are important for the protection of civilians are the provisions requiring belligerents to provide “humane treatment”. These norms – similar to human rights provisions – lay down minimum standards of treatment and fundamental guarantees which parties to a conflict must grant to everyone within their power. These fundamental guarantees are applicable in both international and non-international conflicts and, indeed, form the basis of Article 3 common to the Geneva Conventions which, until the adoption of Additional Protocol II, was the only provision regulating non-international conflicts.

- Protection against the effects of hostilities

One of the most fundamental rules of international humanitarian law is the principle of distinction, which requires parties to an armed conflict to distinguish between civilians and combatants at all times and not to direct attacks against civilians and the civilian population. [19]

In addition to attacks specifically directed against civilians, international humanitarian law also prohibits indiscriminate attacks, i.e. those attacks which, although not targeting civilians, are of a nature to strike military objectives and civilians or civilian objects without distinction. [20] A number of rules of international humanitarian law stem from the principle that civilians must be spared from the effects of hostilities. These include the prohibition of starvation of civilians as a method of warfare; [21] the prohibition on attacks on objects indispensable to the survival of the civilian population; [22] the duty of parties to a conflict to take precautions in attack in order to spare the civilian population; [23] the prohibition on carrying out attacks on “works or installations containing dangerous forces” (dams, dykes and nuclear electrical generating stations, attacks on which may cause the release of dangerous forces and severe losses among the civilian population); [24] the prohibition on the use of methods or means of warfare intended or expected to cause widespread, long-term and severe damage to the natural environment and thereby to prejudice the health or survival of the population; [25] the prohibition on using the presence of the civilian population or individual civilians to render certain points immune from military operations - i.e. using civilians as human shields; [26] and, last but not least, the prohibition on attacks on the civilian population or on civilians by way of reprisals. [27]

These basic principles apply in both international and non-international armed conflicts. While the provisions referred to so far are taken from Additional Protocol I, Additional Protocol II contains similar prohibitions on attacks on civilians, on starvation of the civilian population as a means of warfare and on attacks on works and installations containing dangerous forces, albeit in condensed form. [28]

- Restrictions and prohibitions on the use of specific weapons

International humanitarian law also protects civilians from the effects of hostilities by prohibiting the use of certain weapons which, by design, cause casualties among combatants and civilians without distinction.

The principle of distinction, set out above, prohibits parties to a conflict from employing weapons incapable of distinguishing between combatants and civilians. [29] Without specifically referring to this principle, the use of certain weapons has been prohibited, at least in part, because of their indiscriminate effects. The most notable examples are the instruments prohibiting the use of weapons of mass destruction, such as the 1925 Gas Protocol and the 1993 Chemical Weapons Convention.

The lasting effects of weapons on civilians is also a consideration which may lead to the restriction or prohibition of the use of certain weapons. For example, the use of anti-personnel mines was prohibited in 1997 largely because of their indiscriminate and long-lasting effects on civilians. [30] Other examples include booby-traps and other devices, the use of which is restricted in amended Protocol II to the 1980 Convention on Certain Conventional Weapons. [31]

Specific protection for women

The provisions of international humanitarian law which offer specific *additional* protection to women are either generic, such as the requirement in Article 14 of the Third Geneva Convention that “women ... be treated with all the regard due to their sex”; or more specific, such as the provisions in the Third Convention which spell out how this general obligation should be implemented in practice, for example, by the provision of separate detention quarters and sanitary facilities for female prisoners of war (POWs) and the requirement that they be under the immediate supervision of women if confined. [32]

A comprehensive analysis of the needs of women in wartime is presented in each chapter with the corresponding international law provisions providing specific protection for women. However, as a general comment, the aim of these specific provisions is to provide *additional* protection for women with regard to their particular medical and physiological needs, which are often, but not always, related to their child-bearing role, and for considerations of privacy. For example, the Fourth Geneva Convention provides that expectant mothers are to be the object of particular protection and respect. In situations of occupation it requires expectant and nursing mothers to be given additional food in proportion to their physiological needs and expressly includes expectant mothers among the persons for whose benefit belligerents may establish hospital and safety zones. [33] Similarly, if women are interned, they must be provided with separate sleeping quarters and sanitary facilities and, should this prove necessary, only be searched by women. [34]

b) Other bodies of law

Although the focus of the sub-sections on the law is international humanitarian law, reference is also made to other bodies of international law applicable in situations of armed con-

flict, principally human rights and refugee law, where they offer important complementary protection.

In principle, **human rights law** is applicable at all times, i.e. both in peacetime and in situations of armed conflict. However, certain human rights instruments permit States to derogate from certain rights in times of public emergency. [35] That being said, it is not possible to derogate at any time from the right to life or from the prohibitions on torture or cruel, inhuman or degrading treatment, slavery and servitude, and retroactive criminal laws.

Another important difference between international humanitarian law and human rights law is who is bound by the law. While international humanitarian law binds all parties to an armed conflict – both government and armed opposition groups - human rights law lays down rules which bind governments in their relations with individuals. The traditional view is that non-State actors are not bound by human rights norms - a view which is increasingly the subject of debate.

Human rights law today is enshrined in a number of universal and regional instruments covering wide-ranging issues, such as civil and political rights, or focusing on specific rights, e.g. the prohibition on torture, or specific beneficiaries, e.g. women or children. [36]

In addition to its complementarity with international humanitarian law, human rights law provides important additional protection through the highly developed mechanisms for its enforcement. Many of the instruments establish judicial or quasi-judicial bodies which oversee the implementation of the treaties and which are directly accessible to individuals claiming to have suffered violations of their rights. Such bodies can issue binding decisions requiring the respondent States to terminate the violation and, where appropriate, to make reparations.

In regard to refugees, international **refugee law** lays down general and basic principles for their identification and protection including definitions, the principle of *non-refoulement* and the basic rights to be granted to refugees. [37] As refugee law offers important additional protection to that provided by humanitarian law, it is also referred to in the study. Additional rules, as well as the interpretation and practical implementation of these principles, are left to **national law**.

C. UNDERSTANDING THE GLOBAL IMPACT OF ARMED CONFLICT ON WOMEN

1. Female combatants / Involvement of women in hostilities

a) *Overview*

"I felt it was my duty to take revenge for my father and my uncle also for those people who were killed when the war began." [38] Women are actively involved in many armed conflicts around the world and have played a part in wars throughout history. It was the Second World War that highlighted their role, primarily in reserve or support units (including work in munitions factories) in the German and British forces, and, in the case of the Soviet Union, their direct participation in the fighting as members of all services and units "constituting 8% of the total armed forces". [39] Since then, women have assumed a much greater role and join the armed forces more frequently, voluntarily and involuntarily, performing both support and combatant roles.

In outlining further issues related to the participation of women in situations of armed conflict and internal disturbances the study notes that it should thus not be assumed that women are always part of the civilian population, playing caring and nurturing roles. As widely reported cases in Rwanda showed, women were accomplices to and participants in horrific acts

committed in the genocide. Women have also actively support their menfolk in military operations - not always by taking up arms but by providing them with the moral and physical support needed to wage war, and in some cases inciting them to violence. Women may shelter, hide, protect or feed combatants from either side and/or may also act as couriers and spies carrying military information, because they support the cause being fought for or because they are forced to participate in this way, as illustrated by a peasant woman from El Salvador: "It was terrible, because if you didn't sell tortillas to the guerrillas, they got mad, and if you didn't sell to the soldiers, they got mad, so you had to collaborate with both sides". [40] A former soldier (from World War II) in Bosnia-Herzegovina said: "Everybody was a soldier at some point. Soldiers cannot survive alone, without logistics. Even common citizens became soldiers at a certain point. They were at least part of civil protection. They cooked, gave blood, gave whatever they could and had. They sheltered soldiers". [41]

Furthermore, there are women who are at risk because of their presence amongst the armed forces, which is perceived as assisting them or being a part of the armed group even if they are there completely against their will - abducted for sex or to cook and clean in the camp. During the period of their abduction - and often afterwards - these women and girls can be in considerable danger from attack by the opposing forces as well as by their abductors. The best-known large-scale example of such abductions was that of the so-called "comfort women" in the Far East during the Second World War - a term which in no way conveys the ordeal to which these women were subjected during their detention. In recent years, women and girls have also been abducted by armed groups in other countries.

