

## LECTURE

### Gender, Human Rights, and Peace Agreements\*

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I would first like to thank the organizers for the very great honor of being asked to present the annual Schwartz Lecture in 2002. It is especially apposite to discuss issues of international peace agreements in Ohio, not far from Dayton which is famous as the location of the process that brought an end to the war in Bosnia-Herzegovina.<sup>1</sup> However this lecture is going to examine issues that were not explored at Dayton, that is, some relationships between gender, peace agreements and international human rights. In addition, because the function of peace agreements in today's world has become the broader one of societal reconstruction, it will also consider the role of gender and human rights in peace building.

The notion of a peace agreement or settlement as a pivotal moment for determining the future constitutional and legal framework of a post-conflict zone has become dominant. The so-called "new wars"<sup>2</sup> of the post cold war era are not fought between states but within them between rebel groups and governments, or between rival factions and clans. Such wars are characterized by long term campaigns of attacks on towns and villages, typically with small arms and low technology weapons. Violence and the very goals of fighting are directed at the civilian population, through ethnic cleansing, the commission of gross violations of human rights and the spread of terror. Any long term resolution of such conflicts within the framework of

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<sup>1</sup> General Framework Agreement for Peace in Bosnia and Herzegovina, 35 I.L.M. 75 (Dayton Peace Accords, initialled Dayton, Nov. 21, 1995, signed Paris, Dec. 14, 1995). A description of the process by the United States' lead negotiator is found in RICHARD HOLBROOKE, *TO END A WAR* 231-321 (rev. ed. 1999).

<sup>2</sup> MARY KALDOR, *NEW AND OLD WARS: ORGANIZED VIOLENCE IN A GLOBAL ERA* (1999); MARK DUFFIELD, *GLOBAL GOVERNANCE AND THE NEW WARS: THE MERGING OF DEVELOPMENT AND SECURITY* 13-20 (2001).

an agreement must be sought in state and society building.<sup>3</sup> A peace agreement therefore seeks to find an acceptable compromise between the interests and positions of the warring factions that they can all accept and that can be sustainable. Despite the internal character of many such conflicts, the international community through individual or institutional negotiators are characteristically involved both in seeking these compromises and in providing support for their performance, as for example in Cambodia, Bosnia, East Timor, Kosovo, Sierra Leone and Afghanistan. The objective is to create security—territorial security, economic security, legal security and personal human security—through political and social reordering. In many such agreements, especially those brokered by American and European negotiators, there is a commitment to transform the conflict zone through the liberal concepts of democracy, the protection and promotion of human rights and the rule of law to provide the necessary stability and climate for economic investment. There appears to be an almost unquestioning faith about the appositeness of these principles to post-conflict situations, and their suitability for opening the area to the free flow of capital and foreign investment, irrespective of the causes of the specific conflict in question, the different actors or the diverse paths followed throughout the peace process.

A significant aspect of modern society that is almost always omitted from the processes of peace negotiations and the terms of any settlement is gender relations. Yet, as I have argued elsewhere, feminist critique of the key concepts—democracy, the rule of law and human rights—has found them to be problematic for women.<sup>4</sup> Feminist scholars and activists have challenged these concepts as providing a gendered vision for the reconstructed state that assumes male subjects and excludes women from its ambit. The rule of law has been shown to be based upon male premises about law and governance, the ideal or universal citizen is male, and democracy fails to deliver on its promise to women. International human rights law has been presented as predicated upon protecting men from state intervention in areas of predominant concern to men rather than upon guaranteeing human dignity and optimum choice to all individuals.<sup>5</sup> Since negotiating a peace process

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<sup>3</sup> See generally KALDOR, *supra* note 2.

<sup>4</sup> See Christine Chinkin & Kate Paradine, *Vision and Reality: Democracy and Citizenship of Women in the Dayton Peace Accords*, 26 YALE J. INT'L L. 103, 114–27, 153–68 (2001). This article is also an outcome of the John D. and Catherine T. MacArthur Foundation Research and Writing Award.

<sup>5</sup> HILARY CHARLESWORTH & CHRISTINE CHINKIN, *THE BOUNDARIES OF INTERNATIONAL LAW: A FEMINIST ANALYSIS* 201–49 (2000).

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offers a transformative moment to secure economic and social justice and human rights for all members of society, women and men, it is not surprising that women's non-governmental organizations (NGOs) have been active at the international level in seeking commitment to the inclusion of women in peace processes and the negotiation of peace agreements. The Fourth World Conference on Women at Beijing in 1995 asserted in the Platform for Action that "in addressing armed or other conflicts, an active and visible policy of mainstreaming a gender perspective into all policies and programmes should be promoted so that before decisions are taken an analysis is made of the effects on women and men, respectively."<sup>6</sup>

This policy goal translated into strategic objective E.1 requiring governments and international and regional institutions to: "Take action to promote equal participation of women and equal opportunities for women to participate in all forums and peace activities at all levels, particularly at the decision-making level . . ." <sup>7</sup> and to "[i]ntegrate a gender perspective in the resolution of armed or other conflicts . . . ." <sup>8</sup>

After the Beijing Conference women's NGOs continued their campaign for the inclusion of women in peace processes through other arenas. The General Assembly Special Session on Further Actions and Initiatives to implement the Beijing Declaration and Platform for Action, Beijing + Five, reiterated these principles.<sup>9</sup> On 23 October 2000 the United Nations Security Council held a so-called "Arria Formula" meeting<sup>10</sup> at which members of the Council engaged with NGO representatives and experts on women and armed conflict, and on 31 October 2000 the ground breaking Security Council Resolution 1325 was adopted. The resolution reaffirms the important role of women in the prevention and resolution of conflicts and in peace building. In particular the Security Council:

*Calls on* all actors involved, when negotiating and implementing peace agreements, to adopt a gender perspective, including, inter alia:

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<sup>6</sup> *Fourth World Conference on Women*, U.N. ESCOR ¶ 141, U.N. Doc. A/CONF.177/20 (1995).

