

Faculté de droit et de criminologie

# From object to subject: towards an inclusive approach based on gender in international humanitarian law

*Through an examination of women's experiences as combatants*

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# METHODOLOGY

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This thesis explores the intersection of gender, women, and armed conflict within a legal framework. For this study, the scope of gender is limited to male and female, excluding analysis of other gender identities.

The research draws on a variety of sources, including scientific books, academic journals, news articles, and audio-visual materials from conferences, with a majority authored by feminist scholars. Some sources date from the late 20<sup>th</sup> century, a period when significant work began to emerge regarding the position of women and many of these theories remain relevant in the 21<sup>st</sup> century. Reports detailing the experiences of women prisoners of war are also utilised.

A key focus is the analysis of the Third Geneva Convention from a feminist perspective by focusing on the Commentaries of 1960 and 2020.

Throughout this work, a post-modern feminist approach is adopted, as it best fits the analysis of women's experiences as combatants. This approach makes sure to give a voice to every woman and recognises the various experiences of these women worldwide.

Artificial intelligence offers in 2024 new ways of working and it has been used as a linguistic assistant in this paper to revise the grammar and syntax and improve the English fluency.

# INTRODUCTION

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To contribute to a progressive and integrated society, it is essential to understand the point of view of others. “The other” mentioned throughout the pages of this thesis refers specifically to women. Given that we live in an androcentric society, women’s experiences have often been overlooked and for centuries their perspectives have been disregarded. Feminism emerged as a response to the persistent oppression of women in most societies and is usually traced back, in the Western, to the 19<sup>th</sup> century movement of the suffragettes. During this period women resorted to « *deeds and not words*<sup>1</sup> » to demand recognition and secure the right to vote. It is however crucial to emphasize that the fight for equality had been waged by women for a longer time, yet they were hardly taken seriously or were even punished for having progressist thoughts. Take for instance Olympe de Gouge, who was sentenced to death by guillotine for her advocacy of women’s rights through her 1791 *Declaration of the Rights of Woman and the Female Citizen*, opposing her vision of the *Declaration of Man and Citizen*.

Feminist perspectives materialised over time in various areas, whether in literature where authors like Jane Austen and Virginia Woolf reported on the condition of women in the 19<sup>th</sup> and 20<sup>th</sup> centuries, or in psychology, where Karen Horney challenged Freud’s male-centered theories and Carol Gilligan explored women’s ways of thinking. Starting in the second half of the 20<sup>th</sup> century, feminist legal scholars, such as Catherine McKinnon, Hilary Charlesworth, and Cynthia Enloe began to scrutinise the law by revealing inherent bias and exposing that the law was written from the perspective of men, not giving sufficient attention to women’s needs. Consequently, men and women tend to have differing relationships with the law, as it perpetuates a system of values that prioritise those traditionally associated with men, often at the expense of those associated with women. This critique is central to feminist scholars, who seek to demonstrate how the world is moulded in the image of men and how their standpoint is frequently confused with objectivity and reality.<sup>2</sup> In this construct, the man assumes the role of the Subject, the Absolute, and the Truth, while the woman is positioned as the Object, the Other, a mere construction defined in relation to him<sup>3</sup>.

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<sup>1</sup> Motto of the suffragettes.

<sup>2</sup> A. BIANCHI, *International Theories of international law: an Inquiry into Different Ways of Thinking*, Oxford University Press, Oxford, 2016, pp. 190-191.

<sup>3</sup> S. DE BEAUVOIR, *Le deuxième sexe I*, Éditions Gallimard, Paris, 1949 renouvelé en 1976, p. 17.

Feminist scholars challenge societal constructs which for a long time were not questioned but were considered as objective and neutral. Recognising the disparities between men and women and highlighting the experiences of women, is the first step in moving toward a more integrated society. This thesis aligns with this movement. Before adopting and implementing decisions, it is important to unveil, truly comprehend and take seriously what used to be unheard and invisible. Investigating women's experiences and identifying the gaps where the law fails to address their specific needs and challenges are necessary steps to advocate for meaningful change. Only by recognizing and valuing the perspectives of women can society begin to develop and implement effective solutions.

In line with this approach, this thesis ambitiously seeks to contribute to the work of feminist scholars by uncovering the biases present in International Humanitarian Law, particularly through the lens of women combatants' experiences and raising awareness of the struggles they may face solely because of the stereotypes associated with their gender. The deeply patriarchal and masculine characterisation of the military makes it challenging to examine the field from a feminist point of view, as it has historically been shaped by men for men, with little consideration given to women's experiences in war. However, as time has progressed, women have increasingly challenged traditional societal roles and entered the armed forces. Yet, while women are ready to wear the military uniform, the gender constructs embedded in society and the law remain more resistant and slower to change.

The aim of this thesis is not to prescribe a unique and definitive action plan on how to implement decisions to build a society based on gender equality, as it would be presumptuous and naive to propose one universal solution<sup>4</sup>. It is important to consider that the experiences of women vary significantly across different countries and cultures, with some states being more progressive while others are more resistant, thereby requiring different approaches. Nor is it the intention to suggest that the law was intended to be sexist; rather, the law simply reflects the vision and perspective of those who drafted it at the time. Our intention is to unveil what has been overlooked and adopt a new point of view on the subject matter. Thus, the main objective of this thesis is to raise awareness, offer suggestions, and especially invite the readers to engage with a feminist perspective on International Humanitarian Law.

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<sup>4</sup> However, we will make suggestions and highlight key points to consider and keep in mind in the third chapter.

The preliminary pages of this thesis relate to the questions of gender and explore how constructed gender norms can significantly influence societal expectations and experiences, often limiting individuals from reaching their full potential and reinforcing inequality. We extend this analysis into the realms of law and warfare, where uncovering gendered biases helps reveal how both men and women experience these domains.

In the first chapter, we analyse the evolution of how women challenged traditional roles and started to join the military during World War I and World War II. Since then, their presence in this male-dominated field has continued to increase. However, this participation is not without challenges, as women are often not recognized as equals to men in the military, despite their equal contributions as soldiers. This chapter introduces the importance of adopting a gender perspective by shedding light on women's experiences within the armed forces and examining their roles in society once they leave the military and reintegrate into traditional roles.

In times of war, individuals are bound by certain rules and regulations and may not act as they wish. As such, the Geneva Conventions provide protection to certain groups of people during armed conflicts. As men have historically been the primary initiators of wars but also the authors of laws governing these armed conflicts, our analysis in the second chapter focuses particularly on why an updated Commentary of the Convention was needed and on how the Third Geneva Convention is effectively applied regarding the treatment of women as prisoners of war by considering a report on the conditions of Russian prisoners in Ukraine.

Finally, the third chapter of this thesis presents three critiques that need to be considered when adopting a gender perspective. Rather than criticizing the experiences of women, we take them into account to formulate lessons that address the question: "How do the experiences of women in the armed forces highlight the need to adopt a gender perspective in the military and international humanitarian law?"

## PRELIMINARY PAGES. GENDER, LAW AND WAR

Studies by feminist legal scholars demonstrate that the legal system is significantly influenced by the status and roles assigned to both men and women<sup>5</sup>. But what exactly defines “men” or “women”? While there exists a genetic distinction between the sexes found in the chromosomes, the concept of gender encompasses more than just biological differences<sup>6</sup>. Gender differences are shaped by societal norms and expectations, with each gender – male and female – often assigned specific roles and expected to adhere to them<sup>7</sup>. These roles can be restrictive and limit individuals' freedom to express themselves fully. As such, women associated with the female gender, are often expected to prioritise caregiving responsibilities for their children, while men, associated with the male gender, are typically expected to assume leadership roles within the household.

Limiting individuals to societal gender norms can significantly hinder societal progress by neglecting the diverse talents and capabilities present in every individual and praising gender rather than individual capacities. While certain traits may indeed be more commonly associated with one gender over the other, as illustrated by Professor and psychologist Carol Gilligan's studies on young boys and girls, which suggest that men tend to employ a more rational mode of reasoning while women lean towards contextual thinking, it would nevertheless be wrong to categorise men solely as objective, rational, and independent, and women solely as sensitive, tactful, and empathic<sup>8</sup>. If we limit ourselves to this categorisation, it would be problematic because our society values rationality above emotions, thus implicitly valuing men above women. By perpetuating these stereotypes, we confine both genders to rigid boxes assigned at birth, preventing them from exploring their full potential. Men are indeed capable of taking care of the household and forming emotional connections with their children, while women are equally capable of assuming leadership and decision-making roles, often even bringing an added dimension of the “ethic of care<sup>9</sup>” to their approach.

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<sup>5</sup> See the works of Charlesworth, Jarvis, Enloe and Gardam.

<sup>6</sup> J.-F. DORTIER, « Nos cinq sexes », in *Masculin-Féminin. Pluriel*, sous la dir. de M. Fournier, Editions Sciences Humaines, Auxerre, 2014, pp. 21-23.

