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York University, Canada

Gender-based persecution

Report of the Expert Group Meeting

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9 - 12 November 1997

United Nations Division for the Advancement of Women
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Preface

The Expert Group Meeting on "Gender-based persecution" was convened to address critical area E of the Platform for Action which concerns women and armed conflict. The meeting was organized by the Division for the Advancement of Women/ Department of Economic and Social Affairs (DAW/DESA) and the Centre for Refugee Studies, York University, Canada, as part of the preparations for

the forty-second session of the Commission on the Status of Women.

Critical area E of the Platform for Action addresses several issues, including the participation of women in conflict resolution; the protection of women living in situations of armed or other conflicts or under foreign occupation; the reduction of military expenditure; the promotion of non-violent forms of conflict resolution and the reduction of the incidence of human rights abuse in conflict situations; the promotion of women's contribution to fostering a culture of peace; the provision of protection, assistance and training to refugee and internally displaced women; and assistance to women of the colonies and non-self-governing territories.

Critical area E of the Platform for Action is intimately connected with other areas of the Platform, including critical area D, violence against women. Similar harms to those directed at women during armed conflict are committed against women in situations where there is no armed conflict by family members, and are sanctioned by State action or inaction. A common theme underlying the issues in critical area E and other parts of the Platform is gender-based persecution. This theme can be seen through the need to incorporate sensitivity to gender-based persecution, including rape and other forms of sexual violence, sexual slavery and forced pregnancy into international humanitarian law and a gender perspective into international human rights law. It features in the need to include the notion of gender-based persecution into the definition of international crimes subject to the adjudication of existing United Nations ad hoc War Crimes Tribunals and the Statute of the proposed permanent International Criminal Court. In addition, the theme runs through the Platform's emphasis on mainstreaming gender issues, including the concept of gender-based persecution, in the training of police, military forces and peace-keeping forces.

The Expert Group Meeting considered three areas: existing and future legal mechanisms for the consideration of claims of violations of the laws of armed conflict against women and existing human rights violations to which women are subjected; ways of enhancing women's security in situations of armed conflict; and the legal claims and needs of refugee women and those who are internally displaced. It made recommendations with respect to legal definitions and standards; training, dissemination and education; participation; and implementation, monitoring and accountability. These are directed at national, regional and international actors and seek to build on the actions identified in the Platform for Action.

I. ORGANIZATION OF WORK

A. Attendance

1. The Expert Group Meeting on "Gender-based persecution" was held at the Centre for Refugee Studies, York University, Toronto, Canada from 9-12 November 1997. The meeting was organized by the Division for the Advancement of Women, in collaboration with the Centre for Refugee Studies, York University.

2. The Meeting was attended by eleven experts representing all geographical regions and 43 observers; three from Government; two from intergovernmental organizations; seven from the United Nations system and 31 from non-governmental organizations and other sectors of civil society (see annex I for the full list of participants).

B. Documentation

3. The documentation of the meeting comprised one background paper prepared by the DAW; nine experts' papers; and four observers' statements (see annex II). Because of their relevance with respect to the issues under discussion, a number of United Nations documents and other reference papers were made available.

C. Adoption of the agenda and programme of work

4. At its opening session on 9 November 1997, the meeting adopted its agenda and proposed programme of work as follows (annex III):

- Opening of the meeting and opening statements
- Election of officers
- Adoption of programme of work
- Presentation of papers
 - * background paper
 - * experts' papers
 - * observers' papers and statements

- General discussion
- Working group discussions on
 - * existing and future legal mechanisms for the consideration of claims of violations against women of the laws of armed conflict and human rights abuses;
 - * ways of enhancing women's security in armed conflict;
 - * the legal claims and needs of women refugees and internally displaced persons.
- Presentation of reports from working groups
- Adoption of the report of the meeting
- Closing of the Expert Group Meeting

D. Election of officers

5. At its opening session, the meeting elected the following officers:

Chairperson	Ms. Hina Jilani (Pakistan)
Vice-Chairperson	Judge Navanethem Pillay (South Africa)
Rapporteur	Ms. Christine Chinkin (United Kingdom)

E. Opening statements

6. The Expert Group Meeting was opened by Ms. Jane Connors, Chief, Women's Rights Unit, Division for the Advancement of Women. She welcomed the participants and expressed her appreciation to the Centre for Refugee Studies at York University for hosting the event, and for the support and cooperation provided by its Director, Professor Anne Bayefsky, and her staff during the preparations for the meeting.

7. Ms. Connors placed the meeting in the framework of the Beijing Platform for Action and outlined the opportunities it had to contribute to the work of the Commission in the Status of Women (CSW), as well as to influence the work of other bodies and organizations with respect to the issues confronting women affected by armed conflict. She noted that while earlier Expert Group Meetings hosted by the Division had addressed women's participation in political decision-making and conflict resolution, and violence against women generally, none of the Division's Expert Group Meetings had, as yet, dealt with the protection of women in times of armed conflict, national and international accountability for that protection, steps that are necessary to reduce the incidence of human rights abuses of women in conflict situations, nor measures necessary for the protection of women refugees and women who are internally displaced as a result of conflict. The Division had identified gender-based persecution as a possible risk shared by women in situations of armed conflict and those who seek to escape armed conflict internally and via refugee flight. The Expert Group Meeting had therefore been convened to address these risks and, building on the Platform for Action, to make concrete suggestions for the international community, national governments and civil society.

8. In her opening statement, Professor Anne Bayefsky, Director of the Centre for Refugee Studies, York University, welcomed participants and indicated that it was appropriate that the meeting was being held in Canada which had, over the years, sought to promote the interests of women affected by armed conflict and it was particularly appropriate that it was taking place at York University as Judge Louise Arbour, currently the Prosecutor for the ad hoc War Crimes Tribunals for the Former Yugoslavia and Rwanda had served as a professor in the law department of that University. She stressed the opportunity that the Meeting had to develop the recommendations in the Platform for Action and to provide guidance for bodies such as the CSW and the Committee on the Elimination of Discrimination against Women.

9. Professor Lorna Marsden, President of York University, also welcomed the experts and other participants in the meeting.