<sup>7</sup> *Id.* at ¶ 142(a).

<sup>8</sup> *Id.* at ¶ 142(b).

<sup>9</sup> GA Res. S-23/3, U.N. GAOR, 23rd Special Sess., Annex ¶ 86(b), ¶ 86(c), U.N. Doc. A/RES/S-23/3 (2000).

<sup>10</sup> See <http://www.international-alert.org/women/>.

(a) The special needs of women and girls during repatriation and resettlement and for rehabilitation, reintegration and post-conflict reconstruction;

(b) Measures that support local women's peace initiatives and indigenous processes for conflict resolution, and that involve women in all of the implementation mechanisms of the peace agreements;

(c) Measures that ensure the protection of and respect for human rights of women and girls, particularly as they relate to the constitution, the electoral system, the police and the judiciary.<sup>11</sup>

Security Council resolution 1325 puts women onto the international agenda for peacemaking, peace-keeping, and peace-building.<sup>12</sup> Following the Beijing Platform for Action, it requires attention to be given to two separate concepts: gender balance in negotiation processes for societal reconstruction and gender mainstreaming in the terms of the agreements reached and their implementation. It thus forecloses any assertion by those involved that they did not think determination of women's priorities and needs to be relevant factors in post-conflict settlement. However the resolution needs to be made effective. Gender balance requires the inclusion of both women and men at all stages and in all roles within such processes, for example as members of the parties' negotiating teams, as mediators, as members of contact groups or as "friends of the Secretary-General" assisting in the process, as advisors or consultants, and in any civilian or military implementing body. Gender mainstreaming

is the process of assessing the implications for women and men of any planned action, including legislation [that might be required by the agreement], policies or programmes, in any area and at all levels. It is a strategy for making women's as well as men's concerns and experiences an integral dimension in the design, implementation, monitoring and evaluation of policies and programmes in all political, economic and social

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<sup>11</sup> S.C. Res. 1325, U.N. SCOR, 4213th Sess., at 3, U.N. Doc. S/RES/1325 (2000), available at [http://www.un-instraw.org/docs/S\\_RES\\_1325.pdf](http://www.un-instraw.org/docs/S_RES_1325.pdf).

<sup>12</sup> See *An Agenda for Peace, Preventive Diplomacy, Peacemaking and Peace-keeping*, U.N. GAOR, U.N. Doc. A/47/277-S/24/11 (1992) (Report of the Secretary-General pursuant to the statement adopted by the Summit Meeting of the Security Council on Jan. 31, 1992); *Supplement to An Agenda for Peace: Position Paper of the Secretary General on the Occasion of the Fiftieth Anniversary of the United Nations*, U.N. Doc. A/50/60-S/1995/1 (1995); see also *An Agenda for Peace*, G.A. Res. 47/120B, U.N. GAOR, 47th Sess., U.N. Doc. A/RES/47/120 B (1993).

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spheres so that women and men benefit equally and inequality is not perpetuated.<sup>13</sup>

Since the inclusion of women in peace processes has traditionally been very limited—there was only one woman within the negotiating teams at Dayton and none from the conflict zones<sup>14</sup>—in reality achieving gender balance means seeking ways of bringing women into the negotiations. Similarly, longstanding failure of those negotiating such agreements to take the separate and distinctive needs of women into account means that gender mainstreaming must be directed towards addressing this deficit.

Commitment to gender balance and mainstreaming requires us to identify the obstacles to women's participation in peace talks and to consider the difference it might make to the process if women were included. Some obstacles can be readily identified. Far fewer women have yielded the guns, and the allocation of power envisaged in peace agreements is limited to those who have been fighting for it. However even when women have fought and been part of the fighting units, as for example in Eritrea and Colombia, they are made invisible again at this point. Negotiating teams are usually drawn from government, diplomatic or military echelons. Women are largely absent from all these existing national power structures and thus are not considered for inclusion in international negotiations. But the problem is deeper than just under-representation in the political arena at the national level. Women may be excluded from public life by local custom and tradition. Even where they are not deliberately excluded, women's activities are not seen as political and/or even as directly engaging in public welfare. Stereotyped assumptions about women's roles means that their activities, including those of survival, coping, and building networks throughout the conflict, are simply not perceived by those conducting negotiations as relevant to organization and leadership in the post-conflict society. Those involved in negotiations may pay lip service to the need by including a broad range of people with knowledge of the conflict, but this does not extend to women who have lived through it. To achieve gender balance, international negotiators must change their biased mindsets and look holistically and from a critical gender perspective at the skills and expertise available from all sections of the community.