Despite these examples of voluntary and involuntary participation of women as combatants and in support roles in armed conflict, some countries and cultures refuse to allow women to assume combat roles in the armed forces, and it can be said that primarily women experience war as members of the civilian population. (It can also be argued that women passing stories of ethnic and clan feuds and wars on to their children as fireside or bedtime stories is a subtle form of participation which encourages future generations to fight.)

b) *Review of international law*

- Non-discrimination

In the same way that it offers "general" and "specific" protection to civilian women, international humanitarian law also protects women who are taking an active part in hostilities. As a starting point, the principle of non-discrimination requiring parties to a conflict to afford the same treatment and protection to everyone without distinction, including on the basis of sex, also applies with regard to the rules of international humanitarian law which limit means and methods of warfare and protect combatants who are no longer taking part in hostilities. Women are thus entitled to the full protection of these rules of international humanitarian law on the same basis as men.

- Limits on means and methods of warfare

International humanitarian law provides crucial protection for women who are actively participating in hostilities by limiting the right of parties to a conflict to choose means and methods of warfare. One way in which this is achieved is by prohibiting or restricting the use of certain weapons. Express restrictions and prohibitions have existed since as long ago as 1868, and examples of more recent instruments include the 1980 Convention on Certain Conventional Weapons and its Protocols. [42] In addition to these weapons whose use has been prohibited or restricted by a specific Convention, international humanitarian law also prohibits the use of other weapons, projectiles and material of a nature to cause superfluous injury or

unnecessary suffering and requires States when studying, developing or adopting new weapons to determine whether their employment would violate international humanitarian law or other rules of international law. [43]

Protection for combatants is also provided by the rules governing methods of warfare. These rules include the prohibition on attacking enemies who have surrendered or who have shown their intention of doing so or who have parachuted from aircraft in distress, the prohibition on declaring that no quarter shall be given, and the rules prohibiting perfidy. [44]

- Humane treatment

Finally, international humanitarian law requires wounded, sick, shipwrecked and captured combatants to be treated humanely even when they are in the hands of the adversary. In brief, such persons must be protected against all acts of violence and, if put on trial, are entitled to fundamental judicial guarantees. The first three Geneva Conventions [45] are devoted to such persons and contain numerous provisions granting additional specific protection to women. [46]

- The principle of distinction in law and practice

Owing to the important consequences of determining whether someone is a civilian or a combatant, a few words should be said about who can be considered a combatant. In international conflicts, combatants are members of armed forces, i.e. groups which are organized, under responsible command and subject to an internal disciplinary system which enables the rules of international law applicable in armed conflicts to be enforced. [47] There is no definition of combatants in non-international armed conflicts. Instead, the position is that a person taking a direct part in hostilities will not be afforded the protection against attacks that is accorded to civilians. [48] What does “taking a direct part in hostilities” actually mean? While the international humanitarian law instruments do not provide a definition, it is generally accepted that the committing of acts which, by their nature or purpose, are intended to cause actual harm to enemy personnel and material would amount to direct participation in hostilities, while the supply of food, shelter and sex to combatants or generally “sympathizing” with them would not. Already complex in theory, the practical application of these principles, especially in situations of non-international conflict, is one of the greatest challenges of international humanitarian law. Recognizing these inherent difficulties, international humanitarian law provides that, in case of doubt as to whether a person is a civilian or a combatant, that person is to be considered a civilian and therefore protected against attack. [49]

- Issue of concern

To conclude with a remark of a more general nature, there is a need for further research on trends in the evolution of warfare which amount to total war. The ICRC is very concerned about the dramatic consequences of such trends. On the one hand, this development seems to give legitimacy to initiatives taken to include the whole population in the war effort, thus rendering the distinction between combatants and non-combatants more difficult to establish. On the other hand, it reintroduces the belief that the whole enemy population is guilty and can therefore be targeted using all possible means. When interviewed for the *People on War* project, many people replied that war was no longer just a matter of “combatants” and “non-combatants” but of “innocent people” and “people who are guilty”. As mentioned above, it is not so easy to distinguish between combatants and non-combatants, especially in wars where there are no front lines, no uniforms and no recognized military structures. This also has parallels with the fact that women are increasingly taking up arms (and therefore cannot be perceived as vulnerable). Members of the civilian population, traditionally those seen as outside

the conflict and in need of protection, may be being perceived as “not so innocent”. How to offset those trends is a challenge whose importance should not be underestimated.

2. Women mobilizing for peace

Just as women have taken up arms, women have also been at the forefront of activities for peace, ranging from spontaneous demonstrations by women who do not want their husbands, sons, fathers and brothers to take part in war (especially non-international armed conflicts, e.g. women protesting in front of Yugoslav National Army barracks in 1991 for the return of their sons whom they did not want to participate in attacks against constituent parts of what was then Yugoslavia) to organized groups protesting against violence and types of weapons, such as the Women in Black [50] and women protesting against nuclear weapons at Greenham Common in England.

The study outlines in brief this aspect of the role of women taking up the conclusion that women should not be seen as powerless, but rather as individuals able to play a major part in the achievement of a long-term and stable peace. Moreover, precisely because they have also been victims of violence in armed conflict, they can help in the reconciliation process and prevent violence in the future if they are fully included in the reconstruction process. Thus women and men need to be equal partners in the establishment of peace.

3. Vulnerability as a result of armed conflict

In public perception (although not in international humanitarian law), within the civilian population as a whole women have tended to be classified in the single category of “women and children”, and men have tended to be largely forgotten as civilians, as if they were all combatants. Yet the civilian population comprises many men who are of combatant age but have not taken up arms, as well as boys and elderly men who should not be recruited because of their age and specific vulnerabilities. This assumption also overlooks the fact that women are more and more frequently taking up arms, as outlined previously. Furthermore, women certainly have needs, experiences and roles in war that differ from those of children.

Women also tend to be categorized as only “vulnerable”, yet they are not necessarily vulnerable and even display remarkable strength, as evidenced by their role as combatants or agents for peace, or by the roles they assume in wartime to protect and support their families.

Are women more vulnerable than men in situations of armed conflict? The answer is both yes and no. They should not be more vulnerable, but it must be recognized that women are particularly susceptible to marginalization, poverty and the suffering engendered by armed conflict, especially when they are already victims of discrimination in peacetime. Women may be particularly vulnerable if they are held up as “symbolic” bearers of cultural and ethnic identity and the producers of the future generations of the community. In such situations, women may be vulnerable to attack or threats from their own community for not conforming to this role, e.g. by not wearing a veil or by cutting their hair, or conversely they may be targeted by the enemy in order to destroy or subvert this role. Present-day conflicts show that women are increasingly becoming the target of fighting. That being said, men also have to be clearly recognized as vulnerable, as in some conflicts as many as 96% of the detainee population are men and 90% of the missing are men. They are also prone to be wounded or killed as legitimate targets as members of armed forces or groups, who still largely recruit amongst male populations.

The vulnerability of different groups - whether male, female, elderly, infant, etc. - will differ according to their exposure to a given problem and their capacity to tackle it and to its impact

on the group concerned. For example, both men and women can be the target in cases of the "disappearance" or detention of political opponents, whereas, in their capacity as actual or potential military opponents, men are generally singled out as a group for detention or summary execution. [51] Conversely, women and girls are far more exposed to sexual violence, regardless of the perpetrator's motive, although men are also victims of such violence. "In certain villages bordering conflict young girls have admitted that armed men come in at night - these girls are used as sex workers - they are not allowed to protest - they are not allowed to lock their doors and the whole community tolerates this because these armed men protect the community - so it is a trade off..." [52]

The very nature of women's vulnerability often lies more in the fact that armed conflicts have evolved to the extent that the civilian population is totally caught up in the fighting and women are frequently the ones trying to maintain and provide for the everyday survival of themselves and their families. The notion of vulnerability also comprises the problem of being at risk (exposure to danger), the ability to cope with the situation and the stress, shock and trauma of warfare. Vulnerability, as such, does not fit into an easily determined category or definition - especially where women are concerned. It is therefore in accordance with the specific nature of each situation and the different factors involved that groups of women could be identified as being particularly vulnerable and in need of special assistance, e.g. pregnant women, nursing mothers, mothers of small children, female heads of households. At the same time, women throughout the world are showing not only that they can be extremely courageous and resilient but also that they can put their ingenuity and coping skills to full use in their daily roles as heads of household, breadwinners, and care-providers within their families, and active participants in the life of their communities, as employees of international organizations and NGOs, and as campaigners for change, agents for peace, etc. [53]

The degree of women's vulnerability and hence the type of action necessary for responding to the needs clearly depend on the circumstances. In each situation, a thorough needs assessment is required to determine the most vulnerable groups - yet the possibility of women's specific situations and needs must always be taken into consideration. For example, sexual violence as a means of warfare, or the demand that women have more children to replace lost sons (increased birth rate leading to an increased demand for reproductive health services) makes women more vulnerable and their specific situation needs to be addressed.