<sup>7</sup> H. CHARLESWORTH and C. CHINKIN, *The boundaries of international law: A feminist analysis*, Manchester University Press, Manchester, 2022, pp. 3-4.

<sup>8</sup> M. JOHNSON, “Review of “In a Different Voice: Psychological Theory and Women's Development””, *Contemporary Sociology*, vol. 12, no. 4, 1983, p. 448; See also C. GILLIGAN, *In a different voice*, Harvard University Press, USA, 1982.

<sup>9</sup> C. GILLIGAN, *op.cit.*

However, many fields prioritize exclusively rational thinking, which leads to the marginalization of women's perspectives, stereotyped as relational or caring and thus deemed of lesser value. It is therefore essential to acknowledge that individuals should not and are not confined to the gender assigned to them at birth, as this overlooks the various dimensions, expressions, and qualities found in each person.<sup>10</sup>

Gender norms are not limited to the household and everyday life. They are also reflected in law. For a long time, a category of elite men dominated all legal fields, often disregarding the voices and perspectives of women as they wrote, voted, and applied the law based on their own views. This resulted in a legal system that was inherently androcentric, wherein women were viewed through a lens that confined them to traditional gender roles and perpetuated stereotypes associated with femininity such as purity, motherhood, and victimhood. This vision even amounts to arguing that law is not neutral nor objective but has a gender and it's male.

This theory stands central to feminist scholars who continue to scrutinise the law and uncover its inherent biases. Moreover, feminist scholars demonstrate the presence of male dominance in law by referring to dichotomies as an analytical tool. In these dyads, the first term is associated with the powerful male gender, whereas the second term, frequently subordinate and deemed of lesser value, connotes the weak female gender: “international versus domestic”, “objective versus subjective”, “punitive versus restorative justice”, “logic versus emotion”, “protector versus protected”, “enforcement versus conciliation”.<sup>11</sup> Gender is thus present in the legal vocabulary. The “public versus private” dichotomy, perfectly exemplifies the gendered consequences embedded in law: acts of violence and abuse are condemned in the public (a sphere aligned with the realm of governance, state and politics dominated by men), but not in the private realm (a sphere associated with home and family and thus women), despite being it the places where these women most typically suffer from violence. Indeed, the law requires a nexus between the act and the involvement of a public official for it to constitute an abuse on international level and extending this concept to cover private behaviour was deemed (by men) to potentially diminish the status of human rights.<sup>12</sup> So, what has been decided in the “public”

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<sup>10</sup> H. CHARLESWORTH, “The Feminist Approaches to International Law”, audiovisual, 1 June 2012, available at: [https://legal.un.org/avl/ls/Charlesworth\\_IL\\_video\\_1.html](https://legal.un.org/avl/ls/Charlesworth_IL_video_1.html), last visited: 24 April 2024.

<sup>11</sup> A. BIANCHI, *op.cit.*, p. 183; C. COHN, “War, wimps and women: talking gender and thinking war”, in *Gendering War Talk*, Princeton University Press, New Jersey, 1993, pp. 227-231; H. CHARLESWORTH, “Feminist Methods in International Law”, *The American Journal of International Law*, vol. 93, no. 2, 1999, pp. 382-383.

<sup>12</sup> H. CHARLESWORTH, *op.cit.*, pp. 382-383.

profoundly impacts the “private”. In other words, what has been decided by men profoundly impact women.

Often, women's experiences will be overlooked, not given enough attention, or understanding. The main issue is that men and women experience the law differently and women's perspectives have not yet been sufficiently heard by men, who still mainly control the public sphere. To achieve true equality, both perspectives must be integrated into a legal framework. There is a need to go beyond gendered societal constructs which perpetuate unequal power dynamics.

The field of International Humanitarian Law is not exempt from the influence of gender constructs, on the contrary, it is perhaps the field where gender contrasts are the most pronounced. Consider as a starting point the dichotomy of “war versus peace” where peace is associated with diplomacy, compromise, negotiations and, non-violence – terms echoing femininity –, while war is characterised by action, protection, courage, and destruction, embodying masculinity in all its gendered dimensions and glory<sup>13</sup>. The same can be applied to “military operations versus humanitarian aid”. However, gender manifests itself in armed conflicts way beyond its legal terminology.

There is indeed a prevailing construct that wars belong to men<sup>14</sup>: they decide to go to war, plan the battles and may die on the battlefield in honour of their nation and for the protection of the vulnerable women and weak children impatiently waiting for their return at home. Men are also seen as the ones bringing peace after enduring months of combat, celebrating, and enjoying the power that comes with victory. Peace is perceived as restored upon the return of men to their homes, allowing women, who had in the meantime taken on jobs to support their families, to finally resume their activities in the kitchen. This outdated narrative reinforces societal constructs about gender roles, compelling each gender to conform to traditional expectations. When thoughts are guided by societal constructs, they tend to overlook and underestimate the reality of the roles and experiences endured by women during armed conflicts (while acknowledging that men might also be impacted by these dynamics, this thesis primarily centres on exploring the specific challenges faced by women).

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<sup>13</sup> C. COHN, “Women and Wars: Towards a Conceptual Framework”, in *Women & Wars*, Polity Press, Cambridge, 2013, p. 12.

<sup>14</sup> *Ibid.* p. 1-2.

As such, the relationship between war and women often reduces the latter to being solely rape victims, an atrocity in amount perceived as “an attack against the honour of the community to which they belong rather than acts of physical and psychological violence against women as mere individuals<sup>15</sup>”.

A strict vision furthermore normalises the expectation that women will care for the household and sacrifice their own needs, for instance limiting their food intake, to ensure priority and security for the male soldiers<sup>16</sup>. Instead of recognising and celebrating their contributions to peacebuilding, women are forgotten, their efforts seen as merely fulfilling their expected gender role. While men are expected to fight and are acclaimed as heroes and protectors upon their return, women are expected to care for the fighters, children, and nation, yet they receive no, or very little, recognition for these contributions.

Gender plays thus a role in the way men and women tend to experience wars. Armed conflicts do not affect men and women the same way and women’s wars are not men’s wars. While men’s wars begin with an attack on the State, women’s combat already starts in pre-war times and is reinforced in times of political instability. It begins when a girl is forcibly married to a man three times her age to ensure her safety in times of chaos (although ironically, she is at high risk of facing violence in her new household). It continues when a girl is taken out of school to care for her younger siblings or is forced to work at a young age to contribute to her family’s economic security. Women face a higher risk of abduction and sexual violence and access to healthcare or abortion services is limited. Men are also hardly impacted by the conflicts resulting in traumas, and they will rarely seek mental health support due to societal norms equating emotional expression with weakness and femininity. Women are often portrayed solely as grieving mothers or daughters, mourning the loss of male soldiers who sacrificed themselves for national protection, without individual recognition for their own suffering or sacrifices. Once the armed conflict ends and guns fall silent, society returns to normality, a patriarchal normalcy, however. The return to peaceful times means sometimes the return to a period of limited education for women, to restricted access to safe abortion and ongoing challenges to women’s freedom of expression. A return to peace for some means a return to or a continuity of oppression for others.<sup>17</sup>

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<sup>15</sup> A. BIANCHI, *op.cit.*, p. 186.

<sup>16</sup> C. ENLOE, *Twelve Feminist Lessons of War*, University of California Press, Oakland, 2023, p. 6 and p. 9.

<sup>17</sup> *Ibid.*, pp. 4-18.

Another aspect of how gender plays a role in warfare is through tactics aimed at disempowering opponents, which exploit the perceived power imbalance between men and women. These tactics focus on attacking men's masculinity to weaken them. Acts of humiliation and sexual assault against men serve to emasculate them (*supra*), while the rape of women is used to convey that men are unable to protect their wives, mothers, and daughters<sup>18</sup>. Additionally, this not only reinforces the notion of women as objects and victims but also perpetuates the harmful stereotype that women are inherently incapable of defending themselves and need the protection of male combatants.

Neither law nor war is gender-neutral: societal norms dictate and expect how men and women should behave during times of violence, making it difficult to escape their gendered roles. From a feminist perspective, it is essential to challenge these gendered norms and expose the real experiences of women, both in conflict and in times of peace. The following pages will demonstrate how women are breaking away from these traditional roles by analysing their increased participation as combatants in the armed forces.

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<sup>18</sup> C. COHN, *op.cit.*, p. 11.

# CHAPTER 1. WOMEN IN THE ARMED FORCES

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Let's begin by deconstructing a widespread belief found in many societies that suggests women are unsuitable for combat roles solely because of their gender, by demonstrating the evolution of women's enrolment in the military (Section 1). Given that gender struggles are particularly evident in the army, we will analyse the reality of women part of the armed forces and introduce the reasons for the necessity to adopt a gender perspective in the military (Section 2). Finally, we will focus briefly on the reintegration of women combatants into society post-conflict and how they may struggle to conform to traditional gender roles upon their return (Section 3).