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<sup>13</sup> CHRISTINE CHINKIN, *GENDER MAINSTREAMING IN LEGAL AND CONSTITUTIONAL AFFAIRS* 12 (Tina Johnson ed., 2001).

<sup>14</sup> The British negotiation team included Ms. Pauline Neville-Jones, who initialled the Agreement on behalf of the UK. HOLBROOKE, *supra* note 1, at 251, 276–77.

Logistic and security issues also serve to exclude women. The practice of holding peace negotiations far from the local community, for example those held in Dayton with respect to the war in Bosnia, in Rome for that in Mozambique, in Paris for that in Cambodia, in Rambouillet for that in Kosovo, in Bonn for that in Afghanistan and in Lusaka, Sun City and Pretoria for that in the Democratic Republic of the Congo, makes participation by local people difficult. Where women have been targeted throughout the conflict and where there has been a high incidence of sexual violence, women may have security concerns about attending any negotiations which include representatives of their abusers. Other constraints might include the inability to access resources to attend or their caring commitments. Those responsible for the organization of peace talks should ensure that appropriate women are identified, that visible and suitable security arrangements for women are put in place, and that provision is made for their needs. Why should the picture of childcare arrangements at a peace conference seem so incongruous?

A further question is why is it important to ensure the presence of women at such processes? There is controversy over whether women negotiate differently, whether their "different voice"<sup>15</sup> facilitates finding connections and commonalities between opposing sides, and whether they can bring these skills to the peace table.<sup>16</sup> Whether or not women negotiate differently, there are other arguments for their inclusion. First, equal participation in public life is demanded by human rights standards of equality and fairness. One hundred and seventy three states are parties to the Convention on the Elimination of All Forms of Discrimination against Women, Article 8 of which requires member-states "to ensure to women, on equal terms with men, and, without any discrimination, the opportunity to represent their Governments at the international level."<sup>17</sup> No state has made a reservation to this article. Failure to include women in policy and decision-making about state and institution building violates this commitment and legitimates their subsequent exclusion from such positions within the state and its institutions.

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<sup>15</sup> See, e.g., CAROL GILLIGAN, *IN A DIFFERENT VOICE: PSYCHOLOGICAL THEORY AND WOMEN'S DEVELOPMENT* (New York Univ. Press 2d ed. 1993).

<sup>16</sup> HILARY ASTOR AND CHRISTINE CHINKIN, *DISPUTE RESOLUTION IN AUSTRALIA* 128-33 (2d ed. 2002).

<sup>17</sup> Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, art. 8, 1249 U.N.T.S. 13, *reprinted in* 19 I.L.M. 33, 38 (1980).

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Secondly, conflict is highly gendered, and women's different experiences during conflict are likely to be central to their determination of their post-conflict priorities and needs.<sup>18</sup> It is therefore essential that these experiences are fed directly into all stages of the process and taken into account. In modern forms of conflict, civilian women and children are deliberately targeted for abuse and violations. The gendered impact of conflict continues after the ceasefire. Since most of the fighting is between men, there is typically a demographic shift with women making up the majority of the population, many as female single parents and de facto care-takers of others displaced by conflict. The experience in Bosnia frequently recurs "[e]ven those whose partner did return from the war were characteristically responsible for re-establishing home life, assuring the well being of children, the sick, disabled, and elderly."<sup>19</sup> An effective peace process should be built on the widest base of experience and therefore must take account of local women's lived experiences during the conflict and their enormous responsibilities post-conflict. Gender balance does not mean the insertion of a few highly placed international women into the process but rather listening and responding to the diverse experiences of women who have lived through the conflict.

Finally, it is also important to move women from being perceived solely as victims of conflict to agents for transformation and empowerment. What is obvious from all conflict zones are the many movements, initiatives and networks that women build up and operate throughout its duration. Such movements often start as humanitarian and practical, for example seeking shared means of acquiring food and water to feed the family or creating informal schooling programmes. Other initiatives may be more overtly political such as forming groups to demand information about their disappeared male relatives. Women also occupy positions and take on roles previously filled by the men who are absent. The local conditions and the factors promoting and inhibiting peace are well known to local women and they can bring that knowledge to the peace table. Failure to include these views and ideas can lead to an impoverished understanding of peace and security that focuses on militarism and power supported by force.

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<sup>18</sup> See CHARLOTTE LINDSEY, *WOMEN FACING WAR* 33–36 (2001). This is an International Committee of the Red Cross study on the impact of armed conflict on women.

<sup>19</sup> Madeleine Rees, *International Intervention in Bosnia-Herzegovina: the Cost of Ignoring Gender*, in *THE POSTWAR MOMENT: MILITARIES, MASCULINITIES AND INTERNATIONAL PEACEKEEPING, BOSNIA AND THE NETHERLANDS* 51, 55 (Cynthia Cockburn & Dubravka Zarkov eds., 2002).

Despite their exclusion from formal peace processes, women have found ways to express their own visions for peaceful transformation of society, for example through parallel processes. This happened in 1919 when women from Europe and the United States gathered together in Zurich while the male representatives of the Great Powers negotiated the Treaty of Versailles.<sup>20</sup> More recently Afghan women came together in the Summit for Democracy held in Brussels from the 4th–5th of December, simultaneously with the UN Talks on Afghanistan held in Bonn.<sup>21</sup> This meeting was followed by a roundtable in Brussels on Building Women's Leadership in Afghanistan which brought together Afghan women from different backgrounds and political beliefs from within and outside Afghanistan and major donors and representatives from UN agencies. They reached agreement on a wide-ranging set of recommendations under different heads assessing the situation of women and gender issues in Afghanistan.