4. Change in women's traditional roles

Armed conflicts greatly affect the lives of women and can completely change their role in the family, the community and the "public" domain. This is normally unplanned. The breakdown or disintegration of family and community networks forces women to assume new roles. Armed conflicts have created large numbers of female-headed households where the men have been conscripted, detained, displaced, have disappeared or are dead. Women invariably have to bear greater responsibility for their children and their elderly relatives - and often the wider community - when the men in the family have gone. The very fact that many of the menfolk are absent often heightens the insecurity and danger for the women and children left behind, and accelerates the breakdown of the traditional protection and support mechanisms upon which the community - especially women - have previously relied.

Increased insecurity and fear of attack often causes women and children to flee, so they form the majority of the world's refugees and displaced. Women are heads of households and breadwinners, taking over responsibility for earning a livelihood, caring for farms and animals, trading, and being active outside the home - activities often traditionally carried out by men. This necessitates the development of new coping skills and confidence, requiring cour-

age and resilience to help sustain and rebuild families and communities torn apart by war. This is exemplified by the situation of many women in Sudan. "Because of the conflict the traditional family structure and force have suffered a general disintegration. In a time when basic needs for subsistence are barely available, children (...) sometimes have to look after themselves. (...) In the absence of men, the responsibility for the family is more and more a woman's charge. The result is that women have to fight more to get jobs and enough money, which leads to a migration phenomenon towards the cities where women are trying to do some business, in the markets, tea or coffee selling, etc. (...) Children are left alone and have nobody to look after them". [54]

Women are challenging, and in some cases redefining, the cultural and social perception of themselves and their former boundaries in society. Women may for the first time have the possibility of working outside the home, being the income earners, main decision-makers and heads of household, organizing themselves with other women and going into the public sphere, which is often the preserve of men. This is eloquently summed up by Ana Julia from El Salvador: "Before the war women were not taken into consideration. Women were only working in the home. But, when war came, women came out of the house to demonstrate their capability. In part it was war which meant that women could be taken seriously and that they could do a lot of things. It made people realize that women are capable of changing our society". [55]

Some of these "empowerment" changes may be seen as positive developments for women. However, they must be viewed through the lens of the loss, poverty and deprivation endemic to war, and the fact that in many societies women still only gain status (economic and social) through marriage. The lack of marriage possibilities (because of a lack of men, or social rejection of women because of a violation against them, or their role in the conflict) can have enormous implications for women. Moreover, any change is frequently reversed in post-war situations. Women are often expected to withdraw again into the home either because men are back (after demobilization, displacement, etc.) and want the jobs, or because the community is trying to go back to the "normality" of the pre-war status quo.

5. Widowhood and the missing

The proliferation of armed conflicts and the high levels of military and civilian casualties in those conflicts have meant that there are large numbers of widows in many countries. This has a major impact not only on women but on society in general.

Widowhood often changes the social and economic roles of women in the household and community, and the structure of the family. The impact of widowhood differs between cultures and religions. However, it can affect the physical safety, identity and mobility of women. Widowhood can also affect their access to basic goods and services necessary for survival and their rights to inheritance, land and property, in addition to the wider impact it has on the community.

Women whose husbands have "disappeared" or are missing experience many of the same problems as widows, but without official recognition of their status, and this again creates specific problems. In addition, they have to suffer the psychological effects and insecurity that stem from not knowing their husband's fate and not being able to bury their loved ones and mourn properly, and the long-term consequences of raising children without a father and not being able to remarry.

The study examines more fully the impact of widowhood and the disappearance of menfolk on the lives of women and notes that many women have organized themselves into groups

and networks to support each other and to fight for recognition of their loss and status, as well as to determine the fate of their missing relatives.

D. OBJECTIVE AND FOCUS OF THE STUDY

1. Objective of the study

In February 1998, the ICRC decided to develop a position paper on the situation of women affected by armed conflict, including an overview of ICRC activities carried out on their behalf. Furthermore, within the context of the *Avenir* project, [56] it was decided that the need for clarification or development of international humanitarian law pertaining to certain problems or categories of persons should be followed attentively and appropriate measures be taken. It was decided that one of these measures should be the carrying out of a study on women affected by armed conflict. This study will serve as a basis for the formulation of guidelines regarding the protection and assistance of women in conflict situations for the next Conference of the International Red Cross and Red Crescent. [57]

This ICRC study aims to understand the ways in which women are affected by armed conflict by drawing on lessons from past and current experiences [58] to improve the quality, relevance and impact of ICRC services. The ultimate objective of such a study is to enhance the assistance and protection afforded to women affected by armed conflicts, by making the relevant actors sensitive to the specific needs of women and by improving the quality of activities carried out for/with women.

With this aim in mind, the ICRC study has:

- 1) identified and analysed women's needs;
- 2) analysed international humanitarian law and other relevant bodies of international law, such as human rights, and assessed the extent to which they provide adequate coverage of the needs identified.
- 3) drawn up a realistic and global picture of activities undertaken by the ICRC on behalf of women victims [59] of armed conflict;
- 4) drawn up a list of main recommendations (key points).

E. PREMISE AND METHODOLOGY OF THE STUDY

1. Premise

This study considers first the needs of the civilian population in situations of armed conflict and then those which are particularly relevant to or specific to women. This two-tier approach is a deliberate aspect of the methodology of the study, for several reasons. First of all, in identifying women's needs, the study assumes that women have needs in common with the rest of the civilian population, e.g. the need for food. Therefore, in order to give a comprehensive picture of women's needs, it was found useful to briefly highlight some of these common needs. At the same time, the identification of common needs should serve as a basis for reflection on whether women are particularly affected by a given phenomenon or are affected in different ways from men, or whether there are needs that are specific to women.

Secondly, the study is based on the recognition that the effects of armed conflict impact differently on men, women, girls and boys. The impact of war on women is not only a result of biological differences, but also of the different constraints and opportunities arising from their role in society (gendered roles). The effects of war on women (and men) are influenced

by a number of factors: the type of conflict, i.e. whether it is an international armed conflict or a non-international armed conflict; the position of the woman in that conflict, i.e. whether as a displaced person, politician, head of household, combatant, etc.; and the different stages of the conflict, i.e. pre-, post- or ongoing conflict, whether under occupation, etc.

The emphasis of this study on women (and girls) is in no way intended to negate the suffering and devastation war causes for men and boys. Men are also often targeted specifically because of their gender, for example, arbitrary military conscription through mass roundups of young men to serve on the front line, arbitrary detention, disappearances or summary execution. For example in Srebrenica, Bosnia-Herzegovina, in 1995, Muslim men and some boys were rounded up and detained or executed, whereas women and children were forced to leave the area. [60] It is also important to recognize that the plight of civilian women in war is often linked to the fate of the menfolk in their households and communities. In other words, attacks on undefended households and women, rape as a means of attacking the "enemy" population, the displacement of women and their dependants, etc., occur in part at least because of the absence of the men. This is not to deny that women face terrible hardships in armed conflict or that they have their own specific needs and vulnerabilities. On the contrary, it is to recognize that the fate of civilian women can be improved if humanitarian law is fully implemented and respected with regard to both combatants and non-combatants, be they male or female.

Thirdly, the two-tier approach is the one adopted by law. As will be seen, women who do not take part in hostilities are first and foremost protected by a whole range of rules of international humanitarian law safeguarding the civilian population and those *hors de combat*. In addition, recognizing their specific needs, international humanitarian law also lays down additional rules for the specific protection of women.