## Section 1. "Good girls don't fight"

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For her relentless combat in denouncing the atrocities perpetrated against women in Iran, Narges Mohammadi was awarded the Nobel Peace Prize last year, but her courage cost her freedom as she is currently imprisoned in Tehran's Evin prison. Malala Yousafzai survived an attempted murder orchestrated against her advocacy for girl's education rights in Pakistan and Rosa Parks initiated the Montgomery bus boycott, a campaign against racial segregation policies. These examples merely scratch the surface in demonstrating that women are fighters and use their voices to expose the inequalities in this world. There is no doubt that women have long been outspoken activists against political violence, whether as suffragettes or resistance fighters, but what can be said about their roles as combatants in the armed forces?

As war breaks out, the traditional image places men on the battlefields and women in their houses, with perhaps a few exceptions like nurses, cooks or secretaries serving in the armed forces. There persists indeed a deeply rooted belief that women are unsuited for combat because they were born as women. This belief suggests that they lack not only the physical prowess, such as upper body strength and stamina, but also the psychological endurance required to confront the brutality of war such as the fighting and killing of opponents<sup>19</sup>.

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<sup>19</sup> <https://www.cmrlink.org/issues/full/british-study-finds-female-soldiers-too-weak-for-land-combat>, last visited: 17 June 2024.

However, studies and practices contradict gendered stereotypes that women are unfit to join the military. For instance, during the Second World War, Army Chief of Staff George C. Marshall conducted an experiment with mixed-gender units and concluded that the troops including women were more performant than the all-male units<sup>20</sup>. Similarly, the British Infantry reported that women soldiers on the front lines were as capable as men<sup>21</sup>. Not accepting women based solely on stereotypes of emotion and weakness hinders indeed the possibility of strengthening the army. Instead of excluding women due to their biological sex, emphasis should be placed on their effective competence and training. Women should be judged on their abilities rather than stereotypes, much like when ethnic minorities and homosexual men were accepted for the first time in the military<sup>22</sup>. Following this approach, Canada, as an inspiring model, implemented the same standardised test for all aspiring soldiers, and failing the test would prohibit the individual from doing its military service<sup>23</sup>.

The late Professor Lucinda Joy Peach highlighted an alternative perspective on society's reluctance to see women fight which is not rooted in concerns about their physical capabilities but rather in the perception that women are morally too virtuous to be exposed to the atrocities of war<sup>24</sup>. This belief expects that women conform to traditional notions of femininity, which strongly contrasts with the violence, torture, risks, and weaponry prevalent on the battlefields. Additionally, women need to be protected by male soldiers and should remain in a place of safety rather than amid guns and violence.

However, it is sufficient to see the increasing numbers of women wanting to join the military<sup>25</sup>, along with the fact that some countries even conscript both men and women into their defence forces<sup>26</sup>, to realise that women are actively participating in combat roles and are not anymore confined to traditional societal roles characterised by gentleness and caretaking.

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<sup>20</sup> A. CAMPBELL, "Women in Combat: The World War II Experience in the United States, Great Britain, Germany, and the Soviet Union", *The Journal of Military History*, vol. 57, no. 2, 1993, pp. 301-304.

<sup>21</sup> A. KING, "Women in combat", *Rusi Journal*, February-March, vol. 158, no. 1, 2013, pp. 4-8.

<sup>22</sup> *Ibid.*

<sup>23</sup> B. T. WARUSZYNSKI, K. H. MACEACHERN, S. RABY, M. STRAVER, E. OUELLET, and E. MAKADI, "Women Serving in the Canadian Armed Forces: Strengthening Military Capabilities and Operational Effectiveness", *Canadian Military Journal*, vol. 19, no. 2, 2019, p. 31.

<sup>24</sup> L. PEACH, "Women at War: The Ethics of Women in Combat", *Hamline Journal of Public Law and Policy*, vol. 15, 1994 p. 199; H. DURHAM and K. O'BYRNE, "The dialogue of difference: gender perspectives on international humanitarian law", *International Review of the Red Cross*, vol. 92, no. 877, March 2010, p. 43.

<sup>25</sup> <https://peacekeeping.un.org/en/women-peacekeeping>, last visited: 22 April 2024.

<sup>26</sup> See for Israel: <https://www.idf.il/en/mini-sites/our-soldiers/>, last visited: 22 April 2024; Y. DAR, and S. KIMHI, "Youth in the Military: Gendered Experiences in the Conscript Service in the Israeli Army", *Armed Forces & Society*, vol. 30, no. 3, 2004, pp. 433-459; See for Sweden: A. PERSSON and F. SUNDEVALL, "Conscripting

Another reason some are reluctant to see women join the army is the belief that their presence will threaten the traditional masculinity of the military. Since the field is seen as a place where men prove their manhood, the inclusion of women challenges the conventional man-protector-soldier ideal<sup>27</sup>. In many states, the military is considered one of the most powerful institutions, not only because of its capacity to use force but also due to its significant economic support, often receiving substantial budgets<sup>28</sup>. This importance given to the masculine field indirectly elevates the status of men and influences their self-perception. For those who favour a patriarchal society, the inclusion of women in the military symbolises a loss of this male power and the need to find a new place in a society that values equal rights and opportunities for all.

Despite these firm beliefs, societal views on gender roles are slowly evolving. While a stereotyped vision was indeed prominent more than a century ago (women were not allowed to join the military or at least had to disguise themselves as men<sup>29</sup>), more countries are overturning paternalistic bans on women serving in the military and are embracing gender integration in their armed forces. Historical records show that a few countries began authorising women to join the army as early as World War I and World War II, mobilising all available personnel during times of war out of necessity<sup>30</sup>. The Soviet Union opened combat positions to women, thousands of women volunteered to join the American armed forces and Britain reluctantly introduced the conscription for women<sup>31</sup>.

Starting the sixties, more countries began opening military positions to women. The reasons why they began enlisting both men and women, or at least were not reluctant to extend entry into the military forces to women, are numerous. Firstly, a country may seek to increase the number of its soldiers by accepting the presence of women. This happens especially, as mentioned previously, during wartime when a high number of men's lives are lost on the

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Women: Gender, Soldiering, and Military Service in Sweden 1965-2018", *Women's History Review*, vol. 28, no. 7, 2019, pp. 1039-1056; See for Norway: <https://www.forsvaret.no/en/about-us/our-history>, last visited: 22 April 2024; See for Denmark: <https://www.theguardian.com/world/2024/mar/14/denmark-plans-to-conscript-women-for-military-service-for-first-time>, last visited: 22 April 2024.

<sup>27</sup> A. KRONSELL, "Gendered practices in institutions of hegemonic masculinity", *International Feminist Journal of Politics*, 7(2), 2005, p. 286.

<sup>28</sup> J. G. MATHERS, "Women and State Military Forces", in *Women & Wars*, Polity Press, Cambridge, 2013, p. 126.

<sup>29</sup> B.L. MOORE, "Military Women: Changes in Representation and Experiences", in *Handbook of Military Sciences*, Springer, 2020, p. 3.

<sup>30</sup> J. G. MATHERS, *op.cit.*, pp. 131-132.

<sup>31</sup> J. G. MATHERS, *op.cit.*, p. 132; B.L. MOORE, *op.cit.*, p. 4.

battlefield, creating a need to gather more soldiers<sup>32</sup>. This was the case during the Vietnam war, and it continues today in countries like North Korea, which made military service mandatory for women in 2015 due to difficulties in recruiting enough male soldiers, a problem stemming from the low birth rate following the Arduous March in the nineties<sup>33</sup>.

Then, some countries aim to modernise their societies and move toward a future based on gender equality. For instance, after overturning the government in 1969, Libya became the first country in the Arab World to establish a Women's Military Academy under Muammar Gaddafi's regime. Gaddafi considered military training for women a necessary step towards the achievement of a progressive society and sought to contrast with the image of the patriarchal and conservative traditions still present in the Arab World<sup>34</sup>. Following the adoption of the UN Security Council 1325 Resolution in 2000<sup>35</sup>, numerous countries including Australia<sup>36</sup>, Canada<sup>37</sup>, Norway<sup>38</sup>, and several EU countries<sup>39</sup> implemented agendas to integrate women in peacebuilding roles and military participation, thereby promoting gender equality in the military. However, there remains a gap between the requested vision and reality as we shall analyse in the following section.

The presence of female soldiers has also proven to be advantageous for military operations, as they can access a wider range of information. In certain cultural contexts, civilian women are prohibited from speaking with male soldiers, which can hinder military progress, particularly in peace-building operations. Female soldiers can bridge this gap, providing access to parts of

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<sup>32</sup> C. COHN, *op.cit.*, pp. 132.

<sup>33</sup> J. LEE, "North Korea introduces 'mandatory military service women'", *The Guardian*, 31 January 2015, available at: <https://www.theguardian.com/world/2015/jan/31/north-korea-mandatory-military-service-women>, last visited: 18 June 2014.