F. Working groups

10. Three working groups were established to elaborate recommendations for action at the national, regional and international level. Their discussions related to three themes: (a) existing and future legal mechanisms for the consideration of claims of violations against women; (b) ways of enhancing women's security in armed conflict and (c) legal claims and needs of women refugees and internally displaced persons.

11. Working group I on existing and future legal mechanisms was chaired by Professor Anne Bayefsky. Ms. Patricia Viseur-Sellers (Belgium) served as rapporteur. Working group II on women's security in armed conflict was chaired by Ms. Elisabeth Rehn (Finland). Ms. Asma Abdel Halim (Sudan) served as rapporteur. Working group III on women refugees and internally displaced

persons was chaired by Ms. Audrey Macklin (Canada). Ms. Gill Hinshelwood (United Kingdom) was rapporteur.

II. SUMMARY OF THE DEBATE

A. The context

12. The Platform for Action, critical area D, Violence against Women and critical area E, Women and Armed Conflict, are intimately connected. Similar harms to those directed at women during armed conflict are committed against women in situations where there is no armed conflict by family members, and are sanctioned by their communities and by State action or inaction. In many instances these acts are committed with impunity, or are subsequently found legally justifiable or accorded amnesty. Even when prosecuted, convictions are hard to secure. Violence against women in armed conflict and in peacetime conditions are not distinct legal phenomena, but form part of the same spectrum of behaviour. And each occurs along a continuum of gravity.

13. The United Nations Special Rapporteur on Violence against Women 1/ has examined the causes and consequences of violence against women and has found some especially applicable to armed conflict 2/. These include the connection between militarism and masculinity and the shame and humiliation inflicted upon an entire community through the sexual abuse of its women. Men's role as protectors is undermined by failure to prevent abuse of women and children. Such a focus however shifts attention from the harms inflicted upon women to those on the community and underlines constructs of women as 'protected' by male 'protectors'.

14. The Vienna Declaration and Programme of Action, 1993, the General Assembly Declaration on the Elimination of Violence against Women 3/, 1993, and the Beijing Declaration and Platform for Action, 1995 critical area I, all affirm that violence against women both violates and nullifies or impairs the enjoyment by women of their human rights, whether that violence occurs in peacetime or in armed conflict. The currently separate legal regimes of international humanitarian law and human rights law must operate mutually, and reinforce each other; both must be applied and made operational, so as to ensure the effective protection of women in armed conflict.

15. The Platform for Action, in critical area E, recognizes that 'while 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'. 4/ Women fall victim to all kinds of abuse during armed conflict whether they participate as combatants or are non-participant civilians. Women's usual subordinate status in society is exacerbated by conflict which places them, and their children, significantly at risk from various forms of harm.

16. Women become targets of abuse from different aggressors, including regular army and militia members, irregular forces and members of their own community. This abuse includes forms of sexual abuse, rape, sexually humiliating treatment, forcible impregnation, sexual slavery, and forcible prostitution. Women may be kidnapped (or offered 'protection') and forced to serve as combatants, servants, 'wives', or members of so-called 'suicide' squads. The particular harms suffered by women in armed conflict are diverse and complex, as must be the responses to them.

17. Mass groups of citizens flee the destruction and physical harm caused by conflict and become internally displaced persons or refugees. Many of these uprooted and displaced persons are females of all ages, including unaccompanied girls and older women, whose male family members are combatants, have disappeared, or died. In fleeing, whether across international borders or internally, women and children may be vulnerable to violence and abuse en route. Problems faced by women in refugee camps include lack of physical security and privacy, sexual exploitation, physical and mental illness, lack of suitable occupation and income-generating opportunities, and lack of control over matters traditionally within their domain. The social dislocation and disruption that accompanies flight from armed conflict may lead to increased intimate violence.

18. At the same time, during times of armed conflict and the collapse of society it entails, women, whether or not displaced, play an especially important role in attempting to preserve social and familial order. Historically, neither the particular forms of harm suffered by women, nor their role in maintaining some form of social order during conflict and in post-conflict reconstruction have been addressed in legal and political processes.

19. Women and girls suffer predominantly or exclusively from specific types of harm during peacetime and armed conflict both because they are female, and because of the 'historically unequal power relations between men and women

which have led to domination over and discrimination against women by men and to the prevention of women's full advancement'. 5/ Women are targeted because of their sex and because of their societal roles, notably those of mothers and caregivers. However it is important not to concentrate solely upon the forms of sexual abuse, shocking as they are, but also to understand and respond to the many other deprivations of basic rights suffered by women during armed conflict.

20. Some forms of harm, which include violations of human rights and human dignity; all forms of adverse discrimination; harassment; torture and cruel, inhuman and degrading treatment, including rape and sexual violence; all forms of slavery and servitude; forced prostitution and other forms of sexual slavery; arbitrary detention and confinement amount to persecution, regardless of the status of the perpetrator. These harms may be considered as forms of gender-based persecution, whether they are the result of acts committed by governmental or non-governmental forces, or by forces or individuals that the government either tolerates or fails to control. Although the term 'gender-based persecution' does not appear within any of the legal instruments, it encompasses the forms of harm that are regularly suffered by women and girls everywhere and which are directed at them because of their sex. These forms of harm are not always recognized by decision-makers in courts considering criminal charges against perpetrators, or in claims for refugee status and asylum.

21. Since the Vienna World Conference on Human Rights in 1993, there have been significant developments in the treatment of harms experienced by women in situations of conflict. The ad hoc Tribunals for War Crimes Committed in Former Yugoslavia, and Rwanda, both explicitly incorporate rape as a crime against humanity within their jurisdictions. The Statute of the latter Tribunal also includes rape as a violation of common article 3 of the Four Geneva Conventions. Through prosecutorial policies, forced sexual penetration has been charged under this Statute as constituting a grave breach of the Fourth Geneva Convention, relative to the protection of civilians in times of war and as constitutive of enslavement and torture and crimes against humanity 6/. The Rules of Procedure and Evidence, in Rule 96, recognize the need for particular evidentiary exclusions in cases of rape and sexual assault. The United Nations has appointed a Special Rapporteur on Violence against Women. The Inter-American and European regional human rights bodies have also found rape in conflict to constitute violations of the human rights obligations of States under the respective human rights conventions 7/. Some States have formulated guidelines for decision-makers with respect to gender-related claims for asylum. 8/

22. It is essential that these advances are maintained and further progressed. Other mechanisms that currently take little account of the relevance of gender-based persecution in armed conflict should be encouraged to incorporate this dimension into their work. Existing legal mechanisms at the national, regional and international levels must become aware of the manifestations of gender-based persecution, whether they are exercising jurisdiction over individuals, international organizations or State agencies, and whether they are concerned with violations of human rights, criminal charges or claims for asylum brought by women. It is also important that legal definitions of heads of jurisdiction incorporate this understanding; that genuine access to such tribunals is not restricted for women; that appropriate rules of evidence and procedure are adopted; and that the question of redress for harms suffered by women victims is given full consideration.