Fourthly, it should also be emphasised that the study is in keeping with one of the fundamental principles of the ICRC, that of impartiality. This principle requires that the ICRC endeavour to assist and protect all victims of conflict or violence without discrimination and in accordance with their needs. To that end, the ICRC must be able to identify the specific needs and vulnerabilities of each category of victim in order to be able to reach, assist and protect them appropriately. This study is part of the process for ensuring that the ICRC is doing, and continues to do, just this.

The study was started in 1998 through the systematic collection of information for the period 1998 to 1999. ICRC field delegations were requested to provide periodic reports regarding activities carried out on behalf of women. Members of the ICRC *Women and War* project went on field missions to assess the approach of the delegations. Information was also gathered through the debriefing of personnel returning from the field and contacts with colleagues at headquarters, and from a review of internal documents. Furthermore, valuable information was provided by women affected by war themselves, in the context of the *People on War* project launched to mark the 50th anniversary of the Geneva Conventions. [61] Lastly, a wide range of material on women and armed conflict was gathered from external sources to complement and supplement information received from sources within the ICRC.

2. Methodology

The text has been constructed using a needs-based approach. The various needs have been grouped according to the predominant feature of each of them. However, there are clear links or close associations between many of the categories. For example, some aspects of security concerns are linked to the question of access to food and water, so that at times the security

aspect will be raised in other sections, but for brevity is dealt with mainly in the section entitled "Safety".

Owing to its special nature, the question of detention - in which detainees are totally reliant on the detaining authority for all their needs and security - and the ICRC's special mandate and extensive experience in relation to persons deprived of their liberty are dealt with in a separate chapter.

F. DETENTION/INTERMENT IN SITUATIONS OF ARMED CONFLICT

1. INTRODUCTION TO THE LAW

During armed conflicts people are detained for a number of reasons. Some are held for reasons related directly to the conflict (prisoners of war, civilian internees), while others may be detained for reasons *not* related to the conflict (generally those detained for ordinary crimes). People may also be arrested for security reasons, which are often, but not always, related to the conflict or the internal disturbances.

Both adults and children, male and female, can be found in places of detention. Responsibility for meeting their needs and ensuring that they are treated properly rests with the detaining authorities. However, often the detaining authorities do not provide sufficient or adequate material necessities - food, bedding, clothing, water, medicines - and detainees therefore rely heavily on the support of family members, and/or international and non-governmental organizations. In addition, detainees in many contexts are subjected to various forms of ill-treatment – sometimes even torture. Women detainees will also have needs specific to their gender in these situations.

There are detailed rules in the four Geneva Conventions of 1949 and their two Additional Protocols of 1977 concerning the treatment of persons deprived of their freedom in connection with situations of armed conflict. These rules include specific provisions on the treatment of women in detention. Human rights instruments also include general and specific fundamental rights to which persons in detention are entitled and there are also international standards governing the treatment and conditions of detained persons, such as the United Nations Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

An important point must be made at the outset. The rules specifically applying in situations of detention are applicable in addition and not instead of the rules granting general protection discussed in the previous chapter (*Assessment of the needs of civilian populations with a focus on women*) of the present study. So, for example, the rules guaranteeing physical safety presented in the section on *Safety* in chapter two are obviously also applicable to persons deprived of their liberty. The present section of the study will only focus on the additional rules relating to detention.

3. International humanitarian law

International humanitarian law addresses the issue of persons deprived of their liberty for reasons related to the conflict in considerable detail. In addition, it establishes an important mechanism for the supervision of the rights granted to such persons by means of the visits of the ICRC.

a) *Categories of persons deprived of their liberty*

Persons may be deprived of their liberty during armed conflicts for various different reasons. According to their status and circumstances, the legal rules protecting such persons may change, without however falling short of the threshold that all persons deprived of their liberty are entitled to life, dignity and respect. Although, for the most part, the present study uses the generic terms “detainees” or “persons deprived of their liberty”, it is nevertheless important to identify the different categories of detainees and the rules protecting them.

International armed conflicts

International humanitarian law identifies the different types of detainees in international armed conflict very clearly. In particular,

i) *Prisoners of war*

First, there are prisoners of war. [62] Primarily, they are members of the armed forces of a party to a conflict who have fallen into the power of the enemy. [63] The treatment to be granted to prisoners of war is the subject of a specific convention, the Third Geneva Convention of 1949 relative to the Treatment of Prisoners of War. Additional rules for their benefit can be found in Additional Protocol I. In addition to members of the armed forces, the Third Geneva Convention provides that certain categories of persons, such as war correspondents, are also to be considered prisoners of war if they fall into the power of the enemy. [64]

The fact that a combatant may have violated international humanitarian law does not deprive him/her of the right to be a prisoner of war should s/he fall into the hands of an adverse party. [65] Furthermore, while, as explained below, there may be circumstances in which persons taking a direct part in hostilities may *not* be entitled to prisoner of war status, the law provides that in case of doubt, a person who takes part in hostilities and falls into the power of an adverse party must be presumed to be entitled to prisoner of war status and be protected by the Third Geneva Convention and the relevant provisions of Additional Protocol I until such time as his/her status has been determined by a competent tribunal. [66]

ii) *Other persons entitled to prisoner-of-war treatment*

In addition to members of the armed forces and the other persons identified above, certain other categories of persons not considered prisoners of war are entitled to receive prisoner-of-war *treatment*, like, for example, members of medical and religious personnel. [67] The difference between being entitled to prisoner-of-war *status* and prisoner-of-war *treatment* is important. While entitlement to prisoner-of-war treatment ensures that persons deprived of their liberty are accorded the full range of safeguards – and not just minimum guarantees laid down in Article 75 Additional Protocol I – they may be prosecuted for having participated in the hostilities.

iii) *Protected persons subjected to criminal procedures*

The Occupying Power may prosecute protected persons who committed an offence intended to harm it or to contravene to the public order and security. They are not considered as ordinary criminals, and should not be detained in the same premises. They benefit from the general principles of law such as the prohibition of retroactivity. Moreover, they have a right of defence, and if convicted, a right of appeal. [68] (Enemy) aliens in detention (pending proceedings or serving a sentence) in the territory of a party to the conflict are also protected by the Fourth Geneva Convention. [69]

iv)

Civilian internees

Protected persons may be interned or placed in assigned residence if the security of the Detaining Power makes it absolutely necessary.[70] Any protected person who has been interned or placed in assigned residence should be entitled to have such action reconsidered.[71] These civilian internees are protected by detailed rules laid down in the Fourth Geneva Convention. [72] In situations of occupation, the Occupying Power is also entitled to detain protected persons for imperative reasons of security.[73] The same conditions and protections are applicable to these persons.

v)

Persons entitled to fundamental guarantees

Recognising that there may be persons deprived of their liberty for reasons related to the conflict who are not entitled to either prisoner-of-war treatment or the protection afforded to civilian internees, international humanitarian law expressly provides that such persons are at all times entitled to the fundamental guarantees laid down in Article 75 Additional Protocol I. [74] Persons who only benefit from this generic protection include mercenaries and members of the armed forces who fall into the power of the adverse party while engaged in espionage. [75]

Non-international armed conflicts

The position in non-international armed conflicts is simpler. In the same way that the notion of combatant does not exist in non-international armed conflicts, the concept of “prisoner of war” is also not applicable. A very important consequence of the absence of the notion of combatant in non-international armed conflicts is that persons who participate in hostilities may be prosecuted for their mere participation. [76] This does not mean however that persons who have participated in hostilities and have fallen in the power of the enemy are not protected by international humanitarian law. Common article 3 of the Geneva Conventions and Additional Protocol II are applicable to persons detained or interned for reasons related to the conflict. [77] Moreover, this Protocol also contains a provision on fundamental guarantees that must be ensured to all persons. [78]

b)

Protection of women: general and specific protection

The “two-tiered” protection provided to women by international humanitarian law is also evident in the rules relating to detention. Women who are deprived of their liberty for reasons related to the conflict are entitled to the same general protection as men without discrimination and also benefit from additional specific rules which take into account their specific needs.