Another strategy is for local women to be informed about the peace talks by sending observers to the process who can report back to women's groups and through local networks such as churches. Such observers must be carefully chosen and receive training in their task, as well as supported in the feed-back process. However these means of associating women with the process are no substitute for direct participation. Observers have no formal role and parallel processes are easily marginalized. What we have to determine is how these strategies can be supported and how the ideas generated in informal processes can be brought into the formal ones. One unusual case is Burundi where UNIFEM (the United Nations Development Fund for Women) trained and assisted women to act as observers to the peace process.<sup>22</sup> At first, proposals that these women participate in the peace process were rejected by Burundians. Subsequently the facilitator of the peace process, former president of South Africa Nelson Mandela, invited UNIFEM to brief Burundi's nineteen negotiating parties on gender issues. Each of these parties then appointed two women representatives to attend the All-Party Burundi Women's Peace Conference, where women met with

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<sup>20</sup> CARRIE FOSTER, *THE WOMEN AND THE WARRIORS: THE U.S. SECTION OF THE WOMEN'S INTERNATIONAL LEAGUE FOR PEACE AND FREEDOM 1915–1946* 29 (Harriet Hyman Alonso et al. eds., 1995).

<sup>21</sup> Afghan Women's Summit for Democracy 4–5 Dec. 2001: The Brussels Proclamation, *available at* [http://www.equalitynow.org/afghan\\_womens\\_summit/brussels\\_proclamation.html](http://www.equalitynow.org/afghan_womens_summit/brussels_proclamation.html).

<sup>22</sup> SANAM ANDERLINI, *WOMEN AT THE PEACE TABLE: MAKING A DIFFERENCE* 21 (2000).



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Mandela and provided him with their recommendations with respect to their priorities for peace. The inclusion of a number of the Burundi women's recommendations in the peace accord suggests that UNIFEM had adopted an effective strategy and that a number of lessons can be drawn. First, the receptiveness of the international facilitator is all important. Secondly, it demonstrates the usefulness of an international agency in supporting local women in organizing and accessing the process. However, there must always be care to ensure that the recommendations are those of the local women and not those of the agency, or solely of elite or diaspora women. Third, it shows the importance of long term preparations. International agreements traditionally take many years and rounds of negotiation, typically starting from the outbreak of violence and continuing through its various phases on the ground. Despite the dislocation caused by the conflict, this gives time for preparations and consultations with women's groups through local networks such as churches and camps for internally displaced persons and refugees. However, such alternatives should be in addition to, not in place of, the goal of including women directly within the processes.

The participation of more women directly or indirectly within a peace process does not of itself ensure the inclusion of women's concerns within the substance of any agreement reached. The goal of gender balance in participation must be accompanied by that of gender mainstreaming in the substantive provisions agreed.

Women and men may have different needs and priorities in the reconstruction of their society and face different obstacles to achieving their objectives. People uprooted and dislocated by conflict have "different needs, vulnerabilities, capacities and coping strategies."<sup>23</sup> Women may also have different understandings of the causes of the conflict and thus of the appropriate concessions for bringing it to an end. Highly relevant to a gendered analysis of the conflict is the social, economic, and political position of women before and during the conflict, as well as in what might be called the transition to post-conflict. These are not a series of unconnected events, but rather patterns and behaviors revealing mindsets and obstacles.

The very concepts of post-conflict, reconstruction, and rehabilitation may be problematic. Just as women experience war differently so too are their experiences of post-conflict gendered. There can be no assumption that the violence stops for women with a formal ceasefire. Rather the forms and

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<sup>23</sup> *U.N.H.C.R. Policy on Refugee Women, Report of the Executive Committee of the High Commissioner's Programme*, U.N. GAOR, 41st Sess., U.N. Doc. A/AC.96/754 (1990), available at <http://www.unhcr.ch/cgi-bin/txis/vtx/home>.

location of gendered violence change. Their relations with war-traumatized children, family members, and former fighters all place gendered demands upon them. Demographic changes flow from the conflict. The disproportionate number of women impacts upon issues such as access to land, housing and social benefits, and return after internal or international displacement. Priority in social and health services may be proposed for those (primarily males) who fought in the conflict, contributing to hardship and poverty for those with social responsibility for the care of others. Focus upon addressing the ethnic or religious difference that fuelled the conflict can obscure continued sex-based discrimination. In turn, the intersections of ethnic or religious discrimination with sex should be identified and considered. Women's experiences throughout the conflict will have been diverse and there can be no assumption that all women will share the same ideologies or priorities. For example, for some there may be very specific health care needs, such as treatment for sexually transmitted disease and other consequences of rape; for others, finding information about missing relatives, sons and husbands who have disappeared may be their foremost concern; for others, this may be attempting to restore normality for their children; for all, economic survival will be essential. Particular categories of women may have specific needs. For example, former combatants may face difficulties in reintegration, especially where preferential measures are directed towards male combatants.