<sup>34</sup> M. GRAEFF-WASSINK, "The Militarization of Woman and 'Feminism' in Libya", in *Women Soldiers*, Palgrave Macmillan, London, 1994, pp. 137-140; S. MUSCATI, A. RAGHEI, D. CHEHATA, "A Revolution for All Women's Rights in the New Libya", 27 May 2013, available at: <https://www.hrw.org/report/2013/05/27/revolution-all-womens-rights-new-libya>, last visited: 18 June 2024.

<sup>35</sup> With the adoption of Resolution 1325, the UN Security Council officially recognised the importance of women's participation in building a stable and safe world and called for the adoption of a gender perspective on questions raised during armed conflicts.

<sup>36</sup> Australian Defence Force, "Defence Gender, Peace and Security Mandate "From rhetoric to reality"", <https://www.defence.gov.au/sites/default/files/2022-11/defence-gender-peace-security-mandate-sep2021updated.pdf>, last visited: 18 June 2024.

<sup>37</sup> [https://www.international.gc.ca/world-monde/issues\\_developpement-enjeux\\_developpement/gender\\_equality-egalite\\_des\\_genres/cnap\\_wps-pnac\\_fps.aspx?lang=eng](https://www.international.gc.ca/world-monde/issues_developpement-enjeux_developpement/gender_equality-egalite_des_genres/cnap_wps-pnac_fps.aspx?lang=eng), last visited: 18 June 2024.

<sup>38</sup> <https://www.regjeringen.no/en/dokumenter/norways-national-action-plan-women-peace-and-security-2023-2030/id2993862/>, last visited: 18 June 2024.

<sup>39</sup> [https://www.eeas.europa.eu/eeas/implementing-women-peace-and-security-agenda\\_en](https://www.eeas.europa.eu/eeas/implementing-women-peace-and-security-agenda_en), last visited: 18 June 2024.

the population that an all-male unit would not be able to reach<sup>40</sup>. For example, Female Engagement Teams (FET), composed exclusively of female soldiers, were deployed to Afghanistan to engage with local women in rural regions<sup>41</sup>. However, this raises the question of whether women are being selected for these roles primarily because of their biological sex rather than their combat capabilities and constructive military inputs.

The military roles available to women have evolved significantly. Historically, women were limited to roles such as nursing, cooking, and teaching<sup>42</sup>. Over time, they have taken on positions as messengers, intelligence officers, and snipers. Today, depending on the country, almost every military position is open to women, with national laws in various states allowing them to serve in roles such as flying military aircraft, serving on combat ships, and operating tanks. However, only a very small proportion of women hold effectively positions as combat soldiers. This discrepancy highlights ongoing challenges in fully integrating women into all aspects of military service.

Israel is often referred to as a perfect example of equality between men and women as it has conscripted both genders into its Defense Forces since the creation of the State. However, a closer examination reveals the presence of some underlying discrimination<sup>43</sup>. Firstly, women are expected to undergo eight months less training than men and can be more easily exempted from military service if they cannot serve due to religious practices and convictions or if they decide to get married and fulfil another civic duty, which is motherhood<sup>44</sup>. These exemptions do not apply to men, who cannot be exempted from military service even if they become fathers and wish to care for their children.

Additionally, even though women have been enrolled since 1948, they were initially limited to non-combat roles. It all changed however in the 1990s when Alice Miller, a young female soldier, appealed to the Supreme Court after the IDF refused to let her take the screening tests for a pilot course because of her gender.

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<sup>40</sup> R. EGNELL and M. ALAM, *Women and Gender Perspectives in the Military: an international comparison*, Georgetown University Press, Washington DC, 2019, p. 9.

<sup>41</sup> B. ROHWERDER, "Lessons from Female Engagement Teams", *GSDRC applied knowledge service*, 14 January 2015, available at <https://assets.publishing.service.gov.uk/media/57a08967ed915d622c0001db/hdq1186.pdf>, last visited: 21 June 2024.

<sup>42</sup> B.L. MOORE, *op.cit.*, p. 3.

<sup>43</sup> J. G. MATHERS, *op.cit.*, p. 140.

<sup>44</sup> <https://www.idf.il/en/mini-sites/our-soldiers/>, last visited: 19 June 2024.

The Court ruled that there existed no justification for rejecting women from aviation courses which could explain the distinction of treatment between men and women<sup>45</sup>. Following this judgement, more roles were opened to women, though the percentage of women in combat roles remains small<sup>46</sup>.

Looking at one of the largest armies in the world, the USA, the country has experienced a gradual evolution towards integrating women into the military. It was only in 1991 that women were allowed to fly combat aircraft and serve on combat ships, in 2010 for Infantry and Special Forces, and in 2015 for direct combat roles<sup>47</sup>. Despite reports showing that women perform well in combat roles, the American military has been reluctant to fully integrate women into these positions, largely due to ingrained gender societal constructs<sup>48</sup>. These concerns persist, and there remains a continuous struggle to accept women even if they are legally welcomed. In 2022, women made up only 17,5% of the U.S. military but surprisingly this number leads globally in the number of women serving in its armed forces<sup>49</sup>.

Since the military is traditionally seen as a male realm, one might wonder why women would want to be a part of it. Some reasons for women's enrolment concern the desire to defend their homeland, uphold family traditions, or fulfil their civic duty. However, other motivations are more concerning and reflect broader societal issues. In some cases, women join the military to escape poverty, or because it offers easier access to education, opportunities to travel and gaining skills.<sup>50</sup> It provides a job in a world where employment opportunities might be rare, especially for women. This is exemplified by the story of Jessica Lynch, who joined the military a few months before 9/11 as it was her only way to afford an education to become a teacher. She later became the first American woman prisoner of war to be successfully rescued<sup>51</sup>.

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<sup>45</sup> The Supreme Court sitting as the High Court of Justice, *Miller v. Minister of Defence*, (1995-6) IsrLR 1, HCJ 4541/94, November 8, 1995.

<sup>46</sup> <https://draftidf.co.il/women-in-the-army/>, last visited: 19 June 2024; A. HAREL-SHALEV, "Women in the Military in Israel", in *The Palgrave International Handbook of Israel*, Palgrave Macmillan, Singapore, 2021, pp. 4-5.

<sup>47</sup> B.L. MOORE, *op.cit.*, p. 7.

<sup>48</sup> J. G. MATHERS, *op.cit.*, p. 138.

<sup>49</sup> <https://www.defense.gov/News/Releases/Release/Article/3580676/defense-department-report-shows-decline-in-armed-forces-population-while-percen/>, last visited: 20 June 2024.

<sup>50</sup> J. G. MATHERS, *op.cit.*, p. 134.

<sup>51</sup> J. K. LOBASZ, "The Woman in Peril and the Ruined Woman: Representations of Female Soldiers in the Iraq War", *Journal Of Women, Politics & Policy*, vol. 29, no. 3, 2008, pp. 305-324.

## Section 2. The gendered reality within armed forces

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Only a small percentage of military positions are effectively occupied by women. The reason behind the low number of women's enrolment can be attributed to the continuous struggle they experience from stereotypes and assumptions attached to their gender. Even after joining the military, women face struggles to be taken seriously and are frequently subjected to mockery, harassment, and discrimination.

Although women are entering a traditionally macho world, it's interesting to point out that within the military, masculinity operates somewhat differently than in civilian society. Men are indeed required to exhibit traits and perform tasks typically associated with femininity. They not only do chores, such as cooking, ironing, and laundry, but soldiers are also expected to be devoted, loyal, and obedient. Soldiers are responsible for caring for themselves and their fellow teammates. These tasks and characteristics, commonly seen as feminine in civilian society, become however routine responsibilities for men in the military. Despite this, men are rarely mocked or emasculated for performing these chores because their participation in the military inherently boosts their manhood and demonstrates their courage and dedication to their country. The military context transforms these activities into strength, reinforcing their masculine identity rather than diminishing it.<sup>52</sup>

The same uplifting reality does not apply to women. Unlike their male counterparts, women's qualifications and capabilities are frequently questioned, these interrogations are often based on unfounded stereotypes rather than actual performance or potential contributions<sup>53</sup>. Women are usually not considered equals to men and there is little focus on the unique capacities or positive elements they could bring to fighting and peacebuilding processes.

A report ordered by the House of Commons in 2021 demonstrates that a major concern regarding the integration of female soldiers in the United Kingdom's armed forces (besides their physical limitations) is the issues related to sexual relations between soldiers, which are seen as undermining the cohesion necessary among military personnel<sup>54</sup>.

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<sup>52</sup> J. G. MATHERS, *op.cit.*, pp. 126-127.

<sup>53</sup> See the stories of Lieutenant Kara Hultgreen and Air Force Veteran Mary Jennings Hegar.

<sup>54</sup> Available at <https://committees.parliament.uk/publications/6959/documents/72771/default/> last visited: 21 June 2024.