This two-tiered protection finds expression, for example, in Article 14 of the Third Geneva Convention, which states that “women shall be treated with all the regard due to their sex and shall in all circumstances benefit by treatment as favourable as that granted to men” and in Article 16 which provides that “taking into account the provisions of the present Convention relating to (...) sex (...) all prisoners of war shall be treated alike by the Detaining Power, without adverse distinction ...”. [79]

The particular “regard” to be paid to women translates into rules relating to matters such as privacy and modesty, women’s physiological specificity, pregnancy and childbirth. Many of the rules offering women additional specific protection have already been presented in the previous chapter of this study. They are of course also applicable to women deprived of their liberty. [80] The present part of the study will only identify the additional specific rules applicable to women deprived of their liberty.

Examples of these specific additional protections include the following requirements:

- that the cases of detained or interned pregnant women and maternity cases be heard with the utmost priority and that during hostilities the parties to the conflict endeavour to conclude agreements for the release, repatriation and return to places of residence or to a neutral country of pregnant women and of mothers with infants and small children; [81]
- that detained or interned women be held separately from men and that they be under the immediate supervision of women; [82]
- that interned women be searched only by female guards; [83]
- that interned expectant and nursing mothers be given additional food in proportion to their physiological needs; that interned maternity cases be admitted to institutions where they can receive adequate treatment; and that interned maternity cases not be transferred if the journey would be seriously detrimental to their health; [84]
- that due account be taken of people's sex in the context of disciplinary punishments for detained and interned persons and in the utilization of the labour of prisoners of war. [85]

Also of relevance is the prohibition on the execution of the death penalty on pregnant women or mothers with dependent infants. [86]

4. Human rights law

As stated at the outset, the human rights norms set out in the previous chapter of this study are applicable to persons deprived of their liberty. Therefore, even though they have not been repeated in the present section of the study they must be borne in mind when considering the protection to which such persons are entitled. The present section of the study only presents the additional rights granted to detained persons, be they security detainees or persons detained for ordinary crimes. Of paramount importance is also the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

One instrument to which considerable reference will be made in the present study are the Standard Minimum Rules for the Treatment of Prisoners. This non-binding compilation of rules was adopted by the first United Nations Congress on the Prevention of Crime and the Treatment of Offenders in 1955 and was approved by the Economic and Social Council. [87]

The Standard Minimum Rules were compiled on the basis of the general consensus and the essential elements of the most adequate systems for the administration of justice at the time, with the aim of setting out what is considered as good principle and practice in the treatment of prisoners and the management of detention institutions. The drafters recognised that in view of the variety of legal, social and economic conditions in the world, not all the rules were capable of application in all places at all times. However, they could play a valuable role as a yardstick for the development of acceptable minimum conditions of detention.

Although the Standard Minimum Rules are phrased in the terms applicable to persons detained for ordinary offences unrelated to an armed conflict, they are also of relevance, by analogy, to persons deprived of their liberty for reasons related to an armed conflict.

G. CONCLUSION The ICRC has for many years expressed its concern about the plight of women in wartime – both those not taking part in the hostilities and combatants who are *hors de combat* because they are sick, wounded, shipwrecked or taken prisoner.

In 1998, it initiated its study with three principal objectives in mind: to identify the needs of women engendered by armed conflict, irrespective of whether those needs were the focus of ICRC activities [88]; to examine international law, particularly humanitarian law and to a lesser extent human rights law, in order to assess the degree to which they provide protection for women; and to draw up an overall picture of the ICRC's operational response to the needs of women affected by armed conflict. This study deliberately talks of "needs" and not "rights", although in many instances the terms may be interchangeable. There are certain rights which have not been looked at, such as the right to nationality or statehood and the right to participate in political groupings, which could be explored further but did not find their place in this study. Instead, the focus was placed on issues such as physical safety, sexual violence, displacement, access to health care, food and shelter, and less talked-of matters like the problem of missing relatives and its impact on the survivors - mainly women - of armed conflict, and access to documentation.

It is also important to state that women in armed conflicts are not solely "victims" in need of assistance and protection. Attention has been paid in this study to the fact that women take part in armed conflicts as members of the regular armed forces or armed groups and in their support services. Women are also politicians, leaders of non-governmental organizations, social and political groups, and active participants in peace campaigns. As members of the civilian population, they have important and often crucial social and household economic roles and skills which enable them to deal with the increased stresses and burdens placed on them in wartime. For example, women have initiated small enterprises and income-generating projects with meagre resources within their devastated communities and within camps for the displaced. Women in wartime show tremendous courage and resilience as survivors and as heads of households - a role for which many of them have had little or no preparation for and which is made more difficult by the social constraints often imposed on them. The terms "vulnerable" and "victim" are not synonymous with "women".

Traditional warfare - across national borders and involving regular armed forces - is still being waged, but today armed conflict takes place more often within a country. Such non-international armed conflicts become a struggle for control of territories or populations; and thus civilians are often placed at the heart of the conflict, endangered not only because of the proximity of the fighting but also because they are its main target. Civilians are often actively mobilized in the fighting or at least forced to choose sides. Those who succeed in keeping out of the fighting may be pressured to give support in the form of food or other material assistance. Yet few people support the notion of total conflict - meaning that combatants should feel free to attack both combatants and civilians to weaken the enemy - as concluded in the recent ICRC *People on War* survey. [89]

It is accepted that there are limits to warfare, yet those limits are regularly breached. Civilian women are now increasingly at risk. War has shown that the safety of civilian women is not guaranteed by the respect due to their sex and gender. The thinking on women facing war leads us to a fundamental question: How can we secure respect for the distinction between civilians and combatants in tomorrow's wars in order to prevent the progressive widening of the scope of violence? Much more research needs to be carried out to answer this question, which is of not only a legal but also a political, historical and sociological nature. Finally, the purpose of this reflection is to try to ensure better protection for all.

It is important to note that in focusing specifically on the needs of women and not those of men, the study in no way intends to negate the particular needs of men and men's suffering in wartime or to infer that women *hors de combat* suffer more than their male counterparts. Indeed, it is not so easy to separate the impact of armed conflict on women from the impact of

armed conflict on men, as they are members of the same families and communities, and the effects on the two groups are closely linked. In reaching this conclusion the ICRC is not backing away from a commitment to the needs of women in wartime, but reinforcing its commitment to a “gendered” approach through recognition that the impact of war on women is inextricably tied to the war waged by men - often their own menfolk - against other men - again often their own menfolk, and that men are often targeted through their women.

Turning to the question of whether the law addresses the needs of women in situations of armed conflict, the review carried out in the present study shows that on the whole – subject to the minor exceptions set out below – the law does adequately cover the needs of women in situations of armed conflict. But this true is only if one considers all the applicable bodies of law simultaneously, in particular international humanitarian law and human rights law.

The fact that the rules are found in different bodies of law is not negative *per se*, as it would not be appropriate for a single set of rules to attempt to regulate all the various aspects of armed conflict that affect women. Different bodies of law have different purposes. One of the principal aims of international humanitarian law is to regulate the conduct of hostilities. In so doing it offers important protection to women, both as persons taking an active part in the hostilities and as civilians. It would be inappropriate, however, to expect this body of law to regulate other issues which, although of relevance to women in situations of war as the present study has shown, are more suitably dealt with by human rights law and national law, such as personal documentation and the detailed regulation of property rights.

The law provides adequate protection in situations of both international and non-international armed conflict. Even though the written rules of international humanitarian law governing the latter situation are few in number, there is an important body of customary law which extends to non-international conflict the scope of application of many of the rules laid down for international armed conflict. That being said, the principal rules affording protection to women in situations of armed conflict do form part of the written body of law applicable in non-international conflict.

There are, however, some gaps, the more substantive of which appear to relate to the issue of return after arbitrary displacement and the question of personal documents.

While at the normative level the needs of women in armed conflict are adequately addressed, the challenge lies in ensuring respect for and implementation of the existing rules.

With regard to the rules that aim to afford physical protection strictly speaking (e.g. the prohibitions on attacks against civilians, indiscriminate attacks and sexual violence), it would appear that violations stem from an unwillingness to comply with the rules rather than from ignorance of the law or the impossibility of respecting it.