Not only is "post-conflict"<sup>24</sup> a misnomer for women, so too are the notions of reconstruction and rehabilitation. Both concepts assume an element of going back, restoring the status quo. But this is not necessarily what women seek.<sup>25</sup> The goal is not restored dependence and subordination but rather an enhanced social position that accords full citizenship, social justice, and empowerment based upon respect for women's human dignity and human rights standards that may never previously have existed.

I turn now to consider briefly some issues that might be included in a peace agreement if the negotiators took seriously the requirement of gender mainstreaming. First are the necessary institutional arrangements. The

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<sup>24</sup> "Post-conflict" is a highly problematic status, as there are many shared features of "conflict" and "peace." See David Keen, *War and Peace: What's the Difference?*, INT'L PEACEKEEPING, Winter 2000, at 1; DAVID KEEN, THE ECONOMIC FUNCTION OF VIOLENCE IN CIVIL WARS 56 (1998).

<sup>25</sup> Darini Rajasingham-Senanayake, *Ambivalent Empowerment: The Tragedy of Tamil Women in Conflict*, in WOMEN, WAR, AND PEACE IN SOUTH ASIA: BEYOND VICTIMHOOD TO AGENCY 106-08 (Rita Manchanda ed., 2001).

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agreement may have to address a three-way relationship between the designated leaders, the local population, and international agencies. Where the presence of UN or regional military or civilian personnel is envisaged, their level of involvement and mandates must be determined. The presence of international agencies may be advantageous to the furtherance of women's interests post-conflict. The presence of UN and other institutional military and civilian forces can provide a safe space for the civilian population in place of the violence of conflict and fear of attack that preceded their mobilization. Members of the international institutions may be allies for women against local communities resistant to women's empowerment and may be able to assist in accessing resources and in identifying leaders. However, they may also be an obstacle. International personnel may place excessive reliance on their mandate as set out in the agreement and be unwilling to go beyond its terms by establishing policies and practices addressing women's needs. This is one reason why it is important to ensure that these needs are directly addressed in the agreement, or at least explicit provision be made for their early consideration. Even where this has been done, an international bureaucrat unversed in gender matters may prove an additional hurdle for local women to overcome in presenting their issues and concerns. International agencies may be ignorant of local initiatives and programs and make no attempt to find out what is happening on the ground.

Members of international agencies can be positively harmful to women in that the presence of large numbers of unattached men creates physical security concerns for women, especially when they have available comparatively large amounts of money and can offer forms of employment. As seen in Cambodia, Bosnia, Somalia, and elsewhere, the presence of international military or peacekeeping forces creates the potential for increased prostitution, sexual violence, and connivance, or even participation in human trafficking. The consequences of such acts are serious and institutional safeguards must be put in place from the outset to protect the local community against them.

It has also been suggested that including more women in international military, police, and civilian forces would bring some positive differences in values and perspectives to peace-keeping.<sup>26</sup> For example, it might reduce incidents of sexual harassment and deter abuse of the local population. Evidence also suggests that good relations and trust between peace-keepers and the local community can be more easily developed by women UN

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<sup>26</sup> *Women 2000: The Role of Women in United Nations Peace-Keeping*, United Nations Division for the Advancement of Women, at 9, U.N. Doc. 1/1995 (1995).

personnel.<sup>27</sup> Greater attention should also be given to the provision of gender-specific security such as providing escorts for women to local decision-making bodies, or to food supplies.<sup>28</sup>

For the international presence to work for women, local women must be able to look for support from the international community and work in partnership with them. Channels for communication between local women and the international agencies must be established including coordination with local women's NGOs. International agencies should not be tempted to treat local women as "cheap service providers" but should "respect local agendas and involve local women in decision-making processes over the design of internationally sponsored projects."<sup>29</sup> Nor should local women become overwhelmed by having to "service" the international agencies instead of receiving the space and support in determining their own priorities and means of implementation.<sup>30</sup> This requires the determination of how gender issues are to be handled by the international agencies, for example through a separate unit dedicated to gender, the establishment of gender focal points throughout all operations, the appointment of specified gender specialists within different sectors, or some combination of these techniques.<sup>31</sup> Another issue is the need to ensure the participation of women at all levels and in all functions of the international agencies present in the post-conflict zone. This means overcoming the male predominance and bias of international institutions, but it is extremely difficult to urge gender equality in national institution building if the international bodies implementing the agreement conspicuously fail to adopt such standards in their own operations.

Institutional arrangements must be accompanied by gender mainstreaming of substantive issues. The following are merely some suggestions as to what might be included within a gendered settlement of conflict. Peace agreements directed towards societal reconstruction are likely

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<sup>27</sup> *Peace: Women in International Decision-Making: Report of the Secretary-General*, U.N. ESCOR Commission on the Status of Women, 39th Sess., Provisional Agenda Item 6 ¶ 38, U.N. Doc. E/CN.6/1995/12 (1995).

<sup>28</sup> *See generally* NORWEGIAN INSTITUTE OF INTERNATIONAL AFFAIRS, *GENDERING HUMAN SECURITY FROM MARGINALISATION TO THE INTEGRATION OF WOMEN IN PEACE-BUILDING* (2001).

<sup>29</sup> JULIE MERTUS, *WAR'S OFFENSIVE ON WOMEN: THE HUMANITARIAN CHALLENGE IN BOSNIA, KOSOVO, AND AFGHANISTAN* 50 (2000).