As Anthony King notes, women often face stigma and are blamed or denigrated for fraternising with their fellow soldiers or male superiors. The unequal accountability means that while women are often slut-shamed for such relationships, their male counterparts do not always face the same level of reputational damage<sup>55</sup>. Labels and derogatory terms are frequently used to ridicule or punish women: they are called "slut" when they fraternise with fellow soldiers and "lesbian" when they refuse sexual advances or because they decided to join the forces and thus violate traditional gender norms. "Girl," is used pejoratively to symbolise weakness and femininity with a negative connotation and used to mock "weaker" male soldiers.<sup>56</sup>

A defamatory environment can be detrimental to a woman's military career, which can end abruptly due to psychological or physical trauma<sup>57</sup>. Indeed, another serious concern is the risk of sexual assault as exemplified in the infamous "Tailhook scandal" where numerous women officers were abused by male naval aviators in a hotel in Las Vegas. Lieutenant Paula Coughlin reported the incident, but after receiving minimal support and response, she took the matter to higher authorities who initiated an investigation. However, the investigation had limited impact and Coughlin eventually resigned due to the backlash and trauma she faced for reporting the assaults<sup>58</sup>.

In a more recent European case, the head of the Royale Navy ordered an investigation into the multiple allegations of sexual harassment, sexual assaults and bullying against women. It was revealed that lists were made with the names of the women who would be assaulted first in the event of a catastrophe among reports of actual rape and harassment<sup>59</sup>.

Conducting an investigation is not always the norm. Incidents need to be reported first, and women are often reluctant to do so because of the potential negative impact on their careers. For example, in North Korea, some male soldiers harass sexually both civilians and soldiers<sup>60</sup>,

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<sup>55</sup> <https://committees.parliament.uk/writtenevidence/23306/pdf/>, last visited: 21 June 2024.

<sup>56</sup> J. G. MATHERS, *op.cit.*, pp; 135-136; pp. 141-142.

<sup>57</sup> J. G. MATHERS, *op.cit.*, p. 142.

<sup>58</sup> Review of the Navy Investigations, Department of Defense Office General Inspector 21 September 1992, available at <https://ncisahistory.org/wp-content/uploads/2017/07/DoDIG-Report-of-Investigation-Tailhook-91-Review-of-the-Navy-Investigations.pdf>, last visited: 21 June 2024; M. T. VIOLANTI, "Hooked on Expectations: An Analysis of Influence and Relationships in the Tailhook Reports", *Journal of Applied Communication Research*, 24 (2), 1996, pp. 67-82.

<sup>59</sup> <https://www.bbc.com/news/uk-63435129>, last visited: 22 June 2024; <https://www.theguardian.com/society/2023/dec/24/it-was-a-hunting-ground-women-and-sexual-assault-in-the-uk-armed-forces>, last visited: 22 June 2024.

<sup>60</sup> <https://www.hrw.org/news/2022/12/21/submission-rights-women-and-girls-north-korea-special-rapporteurs-report-52nd-human> last visited: 22 June 2024; <https://www.businessinsider.com/female-north-korean-soldier-horrific-sexual-abuse-2017-8> last visited: 22 June 2024; J. C. COHN, *op.cit.*, p. 144.

but because virginity is considered a sensitive topic, women do not report the assaults for fear of losing their reputation and their chance of promotion or finding a husband<sup>61</sup>. As a result, women are forced to hide the atrocities of which they were victims.

The numbers of sexual assaults within the military indicates that women are often still perceived the same way as women in society: objectified and reduced to their sex. Simply enlisting women in the military is insufficient in order to change the vision men and society have of them. According to feminist scholars, a comprehensive solution involves adopting a gender perspective that acknowledges the distinct experiences of women and takes them seriously. Addressing sexual harassment and assault, promoting gender equality, and creating a supportive environment are crucial steps which could have a positive impact on women's participation in the military and the cohesion of soldiers as a whole.

In this context, Sweden offers an inspiring model for other countries striving to integrate a gender perspective into their military. The State has indeed made impressive steps in this area notably through the establishment of the Nordic Centre for Gender in Military Operations (NCGM) in 2012. The NCGM focuses on implementing the UNSCR 1325 Resolution by promoting gender perspectives through education and training. It organises courses and seminars to improve gender awareness among military personnel by equipping them with the tools to recognise and address the different impacts of the same situation on men and women, and to develop appropriate responses<sup>62</sup>. Sweden has also appointed gender advisors responsible for the implementation of Resolution 1325 offering recommendations both in peacetime and during military operations<sup>63</sup>.

What sets Sweden apart from other countries is its strategic approach to promoting a gender perspective. Rather than promoting gender equality as a political concern, Sweden underscores the importance of adopting a gender perspective for enhancing military effectiveness. This pragmatic approach does not change the fundamental practices but addresses the resistance often encountered in the traditionally masculine military environment<sup>64</sup>, where the primary

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<sup>61</sup>M. MOHAN, "Rape and no periods in North Korea's army", *BBC World Service*, 21 November 2017, <https://www.bbc.com/news/stories-41778470>, last visited: 22 June 2024.

<sup>62</sup> <https://www.forsvarsmakten.se/en/swedint/nordic-centre-for-gender-in-military-operations/co-ncgm-start/>, last visited: 22 June 2024.

<sup>63</sup> <https://www.forsvarsmakten.se/siteassets/english/swedint/engelska/swedint/nordic-centre-for-gender-in-military-operations/ncgm-folder-2015-04-16.pdf>, last visited: 22 June 2024.

<sup>64</sup> <https://www.fhs.se/en/swedish-defence-university/stories/2023-10-20-multiple-layers-of-resistance-explain-the-swedish-armed-forces-slow-gender-equality-efforts.html>, last visited: 23 June 2024.

focus is on conducting and winning wars. By framing the adoption of a gender perspective in terms of mission success and operational efficiency, Sweden makes the concept more appealing to commanders, officers, and soldiers, who are thus more receptive to implementing these changes<sup>65</sup>.

This strategy has yielded positive results. There has been a notable increase in the number of women in the Swedish military, rising from 6% to 23% of the total force in less than 7 years. However, let's not forget that Sweden reintroduced gender-neutral conscription in 2017 which can be seen as the main cause of this sudden increase<sup>66</sup>. Sweden also reports some of the lowest rates of sexual assault and discrimination within the military<sup>67</sup>. While this does not mean sexual violence is non-existent (women might still be reluctant to report assaults), it nevertheless suggests that implementing a gender perspective is beginning to show benefits. By continuing to invest in a gender perspective, Sweden not only promotes equality but also enhances overall military effectiveness, making it a potential model for other nations to follow.

Sweden wants to share its approach, trainings, and courses with other countries. Each year the Gender Adviser course welcomes students from different countries which are open to military officers and civilians and share with them their advancements<sup>68, 69</sup>.

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<sup>65</sup> R. EGNELL, "Sweden's implementation of a Gender Perspective: Cutting Edge but moment lost", in *Women and Gender Perspectives in the Military: an international comparison*, Georgetown University Press, Washington DC, 2019, pp. 52-55.

<sup>66</sup> [https://euromil.org/wp-content/uploads/2023/06/2306\\_Survey-Gender-Equality-in-the-Armed-Forces.pdf](https://euromil.org/wp-content/uploads/2023/06/2306_Survey-Gender-Equality-in-the-Armed-Forces.pdf), last visited: 23 June 2024.

<sup>67</sup> R. EGNELL, *op.cit.*, pp. 64-66.

<sup>68</sup> <https://www.forsvarsmakten.se/en/news/2017/10/integrating-a-gender-perspective/>, last visited: 23 June 2024.

<sup>69</sup> <https://www.government.se/contentassets/3941dc43555b4a90943a2e5de064937f/swedens-20242028-national-action-plan-for-the-implementation-of-un-security-council-resolutions-on-women-peace-and-security/>, last visited: 23 June 2024.

### Section 3. Post-conflict re-integration of women combatants

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Following the end of World War II, some women chose to continue their careers among the forces, but they were rarely welcomed with open arms. Their wartime experiences and acts of service seemed as forgotten or deemed irrelevant<sup>70</sup>. Other women who fought for their country and whose help was deeply appreciated during the war decided to return to their pre-war lives. However, many of them found it challenging to conform to traditional roles as wives and mothers after experiencing the broader possibilities beyond domestic life.

Women may struggle to conform to their old roles in society after experiencing the atrocities of war and dealing with post-traumatic stress disorder, making it difficult to resume a “normal” role in society. While this also is true for their male counterparts, gender roles and social pressures affect women differently. To preserve the image of virility constructed by society, men typically struggle to open up about the war’s atrocities and manage their emotions. For women, returning to pre-war life is complicated for other several reasons. As highlighted by Elise Fredrikke Barth in her study on the reintegration of African soldiers, who were part of guerrilla movements<sup>71</sup>, some women may return disabled from wartime, making them less desirable as spouses. Others break family ties by joining the armed forces and are not welcomed back into their communities, and many do not wish to conform to traditional gender roles, aspiring instead to other career opportunities<sup>72</sup>.