23. In 1998 a diplomatic conference will consider the draft Statute for a permanent International Criminal Court (ICC), prepared by the International Law Commission, and reviewed and amended by the successive preparatory commissions. It is essential that women's issues are fully addressed and a gender perspective incorporated in these negotiations and included in the final Statute.

24. In 1992 the Secretary-General of the United Nations considered the issue of security in the post cold war era and in "An Agenda for Peace" addressed the inter-related concepts of peacemaking, peace-keeping and peace-building. In the 1995 Supplement to "An Agenda for Peace" these concepts were further examined in light of the ethnic and nationalist conflicts that had erupted, as well as the question of sanctions and disarmament. Although the security dimensions of poverty, environmental degradation, violations of human rights, including racial discrimination, and economic tensions were recognized, security remains primarily understood as State security from foreign or other intervention.

25. Security can also be understood in a broader way that encompasses a state of well-being in which an individual or group has the assurance of protection from physical and mental harm, freedom from fear and anxiety and is able to live life with dignity. For women this includes freedom from the fear of gender-based persecution in peacetime and armed conflict. Regretting that the particular threats to women's security were not given separate

consideration in the UN's "An Agenda for Peace", the meeting considered it essential that full examination is given to threats to women's security in armed conflict. The legal distinction drawn in the 1949 Geneva Conventions and their 1977 Additional Protocols, between international and internal armed conflict that underpins the laws of war, is not relevant to this broader understanding of security and to consideration of the appropriate legal, political and social measures to enhance attainment of that security. Nor can it be assumed that the end of armed conflict, or a concluded peace agreement, entails the end of gender-based persecution, which may take different forms in the reconstruction of society.

26. Accordingly, the meeting considered that particular attention should be paid to three specific areas: existing and future legal mechanisms for the consideration of claims of violations against women of the laws of armed conflict and human rights abuses; ways of enhancing women's security in armed conflict; and the legal claims and needs of women refugees and internally displaced persons. The need to view women as able to influence their own destiny and act as agents for transformation and not merely as passive victims was emphasized as fundamental.

B. Themes in discussion

27. Certain themes cross-cutting the areas with which the meeting was concerned prevailed throughout the initial discussions. The first, was the need to examine existing international legal definitions to determine whether they encompass claims brought by women and address women's interests. Gender neutral language, for example in human rights treaties or the Geneva Conventions and Additional Protocols, can obscure those harms that are suffered predominantly or exclusively by women. Definitions may need to be deconstructed to ensure the inclusion of women and women's interests in mainstream legal principles. All forms of prohibited conduct under international law are traditionally analyzed and deconstructed for the purposes of preparing criminal indictments, or for determining the existence of human rights violations. Definitions need to be formulated and incorporate the progressive development of the law, for example in the context of jurisdiction of the proposed ICC.

28. The understanding of armed conflict was considered in the context of the reality of the occurrence of gender-based persecution in States where the factual existence of armed conflict is not acknowledged by governments or the international community. The need for context-specificity was emphasized, for example with respect to understanding different factors that contribute to gender-based persecution and its different manifestations. The example of forms of slavery was discussed and it was noted that traditional practices sometimes combine with contemporary conflict to create conditions of slavery for women. Each situation must be examined in its own social, economic, political, geographic and cultural context.

29. The second theme was identification of obstacles to the attainment of women's security during and in the aftermath of armed conflict. These include:

- the demands of religious extremism and the targeting of women for real or perceived failure to comply with religious or social mores, especially in light of the embodiment of cultural identity in women;
- the perception of violations of women's rights as personal and private, not public matters;
- lack of reliable data on the incidence of gender-based persecution due to the unwillingness of women to report offences committed against them and the failure of authorities to recognise them as such;
- women's traditional role within the private arena, especially as caregivers for the young, the wounded and the elderly, may restrict their own individual options and make them easy targets;
- women's multiple identities, for example those based on race, ethnicity, nationality, class, age, disability, and sexuality, may interact with, and obscure, gender-based persecution;
- the lack of women in national, regional and international decision-making bodies, especially those relating to national and international security;
- lack of understanding by those in authority of women's reactions in situations of armed conflict.

30. The third theme was identification of women's needs. Appropriate legal, political or social response rests upon adequate identification of needs which should be investigated, not assumed, and will vary according to the particular

conflict and women's location within it. They will also change over time, especially if the conflict is lengthy, or results in long-term military occupation. Needs may include:

- Protection, from immediate risks such as physical, violent attack upon themselves and their children; from detention or internment; and from forced prostitution and sexual slavery. Displaced women have special needs of protection, whether or not they have crossed international boundaries;
- Basic services for survival, including shelter, water, sanitation, etc;
- Protection from the economic and social destabilization, deepening levels of poverty and lack of resources due to the collapse of the civilian infrastructure;
- Assistance with children whose lives have been dislocated by conflict and where education and other services have been disrupted. Women may have been left alone to care for their own children and others, who have become separated from their families;
- Health services, particularly those directed at the necessary treatment in the aftermath of violent attack, such as reproductive health, treatment for sexually transmitted disease, counselling, psychological care;
- Accessible legal and social services, including for those responsible for investigating the commission of crimes and atrocities, whether national or international. Such services must be physically close and accessible, and staffed by people trained in identifying those who may have suffered violent abuses and in appropriate investigation, interviewing, and medical examination techniques. They should include sufficient numbers of women;
- Women combatants have special needs, including appropriate responses to the pressures relating to denial of status and promotion, harassment and sexual abuse within the ranks of their own armed forces, as well as potentially as prisoners of war;
- Land-mine clearance, as civilians killed or maimed by land-mines during and after conflict are predominantly women and their children. 9/

31. The fourth theme was the determination of responsibility and accountability for gender-based persecution. The role of a number of actors is relevant: States, individuals, intergovernmental organisations, international peace-keeping forces, non-state actors comprising international civil society, including religious bodies, and the media.