<sup>30</sup> *Id.*

<sup>31</sup> *See generally* KVINNA TILL KVINNA, *GETTING IT RIGHT: A GENDER APPROACH TO UNMIK ADMINISTRATION IN KOSOVO* (2001).

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to encompass means of protecting physical, economic and legal security within the relevant political units. The gendered dimensions of all these should be addressed. Time restricts full analysis, which in any case must always take account of local conditions, so I will restrict myself to some general comments.

International human rights standards underpin physical, economic, and legal security. The inclusion of human rights, including equality provisions, has become an accepted content of peace arrangements.<sup>32</sup> This may be done in various ways such as listing international human rights instruments in a peace agreement and stipulating them to be binding upon the parties, annexing them to the agreement, and/or incorporating them into the national constitutional frameworks.<sup>33</sup> However mere inclusion of human rights instruments is insufficient to guarantee to women the same protection of their rights as men. There must be understanding of the concept of women's human rights and a commitment to their implementation.<sup>34</sup> At a minimum, if the state is not a party to the Convention on the Elimination of All Forms of Discrimination Against Women, provision should be made for assistance to enable it to ratify or accede to the Convention and for the submission of its first report to the Committee on the Elimination of Discrimination Against Women. If the state is already a party, technical and practical assistance might be offered for fulfillment of its obligations. Attention should also be given to how a human rights culture can be developed and the role of civil society, including the media, in achieving this.<sup>35</sup> Too often peace agreements focus on the guarantee of civil and political rights to the detriment of the other half of the international human rights catalogue—economic and social rights. However the guarantee of economic and social rights has been

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<sup>32</sup> CHRISTINE BELL, *PEACE AGREEMENTS AND HUMAN RIGHTS* (2000).

<sup>33</sup> The Dayton Peace Accords, Annex IV contains the Constitution of Bosnia-Herzegovina, and Article II of the Constitution confirms the centrality of international human rights. Dayton Peace Accords, Annex IV, available at <http://www1.umn.edu/humanrts/icty/dayton/daytonannex4.html> (1995).

<sup>34</sup> CHARLESWORTH & CHINKIN, *supra* note 5, at 201–49.

<sup>35</sup> The Convention on the Elimination of All Forms of Discrimination Against Women states as an objective:

[t]o modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or superiority of either of the sexes or on stereotyped roles for men and women.

Convention on the Elimination of All Forms of Discrimination Against Women, art. 5, *supra* note 17.

considered especially significant for women's pursuit of citizenship on a basis of equality with men. Accordingly a rights-based approach should be taken towards the provision of needs,<sup>36</sup> especially access to appropriate, accessible, available, and affordable healthcare and education.<sup>37</sup> Economic and social rights must be guaranteed on a non-discriminatory basis. For example in Angola, disabled men have received prostheses from the army and other organizations to enable them to function in civilian roles. Women, who form a large proportion of those injured by landmines, however, until recently, did not receive such aids. Similarly, in Rwanda there are concerns that male prisoners accused of offenses arising from the genocide are receiving drugs for HIV/AIDS to keep them alive for trial while women victims of rape are not. Immediate healthcare needs must be identified and addressed such as attention to women's psycho-social health care, emergency, and reproductive health needs. There should also be planning for long term health needs, such as provision for courses at the village and neighborhood level to train women in health services, including health-education, child-delivery, and mother-child health-care.<sup>38</sup>

Education is central to the reconstruction of society including gender relations. When asked about their hopes for a peaceful society, women consistently mention their desire for education. Schools may need to be re-established after conflict (with special attention to schools for girls). Also the curriculum may need to be appraised: for example, to eliminate materials that present discriminatory or stereotyped views of women, or which omit salient facts, such as the exclusion of mention of the abuses suffered by the comfort women at the hands of the Japanese military in Japanese textbooks. The training offered to women should reflect their previously acquired skills and expertise and all the types of employment available. Women should not be assigned by the international community to jobs which are not commensurate with their skills and experiences. For example, in Afghanistan, the existence of women with training and experience in medicine, education, law, and other skills should be recognized as a critical resource in assisting women to re-enter public and political life. The resources women have are too frequently wasted by assumptions about their place in society that are not

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<sup>36</sup> Christine Chinkin, *The United Nations Decade for the Elimination of Poverty: What Role for International Law?*, 54 CURRENT LEGAL PROBS. 553, 564 (2001).

<sup>37</sup> Such an approach has been adopted in South Africa through the inclusion of economic and social rights in the Constitution.

<sup>38</sup> ANDERLINI, *supra* note 22. These recommendations are taken from the statement concluded by Afghan women, Brussels, Dec. 2000.

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tested by those on the ground. An anecdotal example is of a doctor in Kosovo who was on active duty during the fighting, but who afterwards was put in a program by an international organization to learn to knit “for her community” instead of being able to contribute her experience in health care.