Turning to the rules relating to assistance, a distinction must be drawn between the provision of assistance on the one hand by the party to the conflict in whose power the civilians find themselves, and on the other by external bodies, such as cooperation agencies or humanitarian organizations. The failure of the relevant party to the conflict to respect the rules requiring it to provide assistance – and also certain of the rules relating to protection, such as minimum conditions of detention – is often due to the absence of funds and resources, making compliance impossible. Such situations obviously call for a different solution from cases of intentional violation.

In situations where the party to the conflict with primary responsibility for providing assistance is unable or unwilling to meet its obligations, outside agencies may step in by launching relief operations. In such cases, failure to provide the assistance required by law is principally due to the impossibility of gaining access to the population in need, either because of the re-

fusal of the relevant party to the conflict to grant such access or because of threats to or attacks upon humanitarian personnel - both of which are violations of international humanitarian law. Negotiating access to those in need is a sensitive and crucial aspect of the provision of protection and assistance for victims of war, calling for dialogue with all parties to the conflict.

Another facet of the challenge of ensuring respect for the law lies in the fact that, although the legal provisions are clear, their application in practice may be difficult. This is particularly the case with regard to the principle of distinction. The law provides very clearly that hostilities may be directed only against persons taking an active part in hostilities. However, in today's non-international conflicts, determining what amounts to taking a direct part in hostilities is often far from easy.

A further difficulty in ensuring full respect for the rules protecting women in situations of armed conflict lies in the very nature of human rights law. As has been stated, human rights law offers important protection complementary to that afforded by international humanitarian law in a number of areas. The prevalent view to date has been that this body of law is binding only on States and not on armed opposition groups, so persons who find themselves in the power of such groups are unable to rely upon the provisions of human rights law to defend themselves against the latter. [90] However, in practice this view is being challenged, and human rights are increasingly being referred to in such circumstances.

In addition to the existence of rules and the need to respect them, mechanisms for enforcing rights and redressing violations are also of crucial importance. In this respect, the recent developments - both at national and at international level - in the prosecution of those responsible for war crimes are a very important step forward in the fight against impunity, not only because the perpetrators are actually brought to justice, but also because of the general deterrent effect which it is hoped such developments will have.

Criminal prosecutions are only one of many methods for dealing with violations of international humanitarian law. Of considerable importance for victims of violations are mechanisms which permit them to obtain redress, which may include various forms of restitution as well as compensation. In this area too, important developments have taken place in recent years. Among these are pro-active and innovative positions adopted by national courts, the settlement of issues still outstanding from the Second World War through international claims processes, and creative mechanisms for addressing issues of immediate practical relevance to persons affected by armed conflict, such as the Land Claims Commissions in Bosnia-Herzegovina and Kosovo.

Unfortunately, these very promising developments need to be balanced against the reality that for many people affected by armed conflict recourse to national courts for assertion of their rights still remains an impossibility.

From a more operational point of view, what steps can the ICRC take to maximize the protection afforded by the law to women in situations of armed conflict? First and foremost, the continuation of its activities to make international humanitarian law better known by all parties involved in armed conflict and to monitor and ensure the respect for that law. Knowledge of the law is an obvious pre-requisite for such respect. In dissemination programmes emphasis should be placed on the two-tiered protection that humanitarian law offers women. And the ICRC should continue its present protection work, building on the knowledge it has acquired while carrying out studies and increasing its expertise in the area of problems related to sexual violence. Finally, it could enlist the support of men by raising their awareness of the

specific problems of women, which they may not always recognize, through its communication activities and dialogue with the authorities.

The ICRC is providing assistance and protection for women affected by armed conflict or internal disturbances in countries throughout the world. Displaced women, detained women, women heading households made particularly vulnerable by the hostilities, women in need of protection from threats or violence, those searching for their missing relatives and those in need of medical, food and material assistance are seeking out - or being sought out by - the ICRC. Is this enough? Certainly it is important that the ICRC has recognized the general needs of women amongst all those in need of its activities and services. But it could enhance its response to specific needs.

For example, since this study was launched in 1998 the ICRC has realized that it could do more to curb sexual violence by means of more specific dissemination among arms bearers on the prohibition of all forms of sexual violence, representations to those in a position to put an end to such violations, and activities for the (female or male) survivors of sexual violence. In particular, the ICRC needs to develop its existing expertise in protection activities for persons *hors de combat* in order to better address the needs of victims of sexual violence in all its forms. This action will include referring victims to other organizations which can provide appropriate assistance. The ICRC has already taken significant steps in this direction through evaluation of its training courses for new and existing personnel, the production of new dissemination materials relating specifically to sexual violence, and through the issue of instructions for an increased focus on this violation in dissemination activities for parties to armed conflict. Sexual violence is only one of the safety problems affecting women in situations of armed conflict. The ICRC is equally concerned about the other violations to which women are subjected – indiscriminate attacks, forced displacement, disappearances, etc.

In the context of its activities for women detained in connection with armed conflict or internal disturbances the ICRC has also provided guidance for delegates aimed at helping them to recognize issues specific to women in detention. This guidance is routinely given to ICRC delegates whose work encompasses visits to places of detention.

The ICRC's health and assistance activities have also been the subject of review. In particular, information outlining key aspects affecting women's access to health care and to food and material assistance was circulated to all ICRC delegations. Such information is also given systematically to all ICRC delegates carrying out activities in these domains. The ICRC will continue to do its utmost to respond to women's special needs in an effective way. This is an institutional priority for the ICRC and the subject of a specific pledge it made in 1999. [91]

Neither this study nor the pledge just mentioned alter the ICRC's "all victims" approach - to provide a comprehensive response to the needs of all populations affected by armed conflict. The aim of both is to reinforce this response through a better understanding of the needs and particular vulnerabilities of certain categories of victims, in this instance women. Maintaining the "all victims" approach is important so as to be in a position to come to the aid of whom-ever is amongst the most vulnerable, but the very notion of vulnerability necessitates an understanding of what makes people vulnerable, and this can differ according to whether the persons concerned are male, female, adults or children, and according to the particular circumstances in which they find themselves, such as detention or displacement. The special attention given to women through this study is helping the ICRC to increase that understanding, and to identify more precisely or more appropriately those members of the female population who are amongst the most vulnerable victims (or potential victims) of war.

Women and men have different roles and responsibilities in society which are socially and culturally determined, and consequently they also experience armed conflict in “gendered” ways. It is important to recognize these differences and to adapt responses and activities accordingly, while at the same time avoiding portrayal of women solely as victims or vulnerable individuals and recognizing their traditional role as well as the fact that this role is changing in nature owing to armed conflict.

War - whether international or non-international - causes enormous suffering for those caught up in it. The present study aims to demonstrate that women experience war in a multitude of ways - from taking an active part as combatants to being targeted as members of the civilian population or because they are women. Women’s experience of war is multifaceted - it means separation, the loss of family members and livelihood, an increased risk of sexual violence, wounding, deprivation and death. War forces women into unfamiliar roles and necessitates the strengthening of existing coping skills and the development of new ones. However, the general and specific protection to which women are entitled must become a reality. Constant efforts must be made to promote knowledge of and compliance with the obligations of international humanitarian law by as wide an audience as possible and using all available means. Everyone must be made responsible for improving the plight of women in times of war, and women themselves must be more closely involved in all the measures taken on their behalf.

[1] The International Red Cross and Red Crescent Movement is composed of the International Committee of the Red Cross (ICRC), National Red Cross and Red Crescent Societies and the International Federation of the Red Cross and Red Crescent Societies (IFRC), hereinafter referred to as the Movement.

[2] See Resolutions of the 26th International Conference of the Red Cross and Red Crescent, Geneva, 1995, *International Review of the Red Cross*, January-February 1996, No. 310, pp. 9-10. Resolutions specifically relating to women were agreed upon by members of the International Conference, States party to the Geneva Conventions and members of the International Red Cross and Red Crescent Movement.

[3] See ICRC pledge statement: "To promote respect for women in situations of armed conflict", Nov. 1999, reported in full on Website www.icrc.org/eng/women.

[4] The Beijing Conference aimed "to advance the goals of equality, development and peace for all women everywhere in the interest of humanity." See Platform for Action and the Beijing Declaration, Fourth World Conference on Women, Beijing, China, 4-15 September 1995, p.7. United Nations Department of Public Information, 1996.