32. The fifth theme was to consider ways of implementing and enforcing legal obligations with respect to the conduct of war and the guarantee of human rights.

33. In making its recommendations with respect to the protection of women in armed conflict and its aftermath, the meeting emphasized that it was committed to and interested in the prevention of conflict. It did not accept the inevitability of violent conflict and stressed the need for members of the international community to divert resources from military expenditures and commit adequate resources and energy to preventive diplomacy, pre-emptive measures, and the understanding and development of a culture of peace. Women's long-standing contributions to the understanding of peace should be acknowledged and drawn upon. Further, the meeting considered that the responsibility of the international community, through such bodies as the specialized agencies and aid agencies, is crucial for preparing programmes that are helpful for women in a way that is relevant to their own perceived needs, before, during, and after conflict. Such programmes should support women's own efforts and ensure women's equitable access to resources and sharing of responsibilities.

C. Conclusions and recommendations

34. The meeting adopted conclusions and recommendations. These were made in the light of the Report of the Expert Group Meeting on Political Decision-Making and Conflict Resolution, The Impact of Gender Difference, held in 1996, 10/ the recommendations of which it endorsed, and the 1997 Agreed Conclusions of the Economic and Social Council on mainstreaming a gender perspective into all policies and programmes of the United Nations system 11/. The conclusions and recommendations of the meeting were formulated to take forward and develop the strategic objectives and actions identified in the Platform for Action, especially in critical areas D, E and I.

35. The meeting structured its conclusions and recommendations under the following headings:

- Legal definitions and standards;
- Training, dissemination and education;
- Participation;
- Implementation, monitoring and accountability.

36. The recommendations are directed at the United Nations system, intergovernmental bodies, especially the Commission on the Status of Women (CSW) and human rights treaty bodies, especially CEDAW, regional bodies and mechanisms, NGOs and other actors in civil society. The meeting emphasized that further and continuing research by United Nations and other bodies, including INSTRAW, into the impact of armed conflict upon women is essential and should be appropriately funded.

37. The meeting recommended that:

- Appropriate financial resources should be made available to implement fully the recommendations agreed by the expert group meeting;
- Financial support for the implementation of the recommendations should be a priority for Member States, the United Nations, its funds and programmes, NGOs and other areas of civil society, including the private sector.

I. RECOMMENDATIONS WITH RESPECT TO LEGAL DEFINITIONS AND STANDARDS

38. The meeting recognized that women and men are affected by international crimes. Women are subjected to all forms of prohibited conduct in times of war, but the commission of sexual violence during armed conflict disproportionately affects women. Reiterating that the spirit and purpose of international criminal law is to protect all humanity from all international crimes, the meeting recommended that:

- The governing statute of the proposed ICC declare in its substantive part that all its provisions shall be governed by the international legal norm of non-discrimination on the basis of sex;

- Sex-based crimes be referred to in the Statute of the ICC, but they should not be explicitly defined, so that the legal meaning of these crimes can be informed by the progressive interpretation of international law. In particular, rape in the context of the Statute of the ICC should be left undefined, but the elements of the crime should be understood in the practice of the future Court as forcible penetration of the vulva, anus or the mouth by the penis or of the vulva or anus by any object.

39. The meeting recalled that the human right of equality before the law is recognized in the International Covenant on Civil and Political Rights (ICCPR) and elaborated in the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). Equality before the law predicates that women have equal access to the protection of the 1951 Convention Relating to the Status of Refugees (Refugee Convention) and its 1967 Protocol. The meeting recommended that:

- Discrimination in the interpretation and application of the Refugee Convention be recognized as in contradistinction to the Convention on the Elimination of All Forms of Discrimination against Women;

- The propositions articulated in this report with respect to the determination of refugee status and refugee women be incorporated into the United Nations High Commissioner for Refugees (UNHCR) Handbook on the Procedures and Criteria for the Determination of Refugee Status and the Guidelines for the Protection of Refugee Women;

- States parties to the Refugee Convention adopt guidelines with respect to gender-related asylum claims;

- The interpretation of the definition of refugee for the purposes of the Refugee Convention and its Protocol should be informed by international human rights and humanitarian law. In particular, these legal frameworks should be drawn upon to distinguish lawful conduct in armed conflict from that which constitutes persecution and to demonstrate that lawful conduct in armed conflict may constitute persecution.

40. The meeting noted that sexual violence may constitute torture and other serious violations of human rights or a war crime or a crime against humanity.

As sexual violence in the context of armed conflict contravenes norms of international human rights and humanitarian law, the expert group considered that it meets the definition of 'persecution' in international refugee law.

41. The meeting recognized that severe discrimination and harassment,

particularly, but not exclusively, in armed conflict or in an atmosphere of insecurity may constitute persecution. It considered that severe restrictions on women's enjoyment of their human rights, including with respect to education, employment and freedom of movement, such as forced seclusion, meet the definition of persecution for the purposes of the Refugee Convention in those cases where women experience such restrictions as profound violations of their dignity, autonomy and status as human beings. The meeting noted that penalties imposed on women for violating social mores which do not amount to violations of human rights may be disproportionate. In such circumstances, social mores, and the threat of penalty for their transgression, taken together, will amount to persecution. Women who have been subjected to sexual violence in armed conflict or otherwise may face ostracism, stigmatization, discrimination, exclusion or violence from their families or communities as a result. The meeting recommended:

- Recognition that such ill-treatment may constitute persecution. In addition, it considered that past persecution, combined with the risk of ill-treatment on return, may give rise to compelling reasons for non-return.

42. The meeting agreed that torture may take many forms, and includes physical and psychological abuse. It defined torture to include threats to family members and forced witnessing of or participation in harms to family members and others. Torture, whether perpetrated during armed conflict or otherwise, constitutes persecution for the purposes of the Refugee Convention. The meeting recommended that:

- Sexual violence be considered to be within the definition of torture for the purposes of the United Nations Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment, 1984 (CAT).