The “R” in DDR stands for reintegration, the process following disarmament and demobilization during which ex-combatants transition from military to civilian life<sup>73</sup>. However, in reality, the focus often remains on the male combatants, whose contributions during the conflict are given more importance, and they receive greater recognition, sometimes including a place in the new government which they helped establish<sup>74</sup>.

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<sup>70</sup> B. L. MOORE, *op.cit.*, p. 5.

<sup>71</sup> Art. 43 and 44 of Additional Protocol I provides a combatant status for guerrilla fighters and irregular armed forces under certain conditions, see commentary available on <https://ihl-databases.icrc.org/en/ihl-treaties/api-1977/article-44/commentary/1987>, last visited: 21 June 2024.

<sup>72</sup> E. F. BARTH, *Peace as Disappointment: The Reintegration of Female Soldiers in Post-Conflict Societies: A Comparison Study from Africa*, International Peace Research Institute (PRIO), Oslo, August 2002; H. DURHAM and K. O’BYRNE, *op.cit.*, p. 38.

<sup>73</sup> [https://unitar.org/sustainable-development-goals/peace/our-portfolio/disarmament-demobilization-and-reintegration#:~:text=Disarmament%2C%20Demobilization%20and%20Reintegration%20\(DDR,and%20return%20to%20civilian%20life](https://unitar.org/sustainable-development-goals/peace/our-portfolio/disarmament-demobilization-and-reintegration#:~:text=Disarmament%2C%20Demobilization%20and%20Reintegration%20(DDR,and%20return%20to%20civilian%20life), last visited: 21 June 2024.

<sup>74</sup> H. DURHAM and K. O’BYRNE, *op.cit.*, pp. 43-44.

But during these negotiations, there is often little room for women, and they receive insufficient attention regarding their reintegration into society post-conflict. Men are frequently prioritised for reintegration, leaving women to struggle with their return to traditional roles.

The case of Eritrea demonstrates this disparity well. During the national liberation conflicts, women were considered equal to men in combat roles and leadership positions were equally divided between both genders. Women's opinions and views on the conflict were respected. However, after liberation, women were relegated to secondary roles, and their reintegration into the new society was not of significant concern. They were expected to simply revert to their traditional roles, as the new government was not ready to accept the equality women had experienced during the fighting. During the war, their contributions were appreciated, but once it ended, society sought to return to “normality”. Women who had experienced some form of liberation from their gender roles had no choice but to regress to them post-conflict.<sup>75</sup>

Without a proper reintegration process focusing on the needs of women, they are, in contrast to the rest of society, not headed towards peaceful times. Depending on the community they come from, they might be stigmatised for having joined the armed forces and may not be welcomed back into their families or communities. They may struggle to find employment, as men are often granted priority by both governments and private companies. This exclusion can rapidly deteriorate their lives, leading to poverty and social marginalization<sup>76</sup>. As Barth puts it: “Female ex-fighters experience a lot of tension in their lives, finding themselves considered somewhere between, on the one hand, heroines, and on the other, unclean. They have led lives that do not comply with rules for how respectable women ought to live, and they have to negotiate their identity against this background<sup>77</sup>”.

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<sup>75</sup> D. MAZURANA and L. ECKERBOM COLE, “Women, Girls and Disarmament, Demobilization and Reintegration (DDR)”, in *Women & Wars*, Polity Press, Cambridge, 2013, p. 209.

<sup>76</sup> D. MAZURANA and L. ECKERBOM COLE, *op.cit.*, pp. 206-210.

<sup>77</sup> E. F. BARTH, *op.cit.*, p. 30.

## CHAPTER 2. WOMEN PRISONERS OF WAR

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Combatants in warfare face the risk of falling into the hands of their opponents, leading to their designation as prisoners of war (POWs). This status is intended to protect them and ensure humane treatment during captivity. POWs are not punished for participating in the conflict; rather, they are neutralised and kept away from the battlefield to prevent further involvement. The Third Geneva Convention outlines the legal protections afforded to them.

In this chapter, we will first delve into the history and evolution of the Third Geneva Convention, offering a gender analysis of specific articles in light of the commentary of 1960 and 2020 (Section 1). Following this, we will reveal some gendered realities for both men and women POWs, providing insight into their captivity (Section 2).

### Section 1. A gender analysis of the Geneva Convention III

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In the aftermath of World War II, legal drafters came together to revise the Prisoners of War Convention of 1929. The war's atrocities revealed significant gaps in the protection provided to prisoners of war, and only a minority of people were effectively protected by the convention. For example, it mainly cared for the members of the armed forces who were "captured by the enemy", leaving the soldiers who surrendered themselves without clear status and protection<sup>78</sup>.

The Third Geneva Convention of 1949 addressed these shortcomings by adding 46 more precise articles and extending protection to a larger category of combatants<sup>79</sup>. However, discussions about the specific place of women in the new convention were contentious, as the drafters were torn between the progressive inclusion of women combatants and the persistence of patriarchal norms. The convention ultimately included some provisions concerning women, but these were seen as the exception, with men remaining the standard. This minimized the contributions of women, recognizing their existence on the battlefield but nevertheless limiting them to non-representative POWs.<sup>80</sup>

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<sup>78</sup> E. CRAWFORD and A. PERT, *International Humanitarian Law*, Cambridge University Press, 2020, p. 15.

<sup>79</sup> Convention (IV) Relative to the Protection of Civilian Persons in Time of War, Geneva, 12 August 1949, art. 4.

<sup>80</sup> B. VAN DIJK, "Gendering the Geneva Convention", *Human Rights Quarterly*, vol. 44, no. 2, May 2022, p. 293.

Since the drafters were male, their focus remained primarily on the experience of male combatants and prisoners of war, once again overlooking the experiences of women. Women, constituting a minority of combatants, did not receive the same level of preoccupation and attention which is evident in the drafting of the convention. The conservative mentalities of the 1940s further failed in planning for future scenarios where women might join the armed forces and require more comprehensive protection. It was unthinkable at the time that women would gain greater importance in the field of armed conflicts and the differing experiences of men and women in combat were not adequately considered.

Taking this context into account, feminist scholars argue that IHL is inherently biased, as it prioritises the experiences of men as combatants while reducing women's roles to those of victims or mothers. Of the 42 specific provisions regarding women in the four Geneva Conventions and their Additional Protocols, half address women primarily in their roles as expectant or nursing mothers<sup>81</sup>. Furthermore, offences such as rape, enforced prostitution or any form of indecent assault are framed as attacks on their honour<sup>82</sup>. While some contend that the Geneva Convention should be interpreted within the historical context of the past century, others advocated for revising these documents to reflect contemporary advances in gender issues<sup>83</sup>. This debate highlights the growing awareness of the need to address the overlooked experiences of women in armed conflicts. Although attention is finally starting to be given to these issues, much work remains to be done. In this context, the new Commentary of 2020 emerged, shedding light on these concerns, and proposing updates to align with modern understandings of gender equality and women's rights.

Indeed, 75 years have passed since the adoption of the GC III, and mentalities have evolved significantly during this time. Taking a look at the Convention of 1949, the prohibition of discrimination and the obligation to treat POW equally can already be found for instance in article 16 GC III. The principle of non-discrimination ensures that all prisoners are treated with the same consideration by prohibiting a distinction in the treatment of persons based on race, religious belief, political opinion, nationality, or gender. This principle guarantees that every person, men and women, is entitled to the safeguarding of their fundamental rights<sup>84</sup>.

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<sup>81</sup> J. GARDAM and M. JARVIS, *Women, Armed Conflict and International Law*, Kluwer Law International, The Hague, 2001, pp. 93-94; H. DURHAM and K. O'BYRNE, *op.cit.*, pp. 34-37.

<sup>82</sup> Convention Relative to the Protection of Civilian Persons in Time of War, Geneva, 12 August 1949, art. 27.

<sup>83</sup> H. DURHAM and K. O'BYRNE, *op.cit.*, p. 35.

<sup>84</sup> [https://casebook.icrc.org/a\\_to\\_z/glossary/discrimination-or-adverse-distinction](https://casebook.icrc.org/a_to_z/glossary/discrimination-or-adverse-distinction), last visited: 27 June 2024.

Article 14 of the Geneva Convention regarding the treatment of prisoners of war is another article which at first glance refers to gender equality by mandating treatment for women as favourable as the one granted to men, as it states that:

*“Prisoners of war are entitled in all circumstances to respect for their persons and their honour. Women shall be treated with all the regard due to their sex and shall in all cases benefit by treatment as favourable as that granted to men ...<sup>85</sup>”*,

But taking a closer look at the 1960 Commentary, which remains the most authoritative source for the interpretation of the Geneva Conventions, one can wonder about the level of equality truly aimed for with these words.