[5] Beijing +5 was an extraordinary session of the General Assembly, entitled "Women in the Year 2000: equality between the sexes, development and peace for the XXIst century". This meeting aimed to examine and evaluate the progress accomplished in the "implementation of the Platform for Action, focusing particularly on positive actions, lessons learned, obstacles, key challenges remaining and a vision for gender equality in the next millennium." Resolution adopted by the UN General Assembly, 52nd session, agenda item 106. A/RES/52/231, 17 June 1998, point 6.

[6] Commission on the Status of Women, Forty-second session, 2-13 March 1998, Thematic issues before the Commission on the Status of Women, Report of the Secretary-General, p. 9.

[7] Para. 135, Platform for Action and the Beijing Declaration, Fourth World Conference on Women, Beijing, China, 4-15 September 1995, p. 84. United Nations Department of Public Information, 1996.

[8] United Nations Security Council Resolution 1325: "Women and Peace and Security", 31 October 2000, S/RES/1325 (2000). See in particular point 16.

[9] I.e. civilians, wounded, sick, shipwrecked and captured combatants.

[10] Article 3 common to the four Geneva Conventions of 1949 applies to conflicts not of an international character, i.e. armed conflicts between a government and an armed opposition group or armed conflicts between two or more armed opposition groups. In 1977, an Additional Protocol was adopted to develop and supplement Article 3. However, this Protocol only applies to conflict between a government and an armed opposition group which is under responsible command and controls some territory.

[11] In August 1999 the UN Secretary-General issued a Bulletin on "Observance by United Nations forces of international humanitarian law". This identified fundamental principles and rules of international humanitarian law applicable to UN forces conducting operations under UN command and control and recalled that, in addition to these principles, such military personnel remained bound by national laws on the subject. (UN Doc. ST/SGB/1999/13, *Secretary-General's Bulletin, Observance by United Nations Forces of International Humanitarian Law*, 6 August 1999).

[12] First Geneva Convention for the Amelioration of the Condition of Wounded and Sick in Armed Forces in the Field, 1949 (GC I); Second Geneva Convention for the Amelioration of the Condition of Wounded, and Shipwrecked Members of Armed Forces at Sea, 1949 (GC II); Third Geneva Convention relative to the Treatment of Prisoners of War, 1949 (GC III) and Fourth Geneva Convention relative to the Treatment of Civilian Persons in Time of War, 1949 (GC IV).

[13] Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts, 1977 (AP I) and Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts, 1977 (AP II).

[14] Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects, 1980 (the Conventional Weapons Convention); Protocol I on Non-Detectable Fragments, 1980; Protocol II on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices, 1980, as amended in 1996; Protocol III on Prohibitions or Restrictions on the Use of Incendiary Weapons, 1980, and Protocol IV on Blinding Laser Weapons, 1995; Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction, 1997 (the Anti-personnel Mines Convention). See also the Protocol for the Prohibition of the Use of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare, 1925 (the 1925 Gas Protocol); Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction, 1972; Convention on the Prohibition of Military or Any

Other Hostile Use of Environmental Modification Techniques, 1976; and Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, 1993 (the 1993 Chemical Weapons Convention). Finally, also of great importance to the enforcement of international humanitarian law is the Statute of the International Criminal Court adopted in 1998.

[15] The “grave breaches” provisions of the four Geneva Conventions (Articles 50/51/140/147 GCs) and Article 85 AP I identify the rules whose violations States are under a duty to prosecute or extradite. The 1998 Statute of the International Criminal Court is the most recent codification of violations of international humanitarian law for which there is international criminal responsibility. For the sake of simplicity, the study will principally refer to crimes under this Statute. Furthermore, although reference will be made only to violations which are war crimes, it should not be forgotten that individuals can also be held criminally responsible for crimes against humanity and genocide.

[16] The International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 (ICTY) was established by Security Council Resolution 827 of 25 May 1993 (Its Statute was originally published as an Annex to the Report of the Secretary-General pursuant to para. 2 of Security Council Resolution 808 (1993), UN Doc. S/25704 (1993)). The International Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States, between 1 January 1994 and 31 December 1994 (ICTR), was established by Security Council Resolution 955 of 8 November 1994.

[17] Rome Statute of the International Criminal Court, adopted in Rome on 17 July 1998, UN Doc. PCNICC/1999/INF/3, 17 August 1999.

[18] Articles 12 GC I and GC II. That women are to be afforded equal protection to men is expressly spelled out in GC III, Article 14, which provides that “women shall (...) in all cases benefit by treatment as favourable as that granted to men”. Non-discrimination provisions are also set out in common Article 3 GCs; Articles 88 (2) and (3) GC III; Articles 27 and 98 GC IV; Articles 9 and 75 AP I and Articles 2 and 4 AP II.

[19] Although long-established, the principle of distinction is reaffirmed in Article 48 AP I, which provides: “In order to ensure respect for and protection of the civilian population and civilian objects, the Parties to the conflict shall at all times distinguish between the civilian population and combatants and between civilian objects and military objectives and accordingly shall direct their operations only against military objectives”.

[20] This too is a long-standing principle which finds expression in Article 51 AP I in the following terms:

“4. Indiscriminate attacks are prohibited. Indiscriminate attacks are:

- a) those which are not directed at a specific military objective;
- b) those which employ a method or means of combat which cannot be directed at a specific military objective;

or

- c) those which employ a method or means of combat the effects of which cannot be limited as required by this Protocol;

and consequently, in each such case, are of a nature to strike military objectives and civilians or civilian objects without distinction.

5. Among others, the following types of attacks are to be considered as indiscriminate:

- a) an attack by bombardment by any methods or means which treats as a single military objective a number of clearly separated and distinct military objectives located in a city, town, village or other area containing a similar concentration of civilians or civilian objects; and
- b) an attack 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.”

[21] Article 54(1) AP I.

[22] Article 54(2) AP I.

[23] Article 57 AP I. Of particular relevance is paragraph 2(a)(ii), which requires those who plan or decide upon an attack to: “refrain from deciding to launch any attack 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.” It should be noted that the term “attacks” means acts of violence against the adversary, whether in offence or in defence (Article 49(1) AP I).

[24] Article 56 AP I.

[25] Article 55 AP I.

[26] Article 51(7) AP I.

[27] Article 51(6) AP I.

[28] Articles 13-15 AP II.

[29] Article 51(4)(c) AP I.

[30] 1997 Anti-personnel Mines Convention.

[31] Protocol on Prohibitions and Restrictions on the Use of Mines, Booby-Traps and Other Devices, as amended on 3 May 1996, to the 1980 Conventional Weapons Convention. While the use of anti-personnel mines is categorically prohibited by the 1997 Anti-Personnel Mines Convention, this Protocol merely restricts the use of mines, booby-traps and other devices. It is important to note, however, that it prohibits outright the indiscriminate use of the weapons in question and defines as indiscriminate, *inter alia*, "any placement of the weapons which may be expected to cause incidental civilian loss of life or 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" (Article 8(c)).

[32] Articles 25(4), 29(2) and 108 GC III.

[33] Articles 16, 89 and 14 GC IV respectively. See also Article 38 GC IV which requires that pregnant women and mothers of children under seven years who are aliens in the territory of a party to a conflict must benefit from "preferential treatment" to the same extent as nationals of the State concerned. See also Articles 17, 18(1), 21, 22(1), 23(1), 50(5), 91(2), 132(2) GC IV and Article 76(2) AP I.

[34] Articles 85 and 97 GC IV. See also Article 124(3) GC IV and Article 75(5) AP I.

[35] The public emergency must threaten the life of the nation and the derogations must comply with certain conditions: they must be proportional to the crisis at hand; they cannot be introduced on a discriminatory basis; and they must not contravene other rules of international law, including international humanitarian law. "Additionally, states making such derogations are required to make a declaration informing those responsible for the implementation of the human rights instrument of the measures that have been suspended and of the reasons therefor" (Article 4, 1966 International Covenant on Civil and Political Rights (ICCPR); Article 15, 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and Article 27, 1969 American Convention on Human Rights (ACHR)).

[36] These instruments include the ICCPR, the 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR), the ECHR and its protocols, the ACHR and its protocols, the 1981 African Charter on Human and Peoples' Rights (ACHPR), the 1979 Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the 1984 Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment, and the 1989 Convention on Rights of the Child.