43. The meeting considered that the number of persons at risk of persecution is irrelevant to the definition of conduct as persecution. It agreed that serious violations of human rights meet the definition of persecution whether they are perpetrated against one or many people.

44. The meeting agreed that feminism constitutes '-political opinion' for the purposes of defining who is a refugee in the context of the Refugee Convention. It considered that political opinion or imputed political opinion may be determined from behaviour as well as expressed opinion. It noted that behaviour by a woman that does not conform to cultural or social norms with respect to gender roles may be construed as political opinion with respect to gender roles or the political opinion, feminism. The meeting also pointed out that peaceful activities by women in the course of armed conflict may be construed by opposing groups to impute political opinion. Political opinion may also be imputed to women as a result of the political opinion of male family members. The meeting recommended that:

- Persecution as a result of expressed or imputed feminism, or failure to conform to conventional gender roles, or because of activities during armed conflict or imputed opinion as a result of the opinion of family members should all be regarded as persecution on the grounds of political opinion for the purposes of the Refugee Convention.

45. The meeting noted that women may be persecuted because they are members of a particular family or clan. It recommended that:

- Persecution as a member of such a group be considered as persecution on the grounds of membership in a particular social group for the purposes of the Refugee Convention.

46. The meeting suggested that women are often persecuted, mainly, partly or solely because they are women. It recommended that

- Where a woman's sex or gender is a significant reason for persecution, her fear of persecution should be recognized by decision-makers as being on account of her membership in a particular social group under the Refugee Convention. In making this recommendation, the meeting emphasized that a woman need not prove that all other women have a well-founded fear of persecution or conversely that she would be singled out from among other women. It is sufficient if the fact that she is a woman is an important reason why she will be persecuted. In addition, the meeting stressed that women may fear persecution on account of race, religion, nationality or political opinion and that fear of persecution on these grounds may combine with fear of persecution as a result of membership in the particular social group "women".

47. The meeting took note of the emerging practice of the Security Council using its powers under Chapter VII of the Charter of the United Nations to create '-safe havens' or '-secured zones' intended as a means of protection in situations of armed conflict. The meeting recommended that:

- Where such mechanisms are used, they should truly meet the definition

of safe haven or secured zone and such haven or zone cannot exist unless there are resources committed to its creation and establishment; its objective is clarified and its mandate articulated in full. The ability to protect and to secure must be ensured, and no individual should be required to go into or to remain in such a zone in the absence of true and voluntary consent;

- The presence of safe havens and secured zones should not affect a woman's ability or right to seek or obtain asylum in another country.

48. Noting the complex gender issues which arise in the context of the creation and operation of safe havens or secured zones, the meeting recommended that:

- The Secretary-General convene an expert group meeting on peace-keeping forces, their membership and accountability, and their role in maintaining the protection of civilians, including women and men, in areas of armed conflict, with special reference to the internally displaced and those located in or moved to safe havens or security zones;

- The proposed meeting should consider the appropriateness of, and conditions for, the use of force to maintain that protection, and the implications for women as well as men.

II. Recommendations relating to training, dissemination and education

49. Many of the meeting's recommendations relate to the need for training, education and dissemination of information, as well as attitudinal and behavioural change, as ways of developing a culture of respect for peace, human rights and gender equality. These recommendations, informed by the Nairobi Forward-looking Strategies and the Beijing Platform for Action, are directed at the military, including peace-keeping forces, civil society, professional and other specialist bodies, including those active in the application of the laws.

50. The meeting recommended that:

- In training and preparations of materials the expertise within the Division for the Advancement of Women, UNIFEM and UNICEF should be drawn upon and utilized. The impact of such training should be independently monitored, evaluated and assessed on a long-term basis;

- States should take seriously their legal obligation to disseminate more widely the Geneva Conventions and Protocols at national, regional and international levels. Similar steps should be taken to disseminate and enhance the understanding of the substantive law of the ad hoc War Crimes Tribunals, and, as it emerges, of the ICC. Standards in international human rights instruments and mechanisms of implementing these standards should also be widely disseminated. Electronic as well as traditional means should be used for the purposes of dissemination;

- Information on the jurisdiction and procedures for accessing the ad hoc War Crimes Tribunals, human rights treaty bodies and other relevant mechanisms should be widely and actively disseminated by Member States, the United Nations system and NGOs, including to women's groups and in local languages;

- Tolerance for diversity, respect for human rights and gender sensitivity should be included in national education curricula at primary, secondary and higher levels, including in teacher training. Curricula should also incorporate international humanitarian law and human rights law, including the jurisdiction and work of the ad hoc War Crimes Tribunals;

- Legal education, including continuing legal education for members of all levels of the legal profession should incorporate international humanitarian law, human rights law and gender issues. Continuing legal education should be available to the Office of the Prosecution, the staff of the Registry, the members of the defence bars of the Ad hoc War Crimes Tribunals and the ICC, and the international judiciary;

- Adequate professional support and appropriate gender training should be provided for all departments of the ad hoc War Crimes Tribunals and the ICC, especially the Witness Protection Unit of the Registry;

- All UN peace-keepers should receive adequate training in international humanitarian law, human rights law and gender issues. The training and pre-training programmes of UN peacekeepers with regard to their mission should reflect sensitivity to women's particular security rights and be informed on cultural specificities. Trainers should include civilians, women and experts in gender issues. A Code of Conduct for UN peace-keepers should be elaborated, including behaviour of forces with respect to women. Women in afflicted areas should be given training in land-mine awareness classes that are accessible to all people;

- All persons involved in refugee determination must be trained with respect to the impact of trauma, cultural difference and sex difference on the willingness of women to disclose gender-based persecution, their ability to present their stories, and assumed links between demeanour and credibility. Training materials consistent with the Guidelines of UNHCR, revised in accordance with this report, and other relevant documents, which are prepared by one State, should be made available to others. Compliance with training directives should be monitored and the impact of training independently assessed;

- States should be encouraged to ensure full incorporation and implementation of international humanitarian law, including the jurisprudence of the ad hoc War Crimes Tribunals and the ICC into national legal systems. Law enforcement agencies should receive appropriate training as to the obligations resulting from this body of law and their gendered aspects.