Indeed, the said commentaries refer to three key considerations that need to be taken into account when referring to the terms “regard due to women” as they define women solely by referring to their “weakness”, “honour and modesty”, and “pregnancy and childbirth”. The main concern of the drafters at the time was the potential risk that women faced in captivity, such as “rape,” “forced prostitution,” and other forms of “indecent assault.” The terminology used is significant, as “indecent” refers to what is “not appropriate or fitting,” rather than explicitly addressing sexual violence, which accurately reflects the trauma women face. These concerns are framed in a way that emphasises violations as attacks on women's honour and modesty, compelling them to adhere to a standard of purity: if women are sexually abused in captivity, it is framed as an attack on their honour, implying they are no longer pure, rather than recognising it as a severe physical and psychological assault. Additionally, pregnant women and mothers with their infants should be repatriated, suggesting that women are the primary caregivers for children, denying thus the same right to repatriation to fathers should they have an infant waiting for their return at home.<sup>86</sup>

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<sup>85</sup> Convention (III) Relative to the Treatment of Prisoners of War, Geneva, 12 August 1949, art. 14.

<sup>86</sup> Commentary of 1960, Convention (III) Relative to the Treatment of Prisoners of War, Geneva, 12 August 1949, art. 14, available at <https://ihl-databases.icrc.org/en/ihl-treaties/gciii-1949/article-14/commentary/1960?activeTab=1949GCs-APs-and-commentaries>, last visited: June 25 2024.

While the inclusion of women in the Third Geneva Convention marked a step towards acknowledging their presence in armed conflicts, the manner in which their treatment and protection were formulated reveals an inherent bias. By defining women primarily through their perceived vulnerabilities and traditional roles, the drafters were not preoccupied with achieving true gender equality. The phrase “*treatment as favourable as that granted to men*” underscores the inferior position assigned to women, implicitly acknowledging the need to emphasise their protection in legal terms and suggesting a concern that, without a specific provision, women’s subordinate status might jeopardise their safety.

The updated Commentary of 2020 admitted that the provisions concerning the position of women did not reflect the current practices and that there was a genuine need to update the commentaries to align with the current understanding of gender equality and human rights<sup>87</sup>.

Article 14 has thus been revised and commented with a more modernistic approach as the Commentary addresses the issue in its Introduction by acknowledging first and foremost the increasing number of women joining the armed forces and taking on active combat roles on the front line, where there is a real risk of capture, making their protection as prisoners of war an ongoing relevant challenge<sup>88</sup>. Moreover, the Commentary adopts for the first time a gender perspective as it admits that in 1949, there was a lack of understanding of how men and women may have specific needs, capacities, and perspectives during armed conflicts and how detention may differently affect them. It reinforces that the mention of the protection of women in article 14 “is not to be understood as implying that women have less resilience, agency or capacity within the armed forces, but rather as an acknowledgement that women have a distinct set of needs and may face particular physical and psychological risks<sup>89</sup>”.

The Commentary further recognises that women in captivity still face particular risks, as they remain more likely to become victims of sexual violence but frames the attack as forms of ill-treatment that affects women’s physical and mental health, as well as their psychosocial well-being. It continues by detailing the consequences of sexual violence including internal and external pain, pregnancy, infertility, and various medical complications.

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<sup>87</sup> Commentary of 2020, Convention (III) Relative to the Treatment of Prisoners of War, Geneva, 12 August 1949, paragraphs 67-68.

<sup>88</sup> *Ibid.*, paragraph 1652 and 1679.

<sup>89</sup> *Ibid.*, paragraph 1682.

While the updated Commentary pays greater attention to the well-being of women, it still notes that some women may face rejection from their communities due to being perceived as dishonoured, particularly if they bear a child conceived through rape. Although the International Committee of the Red Cross has adopted nowadays a more progressive approach in its interpretation of the 1949 articles, it also recognises that this perspective is not universally accepted. In some regions, prevailing gender constructs may still negatively impact women, who end up as double victims in such scenarios<sup>90</sup>.

The Commentary reflects on the phrase “*treatment as favourable as that granted to men*”, emphasising that while progress toward global gender equality is underway, it is not yet universally realised. As such, this sentence remains relevant in situations where women combatants are captured by a Detaining Power that maintains lower legal standards for women. The sentence guarantees thus that a Detaining Power cannot discriminate against or impose harsher treatment on women prisoners of war based on the notion that they have violated cultural norms by taking on combat roles<sup>91</sup>. This prohibition is further reinforced through article 88 (3) of GC III which explicitly forbids imposing a more severe punishment or treatment on women prisoners of war than on their male counterparts.

While, as mentioned above, the Geneva Convention prohibits discrimination based on certain criteria, namely gender, it nevertheless makes some distinctions between men and women as it contains provisions relating to special protection granted to women. This reflects the ongoing tensions to achieve equality while acknowledging that, in the meantime, women face distinct needs and particular risks. As a result, they are often categorised in the Convention alongside other vulnerable groups, such as children, older persons, and persons with disabilities. As legal frameworks evolve, the focus stands on creating an environment where such distinctions are no longer needed, ensuring that all individuals are treated with equal respect and dignity. But in the meantime, by providing these additional safeguards, the Convention aims to protect women, yet it also risks reinforcing gender stereotypes that depict women as inherently weaker and more vulnerable. The drafters recognised that women are exposed to specific dangers in captivity due to their gender, which is why some articles incorporate what can be seen as “favourable discrimination”.

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<sup>90</sup> Commentary of 2020, Convention (III) Relative to the Treatment of Prisoners of War, Geneva, 12 August 1949, paragraph 1684.

<sup>91</sup> *Ibid.*, paragraph 1690.

Article 25(4) GC III provides as such for separate dormitories for female prisoners of war in camps where both women and men are being held captive: “In any camps in which women prisoners of war, as well as men, are accommodated, separate dormitories shall be provided for them<sup>92</sup>”. The 2020 Commentary on this article remains largely unchanged from the original Commentary written in 1960. The requirement for separate dormitories emerged from the experiences of the Second World War. This article was included to ensure that women prisoners of war are protected from potential harm, including unauthorised or coerced entry by men into their sleeping quarters. However, this provision specifically applies to dormitories only, meaning that while sleeping areas must be segregated by gender, the rest of the camp's facilities do not need to be divided<sup>93</sup>.

In amount, article 29(2) GC III complements the requirement for separate dormitories by also mandating the provision of separate toilet facilities for women prisoners of war: “in any camps in which women prisoners of war are accommodated, separate conveniences shall be provided for them<sup>94</sup>”. This article was also introduced during the Diplomatic Conference of 1949, with further detailed comments provided in the 2020 Commentary. The need for safe and regular access to separate toilets for women is emphasised, particularly in light of safety concerns that prohibit men from entering these facilities, thus protecting women from potential harassment or assault. Additionally, the importance of regular access to clean toilets is underscored by studies showing that women are more prone to urinary tract infections, often caused by restricting fluid intake to avoid using unsanitary or non-existent toilets<sup>95</sup>. While Article 29(2) does not explicitly mention the need for separate showers or bathing facilities, the 2020 Commentary includes these necessities as well. It stresses that women should have access to separate shower facilities and sufficient time to wash themselves and their clothing, especially during menstruation. The Commentary goes further by specifically addressing the issue of menstruation, highlighting the necessity of providing free sanitary products and allowing women more frequent and extended access to showers compared to men. This recognition of women's unique health and hygiene needs marks a significant evolution in the interpretation of the Geneva Convention, reflecting a gender perspective of specific requirements in captivity.<sup>96</sup>

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<sup>92</sup> Convention (III) Relative to the Treatment of Prisoners of War, Geneva, 12 August 1949, art. 25(4).

<sup>93</sup> Commentary of 2020, paragraphs 2099 and 2100.

<sup>94</sup> Convention (III) Relative to the Treatment of Prisoners of War, Geneva, 12 August 1949, art. 29(2).

<sup>95</sup> See E. C. RITCHIE and A. L. NACLERIO, *Women at War*, Oxford University Press, New York, 2015, p. xix.

<sup>96</sup> Commentary of 2020, paragraph 2215 and 2223.

There are three other articles dealing with specific treatment for women such as article 88(3) which provides that: “In no case may a woman prisoner of war be awarded or sentenced to a punishment more severe, or treated whilst undergoing punishment more severely, than a male member of the armed forces of the Detaining Power dealt with for a similar offence<sup>97</sup>”. Article 97(4) requires that: “Women prisoners of war undergoing disciplinary punishment shall be confined in separate quarters from male prisoners of war and shall be under the immediate supervision of women<sup>98</sup>” and article 108(2) guarantees that: “A woman prisoner of war on whom such a sentence (penalty) has been pronounced shall be confined in separate quarters and shall be under the supervision of women<sup>99</sup>”.

All these articles are consistent with the general principle that women must be treated with all the regard due to their sex, as found in article 14 GC III and the updated Commentary highlights the evolution of how women are perceived in the context of International Humanitarian Law. While it is evident that all prisoners of war should receive protection when they fall into the hands of the enemy, the specific protections granted to women are predominantly focused on shielding them from sexual violence. This focus highlights a persistent societal view that reduces women primarily to their vulnerability as sexual objects, even when they have assumed roles as combatants and defenders of their country. In the following section, we will analyse the reality faced by prisoners of war, with a particular emphasis on the prevalence and impact of sexual violence during captivity.