[37] The principal international instruments for the protection of refugees are the 1951 Convention relating to the Status of Refugees, the 1967 Protocol relating to the Status of Refugees, and the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa. Mention should also be made of the non-binding Cartagena Declaration on Refugees of 1984.

[38] Female combatant, ICRC *People on War* project, Georgia, 1999. The *People on War Report: ICRC Worldwide Consultation on the Rules of War*, ICRC, Geneva, 1999 (available on request from the ICRC, Geneva, Website www.onwar.org). To mark the 50th anniversary of the 1949 Geneva Conventions the ICRC launched a consultation in 17 countries, 12 of which were or had been at war, giving the general public a chance to express their opinions on war. The aim of this consultation was to reveal how civilians and the military view their experience of war, what basic rules they expect to apply in war, why these rules sometimes fail and what expectations are for the future.

[39] KRILL, Françoise, ICRC, "The protection of women in international humanitarian law", *International Review of the Red Cross*, No. 249, November-December 1985, pp. 337-363.

[40] *Ibid.*

[41] *Ibid.*, Country report Bosnia-Herzegovina, 1999, p. 19.

[42] 1868 St Petersburg Declaration Renouncing the Use, in Time of War, of Explosive Projectiles under 400 Grammes Weight. Also of relevance are the 1907 Declaration concerning Expanding Bullets, the 1925 Geneva Gas Protocol, the 1993 Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction and the 1997 Anti-personnel Mines Convention.

[43] Articles 35 and 36 AP I.

[44] Articles 41-42, 40 and 37 AP I respectively. In many cases violation of these rules is considered a war crime under the ICC Statute. See, for example, Articles 8(2)(b)(vi), (vii), (xi), (xii) and (xvii), ICC Statute with regard to international armed conflicts and Articles 8(2)(e)(ix), ICC Statute with regard to non-international armed conflicts.

[45] The First Geneva Convention relates to wounded and sick in armed forces in the field, the Second Geneva Convention relates to wounded, sick and shipwrecked members of the armed forces at sea and the Third Geneva Convention relates to prisoners of war. See Article 12 GC I, Article 12 GC II and Article 14 GC III.

[46] For example, Article 14 GC III provides that female prisoners of war "shall in all cases benefit by treatment as favourable as that granted to men". The Third Geneva Convention contains numerous other provisions aimed

at ensuring equality of treatment and meeting the specific needs of women. They include the requirement that women be accommodated in separate dormitories from men (Article 25(4)); that they be provided with separate sanitary facilities (Article 29(2)); and that, if undergoing penal and disciplinary punishments, they be held in quarters separate from men and under the immediate supervision of women (Articles 97 and 108). Similar requirements are laid down in Article 75(5) AP I and Article 5(2)(a) AP II; Article 88 GC III prohibits imposing on women more severe penal or disciplinary punishment or treatment than male or female members of the armed forces of the Detaining Power.

[47] Article 43 AP I. See also Article 4 GC III and Article 1 Hague Regulations 1907.

[48] Article 13(3) AP II.

[49] Article 50(1) AP I.

[50] Women in Black is a form of protest by women against war. Women in Black groups have sprung up in many countries around the world but there is no organizational link between them. Women dress in black and stand silently in public places in peaceful protest against war. For further reading on women and peace see COCKBURN, C., *The Space Between Us: Negotiating Gender and National Identities in Conflict*, Zed Books, London and New York, 1998.

[51] The fall of Srebrenica (in Bosnia-Herzegovina) saw the separation of Muslim men from women and young children. The majority of women and children were moved out of the area and the men were detained or reportedly fled. During the months that followed, the ICRC collected the names of persons unaccounted for. In February 1996, the ICRC made its conclusions public for the first time: that the vast majority of the missing men had been killed after capture and that many others had been killed in armed confrontations while fleeing the enclave or in lieu of arrest. As many as 7,300 people were reported as still missing by ICRC to the highest authorities in 1996. ICRC Special Report: *The issue of missing persons in Bosnia-Herzegovina, Croatia and the Federal Republic of Yugoslavia*, February 1998.

[52] ICRC/TVE film, "Women and War: At the end of a gun", May 2000. Comments of a doctor working with Save the Children Fund (SCF).

[53] This can also come at a price for women who are seen to be going outside their culturally assigned roles.

[54] ICRC information gathered by the author from delegates in the course of the research.

[55] ICRC *People on War* radio series: "Women on War", March 2000.

[56] A 1998 internal review process aimed at identifying current and future challenges facing the ICRC and determining how these should be addressed.

[57] This initiative was taken up in Resolution 1 of the 27th International Conference, as outlined above.

[58] The period of this study was primarily January 1998-December 1999, but it also includes an overview of activities in 2000.

[59] The ICRC deliberately uses the word "victims" and not the word "survivors". This reflects the fact that not all victims survive armed conflict and not all survivors are victims.

[60] The ICRC has so far received 7,482 tracing requests from the families of people reported missing in Srebrenica, of which 7,435 are for men and 47 for women.

[61] *The People on War Report*, 1999.

[62] While parties to a conflict are *prohibited* from declaring that quarter shall not be given, they are not obliged to intern prisoners of war. They may do so or may wholly or partially release them on parole (Article 21 GC III).

[63] Articles 4(A)(1) to (3) GC III. Article 43 AP I provides that the armed forces of a party to a conflict consist of all organized armed forces, groups and units which are under a command responsible to that party for the conduct of its subordinates, even if that party is represented by a government or an authority not recognized by an adverse party. Such armed forces must be subject to an internal disciplinary system which, *inter alia*, must enforce compliance with the rules of international law applicable in armed conflict.

[64] Article 4(A)(2)(3)(4)(5)(6), (B) GC III.

[65] Article 44(2) AP I.

[66] Article 5 GC III and Article 45 AP I.

[67] Article 33 GC III. See also Article 4(B) GC III and Article 44(4) AP I.

[68] Articles 64 ff. GC IV.

[69] Art. 37 GC IV.

[70] Article 42 GC IV.

[71] Article 43 GC IV.

[72] Part III, Section IV GC IV.

[73] Article 78 GC IV.

[74] Article 45(3) AP I. The protection of Article 75 AP I is in fact also accorded to all other categories of persons deprived of their liberty for reasons related to the conflict, in addition to the specific - and more generous - rights and protections to which they are entitled.

[75] Articles 47 and 46 AP I.

[76] In an attempt to remedy this position, Article 6(5) AP II requires the authorities in power at the end of hostilities to endeavour to grant the broadest possible amnesty to persons who have participated in the armed conflict. The amnesty relates to the fact of participation and not to any violations of international humanitarian law which may have been committed during such participation.

[77] Articles 5 and 6 AP II.

[78] Article 4 AP II.

[79] The principle of non-discrimination in the treatment to be granted *inter alia* to persons deprived of their liberty is reiterated in Article 27 GC IV, Article 75 AP I and Article 4 AP II.

[80] For example, the rule requiring that women be especially protected against attacks on their honour, in particular against rape, enforced prostitution or any form of indecent assault (Article 27 GC IV) is applicable to *all* women in situations of armed conflict, including those who have been deprived of their liberty.

[81] Article 76(6) AP I and Article 132 GC IV.

[82] Articles 25 and 97 GC III, Articles 76, 85 and 124 GC IV, Article 75(5) AP I and Article 5(2) AP II.

[83] Article 97(4) GC IV.

[84] Articles 89, 91 and 127 GC IV.

[85] Article 88 GC III, Article 119 GC IV and Article 49 GC III respectively.

[86] Article 76(3) AP I and Article 6(4) AP II.

[87] Approved by ECOSOC resolution 663 C (XXIV), 31 July 1957 and resolution 2076 (LXII), 13 May 1977.

[88] The needs identified in this paper are not exhaustive and there may be further needs specific to women or which impact on women in a different way, which should also be addressed.

[89] The *People on War Report*, ICRC worldwide consultation on the rules of war, October 1999.

[90] Although of course, it could be argued that the State would be in violation of its obligation to grant such persons the protection enshrined in human rights law, this very legalistic argument fails to take into account the realities of the situation. It is also questionable whether a State would be responsible in respect of territories over which it has lost control.

[91] 27th International Conference of the Red Cross and Red Crescent, Geneva, 31 October-6 November 1999.