III. Recommendations relating to participation

51. The meeting recognized that the absence of women from the national and international decision, law and policy-making processes means that their interests are less likely to be raised, and that this affects the conditions of peace and war. It recommended that:

- States should be required to conform to the policies of gender balance, gender integration and gender mainstreaming agreed in the Platform for Action, resolutions of the General Assembly and the 1997 agreed conclusions of ECOSOC on mainstreaming a gender perspective, in general and when providing gratis personnel to the UN;

- Women should be encouraged to participate in decision-making at all levels and the UN and Member States should be encouraged to ensure that all initiatives for peace are engendered;

- All relevant international bodies, for example the International Law Commission, the ad hoc War Crimes Tribunals, the ICC, the human rights treaty bodies, and extra-conventional human rights mechanisms should reflect an equitable gender balance at all levels. The recruitment, appointment and promotion of all staff, including at the ad hoc War Crimes Tribunals, and the ICC should be transparent and governed by the policy statements of the Secretary-General with respect to gender balance within UN agencies. The same principles should apply to seconded personnel;

- Gender balance in international judicial posts should be an explicitly stated goal; gender balance should be a consideration in judicial appointment alongside the existing requirements of geographic distribution, and professional and personal qualities;

- Networks to identify appropriate candidates should be established and data bases maintained by, for example, the Division for the Advancement of Women. States' responses to the policies of gender balance and gender mainstreaming should be monitored by CEDAW through the initial and periodic States parties' reports. The Special Adviser on Gender Issues and the Advancement of Women and the UN High Commissioner for Human Rights should develop pro-active roles in monitoring these policies.

52. The meeting considered that gender balance and gender integration are essential in all security and law enforcement agencies, including peace-keepers, on the local, national and international levels, especially at the senior ranks of these bodies. The meeting noted that women are relative newcomers to the military in most States and in UN peacekeeping troops. Women in the military are frequently affected by the subordinate position of women in society, unequal status in the organization of the military and the traditional masculine culture of the military. Accounts of harassment, inhospitable environment and sexual exploitation within the military are manifestations of the vulnerability of women members of the military to these factors. This vulnerability exists within both regular and irregular armed forces. In his 1995 Report "Peace - Women in International Decision-Making", the Secretary-General found that despite these pressures, women perform well and make valuable contributions to peace-keeping and there is no reason to doubt the importance of their work in national forces. The meeting recommended that:

- Special measures be taken to integrate women within the military to ensure their security to perform their legitimate duties. Superior officers must take responsibility in ensuring that women are not isolated within the military and for the actions of subordinates.

IV. Recommendations with respect to implementation, monitoring and accountability

53. The meeting emphasized the importance of strengthening existing implementation and monitoring mechanisms and of integration of gender issues throughout. It considered that implementation, monitoring and accountability mechanisms include international judicial bodies, UN and regional human rights treaty bodies and extra-conventional mechanisms, other international processes such as the Secretary-General's representatives and special envoys. It also underlined the valuable role of non-governmental organizations and other aspects of civil society in monitoring the compliance with international standards and ensuring accountability.

54. The meeting considered that an essential aspect of accountability is ensuring accurate and extensive documentation of violations of women's security rights. It recommended that:

- Fact-finding and monitoring capacities of national and international NGOs and the UN human rights mechanisms be strengthened;

- Support be made available to the UN High Commissioner for Human Rights to take measures for ensuring the security of human rights monitors in order to facilitate performance of their tasks;

- Support for the continuing development and psychological needs of the staff members of the ad hoc War Crimes Tribunals, human rights monitors and special rapporteurs be made available, for example through the appointment of professional counsellors.

55. The meeting emphasized that investigations of atrocities committed by non-State forces including those by para-military bodies are essential. It also noted the importance of investigations of violations by UN and regional peace-keepers. International human rights law holds States responsible for their failure to ensure an environment in which human rights can be enjoyed and this can include the actions of non-state bodies. The meeting recommended that:

- The conclusions of any investigations should be made public and appropriate action taken by competent authorities. It drew the attention of the Secretary-General to this recommendation and urged appropriate action.

56. The meeting considered that increased awareness of the requirements of international criminal law can serve to mobilize shame with respect to the criminal behavior of States and individuals and address the culture of impunity. The meeting agreed that:

- The international community should take responsibility for the safety of those willing to testify before international tribunals to ensure effective administration of justice. An adequate protection programme for witnesses and potential witnesses and other forms of ancillary services, including physical and mental health, social and other services to promote the interests of witnesses and potential witnesses and to ensure the effective functioning of the ad hoc War Crimes Tribunals and the ICC is essential;

- A trust fund to assist in the provision of financial resources for witness protection and related services should be established.

57. The meeting emphasized the importance of State co-operation with international criminal tribunals in areas such as the execution of arrest, witness protection, securing warrants, ensuring due process requirements, by inter alia, appropriate national legislation. It recommended that:

- States be encouraged not to create artificial obstacles to implementation, for example by failure to ratify treaties.

58. The meeting noted that free print and electronic media can contribute to international respect for human rights and to the maintenance of strong civil society within countries. The meeting indicated that the media have a responsibility actively to seek to establish and expose violations of human rights and gender-based persecution in times of armed conflict and otherwise. In armed conflict distorted or pornographic portrayals of women dehumanise them and make them targets for abuse. The vital role of the media to make visible the atrocities committed in conflict cannot be underestimated. The media bears a responsibility to perform this function and to disseminate, as

widely as possible, accurate details of the occurrence of such atrocities, irrespective of the identity of the perpetrators. It recommended:

- Gender balance within all levels of the media to enhance a representative and democratic media;

- Attempts be made to afford safe access to members of the media and freedom to transmit be ensured.

59. The meeting recognized the important role that the United Nations Department of Information (DPI) and the United Nations Information Centres (UNICs) can play in contributing to international respect for a culture of peace. It recommended that:

- The DPI and its UNICs should recognize this role and take steps to ensure that press officers are fully cognizant of gender issues generally, including in the context of armed conflict.