Post-conflict women face particular threats to their security, in particular gendered violence. Violence against women undermines their autonomy, citizenship status, and human dignity. It is both a direct violation of women’s human rights and causes violations of other rights. Such conditions are antithetical to any real concept of democracy, and accordingly, steps must be taken to deal with violence against women that occurred during the conflict and gendered forms of violence that are likely to continue in ways still connected to the conflict. This continuing violence may be experienced by those suffering from post traumatic stress; by men returning to households headed by women during the war; by men facing dislocation and unemployment on return. The destruction of communities in the conflict may also mean the loss of social structures that might previously have offered a safety-net against such violence. The tensions between demands for justice for the commission of crimes of violence during the conflict through criminal prosecutions in a number of different arenas and those for reconciliation through some form of amnesty are well-known. Whichever approach is adopted, the need for other measures such as the provision of safe places, health care, and counseling services for those who have testified must also be recognized. Post-conflict arrangements may make provisions for the reintegration of soldiers—usually men—back into society, but not for that of rape victims and their return to normal life, other than the inclusion of such offenses in catalogues of international crimes committed in the conflict. Attention should be given to ways of addressing condemnation or ostracism of women and men who have suffered sexual abuse through broad education, training, and support.

The agreement should expressly require the state to accept the obligation to exercise due diligence in the prevention, punishment, and eradication of violence against women, for example by the incorporation into national law of the principles and recommended measures contained in the 1993 General Assembly Declaration on the Elimination of Violence Against Women.<sup>39</sup> For ongoing violence, measures such as safe places for reporting violence; secure refuges; and training of police officers, judiciary, those offering social aid, housing officials, and health personnel in dealing with violence against women should be given priority. Women should be appointed to all such

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<sup>39</sup> G.A. Res. 104, U.N. GAOR, 48th Sess., U.N. Doc. A/48/104 (1993).

positions. There may be pressures to return to the pre-conflict cultural mores, but there must be an insistence that cultural traditions can never justify violence, while drawing upon local expertise in determining ways to address it. A women's protection officer might be designated within UN administration (or elsewhere) to play a coordinating role, perhaps on analogy with the child protection officer established by Security Council Resolution.<sup>40</sup> An approach to violence against women that seeks long term, permanent mechanisms is not just for the benefit of women, for it has been suggested that "[s]ocieties with high levels of family violence are more likely . . . to be involved in wars compared to societies with lower levels of family violence."<sup>41</sup>

In some areas, human trafficking has greatly increased post-conflict. For example, since the Dayton Peace Accords women have been brought into Bosnia and sold as commodities. Trafficking emerges with the creation of a potential market for sexual services and the presence of large numbers of international personnel, mostly males.<sup>42</sup> The obstacles that women face post-conflict in realizing economic security, such as discrimination in employment and in access to credit, enhance their vulnerability to the risk of being trafficked while privatization as part of post-conflict economic reconstruction reduces the availability of social safety nets.<sup>43</sup> The spread of trafficking could have been foreseen, especially in a state where women were dehumanized and sexually abused throughout the conflict, but the extent of what was happening and its own involvement was not acknowledged by the international community until 1998. From that time a strategy has been developed to tackle trafficking from a human rights perspective and to attempt to deal with the problem on a long term basis, including through a national plan of action. Such action could have been introduced at the time of

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<sup>40</sup> "At a minimum, someone with particular expertise on gender issues should be leading a task force on protection issues affecting women and children." MERTUS, *supra* note 29, at 51.

<sup>41</sup> Mary Caprioli, *Gendered Conflict*, 37 J. OF PEACE RES. 51, 55 (2000).

<sup>42</sup> Madeleine Rees, Office of the High Commissioner for Human Rights field officer in Sarajevo, states that an approximate calculation is that the international community constitutes thirty percent of the customers of foreign women in Bosnia but provides eighty percent of the revenue of the men who control them. Rees, *supra* note 19, at 63.

<sup>43</sup> *Situation of Human Rights in Bosnia and Herzegovina, the Republic of Croatia and the Federal Republic of Yugoslavia, Report of the Special Rapporteur on Bosnia and Herzegovina*, U.N. GAOR, 54th Sess., and U.N. SCOR 54th Sess., ¶ 37, U.N. Doc. A/54/396, S/1999/1000 (1999).



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Dayton so as to have mechanisms in place from the outset in the same way as mechanisms relating to other threats to personal security were devised.

Peace settlements that are intended to promote economic stability, sustainable development, and increased investment must also lay the basis for national institution building and providing the infrastructure for democratic governance, application of the rule of law, and domestic security. Security Council Resolution 1325 emphasizes the importance of women's participation in constitution, judiciary, and electoral matters to ensure their input into future policy and law-making.<sup>44</sup> The inclusion of sufficient numbers of women in leading positions in such institutions must be guaranteed. However, the inclusion of an equality clause within the constitution or the adoption of anti-discrimination legislation are of themselves unlikely to be sufficient to ensure gender balance in political and legal positions. Specification within the international agreement of the inclusion of women within national structures at least provides international commitment to this goal. The agreement reached at the United Nations Conference on Afghanistan in Bonn, December 2001 stated that the interim government would be committed to the importance of the participation of women.<sup>45</sup> While the outcome has been disappointing, this agreement nevertheless demonstrates that women must continue to campaign internationally in support of local women and to remind the international community of its obligations towards ensuring that women are not omitted from decision-making bodies.

Where ethnic divides have been integral to the conflict, the agreement may include provisions relating to the ethnic composition of leading institutions (legislature, judiciary, army). Any such guarantees should also include gender requirements. A further need is training of women to enable them to take up public positions and to pre-empt any argument that there are inadequately trained women, an argument that begs the question about who is "suitably qualified for such positions." The male leaders who have led the state into conflict?