60. The meeting emphasized that the international community must assist in the establishment or re-establishment of national permanent institutions after conflict, and in ensuring gender balance and the integration of gender-perspectives within them. It recommended that:

- Special attention should be directed to long-term health needs such as psychological consequences arising from trauma and the effects of violations of reproductive rights, such as being forced into bearing children or being denied the freedom to bear children;

- The World Health Organization should take initiatives to maintain and reconstruct health systems during and after conflict, and in so doing especially focus on ensuring the provision of physical and mental health services for women who have suffered the effects of armed conflict.

61. The meeting emphasized the need for land-mine clearance programmes and urged States to ratify the treaty on land-mines and support the Ottawa process.

62. The meeting recognized the potential of the human rights framework to promote and protect the interests of women affected by armed conflict. It recommended that:

- Issues relating to the treatment of refugee women in the countries of asylum and the treatment of internally displaced women in their countries of origin, returnees and women affected by armed conflict, should be addressed in the work of the United Nations treaty bodies, including the Committees on the Elimination of Discrimination against Women, the Rights of the Child, Economic, Social and Cultural Rights, the Elimination of the Racial Discrimination, against Torture and the Human Rights Committee;

- The Committee on the Elimination of Racial Discrimination be urged to take account of the interconnections between sexual violence and racial categories, particularly in times of political insecurity;

- States parties to treaties, and in particular the Convention on the Elimination of All Forms of Discrimination against Women, which continues to apply in situations of armed conflict and does not allow for derogation in times of national emergency, should be encouraged to include information on the measures that they are taking with respect to protecting, respecting and fulfilling the human rights of women refugees and asylum seekers, internally displaced women, returnees and women affected by armed conflict both within their borders and beyond, in their initial and periodic reports;

- The concluding comments or observations of human rights treaty bodies should address the specific issues of refugee and displaced women.

63. Taking account of the fact that the general recommendations and comments of the human rights treaty bodies have the potential to expand the interpretation of international human rights law and may be drawn upon by national courts to aid in interpretation and decision-making, the meeting recommended that:

- Treaty bodies consider formulating general comments on refugee, displaced women and returnees and incorporate issues relating to refugee, displaced women and returnees into other general comments;

- CEDAW consider formulating a general recommendation on refugee and displaced women, taking into account articles 1, 2, 4, 5, 10, 11, 12, 14, 15 and 16 of the Convention;

- In the preparation of its general recommendation on article 12, women's right to health, CEDAW reflect on the needs of refugee, displaced women, and returnees;

- CEDAW formulate a specific general recommendation on gender-based persecution in armed conflict;

- The Human Rights Committee and the Committee on Economic, Social and Cultural Rights take into account the effects of gender-based persecution on women in times of armed conflict in their formulation of general comments with respect to non-discrimination in the enjoyment of rights;

- Treaty bodies that have developed early warning or special report procedures should address the issues of women in armed conflict and refugee and displaced women in the context of those procedures;

- The Committee against Torture take account of incidents of torture of women in any investigations initiated under article 20 of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

64. Recalling the conclusions of the World Conference on Human Rights and the Commissions on the Status of Women and Human Rights in this regard, the meeting recommended that:

- The extra-conventional human rights mechanisms take account, within their mandates, of issues relating to women refugees, internally displaced and returnees, and those confronting women in situations of armed conflict;

- The impact of the 1995 expert group meeting on the development of guidelines for the integration of gender perspectives into human rights activities and programmes 12/ be assessed and that its recommendations be applied specifically to address the situation of women refugees, the internally displaced, returnees and women in armed conflict.

65. The meeting noted the important role of the International Committee of the Red Cross (ICRC) in implementing and ensuring compliance with international humanitarian standards. It also drew attention to the influential position of the Swiss Government as the depository of the Geneva Conventions. It recommended that:

- The ICRC consider steps to increase gender sensitive interpretation of international humanitarian law, including practices and policies relating to internally displaced women and measures that might be taken to enhance the status of its 1992 Aide Memoire relative to sexual crimes in times of war and make it more widely known;

- The Swiss Government consider including gender issues in its projected meetings on the application of the Geneva Conventions and their Protocols, the next of which is scheduled for 1998;

- The Swiss Government consider inviting other NGOs to participate in these meetings as observers;

- The ICRC consider, in accordance with its mandate, developing links, including methods to share information, with those bodies charged with oversight of international criminal law, including the ad hoc War Crimes Tribunals and the international and regional human rights mechanisms;

- The ICRC consider means of cooperation with treaty bodies in their supervision of the implementation of international human rights norms.

66. Noting the increasing number of United Nations field operations, particularly in the field of human rights, the meeting recommended that:

- UN field operations teams should be constituted in accordance with the principle of gender balance;

- UN field operations teams should draw on the expertise within the United Nations, including in the Division for the Advancement of Women, UNIFEM and UNICEF and NGOs and others as appropriate, to develop gender sensitive methodologies and guidelines and take cognizance of violations of women's human rights;

- The Office of the High Commissioner for Human Rights should fully incorporate gender as a component as it develops its field operations capacity.

67. Recognizing the important role of United Nations peace-keepers in contributing to global security, the meeting recommended:

- Mechanisms for monitoring peace-keeping forces should be introduced, particularly in respect to the impact of their activities on women;
- Mechanisms for monitoring should be accessible by affected civilians and should reflect the views of the civilian population;
- Violations of human rights by United Nations peace-keepers should attract disciplinary action and appropriate sanction;
- The Secretary-General consider the establishment of ad hoc committees to consider the deployment of peace-keeping forces in particular areas or in respect to particular conflicts. These ad hoc committees should work in partnership with UNHCR, DAW and UNHCHR with a view to ensuring full protection of human rights for all and a gender-sensitive approach in situations of armed conflict.

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ANNEX II

LIST OF DOCUMENTS

Background paper

EGM/GBP/1997/BP.1 Gender-based persecution in situations of armed conflict
Background paper prepared by the Division for the
Advancement of Women

Papers from the experts

EGM/GBP/1997/EP.1 Field experience with respect to gender-based persecution
in armed conflict
Prepared by Ms. Mary Balikungeri

EGM/GBP/1997/EP.2 Gender issues in the International Criminal Tribunal for
Rwanda
Prepared by Judge Navanethem Pillay

EGM/GBP/1997/EP.3 The Ad Hoc Tribunals' Response to Gender Based Crimes
Prepared by Ms. Patricia Viseur-Sellers

EGM/GBP/1997/EP.4 Some Views on Women in Armed Conflict, Based on Field
Visits and Personal Experience
Prepared by Ms. Elisabeth Rehn

EGM/GBP/1997/EP.5 Gender-based Persecution - the Legal Framework
Prepared by Ms. Christine Chinkin

EGM/GBP/1997/EP.6 Women in Armed Conflict
Prepared by Ms. Hina Jilani

EGM/GBP/1997/EP.8 Dignity in Dark Tall Women - the War in Sudan
Prepared by Ms. Asma Abdel Halim

EGM/GBP/1997/EP.9 Gender-based Persecution in Armed Conflict Focus Refugee
and Internally Displaced Women
Prepared by Ms. Audrey Macklin

EGM/GBP/1997/EP.10 Clinical Considerations in Gender-based Persecution
Prepared by Ms. Gill Hinshelwood

Observers' Papers

EGM/GBP/1997/OP.1 Statement by the Delegation of the Holy See presented by
Ms. Susan Scorsone

EGM/GBP/1997/OP.2 Statement of the Inter-American Commission of Women,
Organization of American States presented by Ms. Araceley
Conde de Paiz, Inter-American Commission of Women

EGM/GBP/1997/OP.3 Statement of the Economic Commission for Africa presented
by Ms. Souad Adbennebi

EGM/GBP/1997/OP.4 Statement of the Gender Caucus of the ICC Preparatory
Committees presented by Ms. Donna Axel

ANNEX III

Agenda and Programme of Work

Expert Group Meeting on Gender-based Persecution

Saturday, 8 November 1997

8:00 - 10:00 p.m. Registration of Participants

Sunday, 9 November

8:30 a.m. Registration of Participants

9:30 a.m. Opening of the meeting and opening statements:
- Division for the Advancement of Women
- Centre for Refugee Studies
Election of Officers
Adoption of Programme of Work

10:30 a.m. Presentation of background paper by the

Division for
the Advancement of Women

11:00 a.m. Break

11:15 a.m. Presentation of experts' papers
1. Gender-based persecution - the legal framework:
Ms. Christine Chinkin, London School of Economics and Political Science, United Kingdom
2. Dignity in dark tall women - the war in Sudan:
Ms. Asma Abdel Halim, Equality Now, Sudan
3. Gender issues in the proposed International Criminal Court: Ms. Alda Facio, ILANUD, Costa Rica
Discussion

1:00 p.m. Lunch

2:30 p.m. Presentation of experts' papers
4. Clinical considerations in gender-based persecution:
Ms. Gill Hinshelwood, Medical Foundation for the Care of Victims of Torture, London, United Kingdom
5. Reflections on prosecution of crimes of gender-based persecution:
Mr. Bernard Muna, Deputy Prosecutor for the Ad Hoc War Crimes Tribunal for Rwanda, Cameroon
6. Some views on women in armed conflict, based on field missions and personal experience:
Ms. Elisabeth Rehn, UN Special Rapporteur on the Situation of Human Rights in Bosnia and Herzegovina, the Republic of Croatia and the Federal Republic of Yugoslavia, Finland
7. Gender-based persecution in armed conflict: focus on refugee and internally displaced women:
Ms. Audrey Macklin, Dalhousie Law School, Halifax, Canada
Discussion

4:00 p.m. Break

4:15 p.m. Presentation of experts' papers
8. Field experience with respect to gender-based persecution in armed conflict:
Ms. Mary Balikungeri, Church World Service and Witness Rwanda Programme, Rwanda
9. The Ad Hoc Tribunals' response to gender-based crimes:
Ms Patricia Viseur-Sellers, Legal Adviser for Gender-related Crimes, ICTY, ICTR, The Hague, The Netherlands.
10. Gender issues in the International Criminal Tribunal for Rwanda, Judge Navanethem Pillay, South Africa
11. Women in armed conflict: Ms. Hina Jilani, Advocate, Pakistan
Discussion

Presentation of observers' papers
Discussion

6.30 pm Break

Monday, 10 November

9:30 a.m. Formation of working groups

10.30 am Working Groups

1:00 p.m. Lunch

2:30 p.m. Working Groups

6:30 p.m. Dinner

8:00 p.m. Working Groups

9:30 p.m. Break

Tuesday, 11 November

9:30 a.m.	Welcome address by Professor Lorna Marsden, President of York University, Toronto
10:00 a.m.	Working Groups
1:00 p.m.	Lunch
2:30 p.m.	Working Groups
4:00 p.m.	Presentation of reports of working groups
6:00 p.m.	Break

Wednesday, 12 November

9:30 a.m.	Adoption of the report of the meeting
11:00 a.m.	Break
11:15 a.m.	Adoption of the report of the meeting
12.30 p.m.	Closing session
1:00 p.m.	End of meeting

Notes

1/ The Commission on Human Rights agreed to appoint a Special Rapporteur on violence against women in resolution 1994/45. The Special Rapporteur's mandate was extended for a further three years by the Commission on Human Rights in resolution 1997/44.

2/ Preliminary report of the Special Rapporteur on Violence against Women to the Commission on Human Rights, E/CN.4/1995/42, 22 November 1994, paras. 261-292.

3/ A/Res/48/104, 20 December 1993.

4/ Platform for Action, para. 135.

5/ Platform for Action, paragraph 118.

6/ Gagovic and Others: the 'Foca' Indictment, IT-96-23-1, 26 June 1996

7/ Aydin v Turkey, European Court of Human Rights, September 1997; Mejia Egocheaga and another v Peru, Inter-American Commission on Human Rights, 1996.

8/ Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution, Issued by the Chairperson of the Canadian Immigration and Refugee Board in March 1993 and revised and reissued in 1996; Considerations for Asylum Officers Adjudicating Asylum Claims for Women issued by the United States' Immigration and Naturalization Service in 1995; Guidelines on Gender Issues for Decision-makers issued by the Australian Department of Immigration and Multicultural Affairs in 1996.

9/ Platform for Action, para. 138

10/ EGM/PDCR/1996/Rep.1, 7 November 1996.

11/ Agreed Conclusions 1997/1.

12/ E/CN.4/1996/105 (1995).

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