If quotas or targets (with timetables and allocation of responsibility for monitoring their achievement) are not included within the agreement itself, it may be necessary subsequently to take steps to introduce them, for example

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<sup>44</sup> S.C. Res. 1325, U.N. SCOR, 4213th mtg., at 3, U.N. Doc. S/Res/1325 (2000), available at [http://www.un-instraw.org/docs/S\\_RES\\_1325.pdf](http://www.un-instraw.org/docs/S_RES_1325.pdf).

<sup>45</sup> *Agreement on Provisional Arrangements in Afghanistan Pending the Re-establishment of Permanent Government Institutions*, § 3 (2001), available at <http://www.uno.de/frieden/afghanistan/talks/agreement.pdf>.

the work of the OSCE in Bosnia and Kosovo which includes strategies for targeting potential candidates, networking and educating women voters, as well as requiring that women represent one third of each candidate list. The appropriate level of women's representation remains controversial. There seems to be some growing understanding that thirty percent is sufficient to create a critical mass of women that can then make an impact upon policy and decision-making.<sup>46</sup> However this is a weakening of the standard of equality and its acceptance might undermine the commitment to that standard.

Finally, I would argue that in compliance with the commitment made at Beijing a gendered analysis of any peace agreement should be undertaken before its finalization. International negotiators and mediators should do this by testing the terms of any agreement reached against a checklist of questions. This should be understood as required by Security Council Resolution 1325, and in turn the Security Council should not adopt an agreement or use it as a basis for the provision of international peacekeepers and agencies unless this has been done. The following questions, adapted from those devised by the Oslo Peace Research Institute, would serve as the basis for such a checklist:

- Who served as members of negotiating teams, negotiators, and mediators? In the national teams? In the international teams?
- What was the position of women before the conflict? What was the position of women during the conflict? What roles did women undertake? Has there been analysis of the different roles of women and men? In effect, has there been a gender audit?
- Has there been consultation with local populations? How were people chosen for consultation? How was the consultation carried out? Were women consulted separately and apart from the men? Who can speak on behalf of different women? Were those within the conflict area consulted separately from diaspora women?

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<sup>46</sup> The Committee on the Elimination of Discrimination Against Women has noted that “[r]esearch demonstrates that if women's participation reaches 30 to 35 percent (generally termed a “critical mass”), there is a real impact on political style and the content of decisions, and political life is revitalized.” The Committee on the Elimination of Discrimination Against Women General Recommendation No. 23, art. 7, political and public life ¶ 16 (1997), *available at* <http://www.hku.hk/ccpl/b CEDAW/wgr23.htm>.

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- What were the objectives of the process—to achieve just a ceasefire or to provide for post-conflict societal reconstruction? If the latter, what are the goals of post-conflict reconstruction? Who decided them within the conflict area and outside? Who was consulted? Are the goals shared equally between women and men? By all women and all men? How do we know? If they are not so supported, why should they be pursued?
- Does the agreement that lays the groundwork for post-conflict reconstruction contain gender specific or gender-inclusive terms? Who is it really directed at? Women? Men? Both? Do they have similar roles under the Agreement? How are each conceptualized: as active agents of change; passive victims; stakeholders; beneficiaries; experts; professionals?
- What is the gender breakdown of this conceptualization and how is it rationalized?
- Who has constructed “woman” and “man”? Who will do so in the future? How do those constructing post-conflict society know what is good for women? What steps have been taken to ensure monitoring for the effects of the transition on women?
- Whose constraints and potentials are addressed throughout the settlement and proposed reconstruction?
- Whose interests are given priority through the transition? Why?
- What assumptions are made about the gendered division and allocation of resources? On what evidence are these assumptions made?
- What are the presumed benefits of the settlement and to whom? What are the disadvantages? For whom? Are they shared equally by all? Who is going to have to implement them?
- What resources are made available for those who are going to implement them and on what basis? Has there been empirical determination of who is going to be responsible for various tasks or have resources been allocated on the basis of gendered assumptions? Have gender issues been included in assessments of needs to be made to donor conferences?<sup>47</sup>

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<sup>47</sup> These questions are adapted from Inger Skjelsboek, *Gendered Battlefields: A Gender Analysis of Peace and Conflict*, PEACE RESEARCH INSTITUTE REPORT, June 1997.

It might be argued that even asking such questions would take time and might undermine the flow of negotiations to bring an end to conflict. But this ignores the reality that international agreements traditionally take many years and rounds of negotiation. There is often a strongly expressed objective of inclusiveness and an expressed concern that omissions are only with great difficulty subsequently rectified. If women's priorities and agendas are not ascertained and included from the outset much time can be lost, as well as the goodwill of local women. Women's NGOs (local and international) are likely to pursue their own mandates, perhaps duplicating each other's efforts and without coordination. Amongst the many and complex issues that are included within peace processes it should not be difficult to factor in gender. Experts in many issues are frequently brought into negotiating teams, but not those with gender expertise. This should be redressed by bringing into the international team identified persons whose role it is to facilitate the inclusion of women and consideration of gender issues throughout the process. The current reality is that gender relations and the empowerment of women are not perceived as essential to the terms of any peace settlement, even when the need to go beyond military to civilian matters is recognized. Taking account of gender is not on anyone's agenda, nor is such expertise sought alongside experts in a broad range of other fields. However to ignore these particular issues is simply to assert their irrelevance.