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<sup>97</sup> Convention (III) Relative to the Treatment of Prisoners of War, Geneva, 12 August 1949, art. 88(3).

<sup>98</sup> *Ibid.*, art. 97(4).

<sup>99</sup> *Ibid.*, art. 108(2).

## Section 2. The gendered reality of detention

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While the experiences of men and women combatants in captivity might not differ drastically from one another, the Third Geneva Convention does acknowledge the distinct needs of women, providing specific provisions to ensure their equal treatment.

As mentioned, women require more frequent access to bathroom facilities and are entitled to sanitary products. They may also need distinct medical attention, and while all prisoners are entitled to medical care under article 30, women's healthcare includes additional gynaecological services. The infirmary in the prisoner camp must therefore be equipped to care for pregnant women and mothers with their newborns<sup>100</sup>. If a woman is pregnant or lactating, her food rations are increased to meet her nutritional needs and keep her in good health<sup>101</sup>. Moreover, the Detaining Power may utilise the labour of prisoners of war, but special mention is made into taking account of the sex of the person. As such, women's gender-specific needs are duly considered when assigning work to them<sup>102</sup>.

This framework reflects what the law prescribes, but there's no guarantee that it is effectively applied in prisoner camps. What happens behind the walls of these prisons often remains a grey area, where some reports and testimonies occasionally reach the public but rarely provide specific details about the experiences of women. Most articles report on the conditions of prisoners of war in general without making a specific distinction for women. This could be due to the fact that there are fewer women prisoners of war compared to men, or it may simply be because insufficient attention is paid to the unique challenges faced by women in captivity, leading thus to their experiences being lost between those of men. However, a recent Report on the war in Ukraine sheds light on some realities of captivity, offering a more detailed yet still very limited account of the experiences of women<sup>103</sup>.

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<sup>100</sup> Commentary of 2020, Convention (III) Relative to the Treatment of Prisoners of War, Geneva, 12 August 1949, paragraphs 2230 and 2231.

<sup>101</sup> Commentary of 2020, paragraph 2113.

<sup>102</sup> Convention (III) Relative to the Treatment of Prisoners of War, Geneva, 12 August 1949, art. 49; Commentary of 2020, paragraph 2680.

<sup>103</sup> United Nations Human Rights, Office of the High Commissioner, Report on the Treatment of Prisoners of War and Persons Hors de Combat in the context of the Armed Attack by the Russian Federation Against Ukraine 24 February 2022 to 23 February 2023, 24 March 2023, available at: <https://www.ohchr.org/en/documents/country-reports/ohchr-report-treatment-prisoners-war-and-persons-hors-de-combat-context>, last visited: 10 August 2024.

The information gathered in the Report by The Office of the United Nations High Commissioner for Human Rights (OHCHR) comes from visits and interviews with 432 POWs, including 25 women, from both sides of the armed conflict. Russian prisoners, who were interned by Ukraine, were interviewed in confidential places within the prison camps, while Ukrainian POWs were interviewed upon their release and return to Government-controlled territory, as no confidential access was granted to OHCHR in the internment facilities.<sup>104</sup>

The Report indicates that among the 229 Russian POWs held by Ukraine, only one was a woman and it does not provide any further details on how she was treated<sup>105</sup>. Nevertheless, the testimonies of the 24 women POWs held by the Russian Federation reveal that they were treated differently than male POWs. But while it would be assumed that women benefit from a “favourable treatment” as provided by the Convention, the Report emphasises that they were simply subjected to less physical violence than men, even though some of them still faced ill-treatment such as, beatings, electrocution, forced nudity, cavity searches in the presence of male guards and threats of sexual violence<sup>106</sup>. Women POWs were also not provided with access to sexual and reproductive health services<sup>107</sup>. Even if the showers were separated from the men’s POWs, women POWs had to shower in the presence of male guards<sup>108</sup>. Concerning the toilet facilities, the Report does not draw any distinction between the experience of men and women only noting the inadequate sanitation, with toilets often unavailable or clogged<sup>109</sup>. There is also no mention of whether women had access to sanitary products. The Report mentions however that most women reported issues with their health, notably the termination of their menstruation due to stress and the conditions of internment<sup>110</sup>.

Ukrainian women further confirmed that they were interned separately from men, even though the Convention only states that “vulnerable places” such as the dormitories and bathrooms need to be separated. This separation is due to the higher risk of sexual abuse that women face in captivity. Looking at the law, the 1960s Commentary on article 13 GC III, which mandates that prisoners of war must at all times be humanly treated, makes no specific mention regarding sexual violence.

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<sup>104</sup> Report 2023, paragraph 15.

<sup>105</sup> Report 2023, paragraph 88.

<sup>106</sup> Report 2023, paragraph 8 and 77-81.

<sup>107</sup> Report 2023, paragraph 8.

<sup>108</sup> Report 2023, paragraph 79.

<sup>109</sup> Report 2023, paragraph 46.

<sup>110</sup> Report 2023, paragraph 81.

However, the updated 2020 Commentary addresses the topic. It acknowledges that, while article 13 does not explicitly prohibit such violence, this prohibition should be implicitly understood within the broader obligation to ensure humane treatment and protect against violence and intimidation<sup>111</sup>. The updated Commentary defines sexual violence as “any act of a sexual nature committed against any person under circumstances which are coercive<sup>112</sup>”, stressing that detention inherently creates coercive circumstances, making prisoners of war particularly vulnerable to such acts. It also underscores that women and young girls are at especially high risk of becoming targets of sexual violence during captivity.<sup>113</sup> Considering the Report, Ukrainian women POWs reported various sorts of ill-treatment of sexual violence including forced nudity, unnecessary and humiliating cavity or naked searches and were threatened with rape or other sexual violence in such circumstances that it made them believe such threats would be executed<sup>114</sup>.

The Report also focuses on sexual violence against the Ukrainian male POWs, including forced nudity, genital violence, and cavity searches<sup>115</sup>, whereas the Russian prisoners were threatened with sexual violence<sup>116</sup>. While women are often targeted as sexual objects, with perpetrators using sexual violence to assert power through rape, sexual violence against men serves to emasculate and humiliate them, undermining their sense of masculinity<sup>117</sup>. This can include acts such as being stripped naked in public, mimicking positions of intercourse and performing forced sexual acts on other male POWs, often in the presence of guards and other prisoners<sup>118</sup>. These acts are designed not only to cause physical harm but also psychological harm as they exploit societal norms around gender and power. As explained by Durham and O’Byrne: “Sexual violence is used against men during armed conflict as a deliberate strategy to push the victim to the bottom of a power structure based on gender stereotypes. A number of authors perceive that the male victim of sexual assault is ‘feminized’ by the perpetrator, forced to occupy the position of the stereotypically submissive and subordinated woman<sup>119</sup>”.

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<sup>111</sup> Commentary of 2020, Convention (III) Relative to the Treatment of Prisoners of War, Geneva, 12 August 1949, paragraph 1578.

<sup>112</sup> *Ibid.*

<sup>113</sup> *Ibid.*

<sup>114</sup> Report 2023, paragraphs 77-81.

<sup>115</sup> Report 2023, paragraph 62.

<sup>116</sup> Report 2023, paragraph 98.

<sup>117</sup> C. COHN, *op.cit.*, p. 12.

<sup>118</sup> S. SIVAKUMARAN, “Sexual Violence Against Men in Armed Conflict”, *The European Journal of International Law*, vol. 18, no. 2, 2007, pp. 264-267.

<sup>119</sup> H. DURHAM and K. O’BYRNE, *op.cit.*, p. 48.

## CHAPTER 3. CRITIQUES & REFLECTIONS

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Now that we have shed some light on the experiences of women combatants and prisoners of war, it is important to keep this context in mind to formulate a few general reflections and critiques concerning the adoption of an inclusive approach based on gender.

### Section 1. Not *why* but *how*?

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Although our analysis focuses on the experiences of women combatants, International Humanitarian Law encompasses other female actors who would also benefit from a gender-based approach. This perspective would ensure that all women are seen, heard, understood, and that their experiences are taken seriously whether they are combatants, prisoner of war, civilians, or actors in the decision-making processes. Concerning women civilians, a gender perspective would enhance their protection in armed conflicts, since the military, which also plays a protective role, would take more inclusive decisions, maintain zero tolerance for sexual exploitation, and engage more effectively in disarmament, demobilization, and reintegration programs for women<sup>120</sup>. Moreover, by adopting a gender perspective, more resources would be mobilised on a larger scale in decision-making processes and activities relating to peace-making, post-conflict reconstruction, and even conflict prevention. Broadly, such an approach would alleviate the negative impact of war on women, enhance women's participation in the military, and improve military effectiveness<sup>121</sup>. As recognised by the UN Security Council, women, as well as men, are vital to the construction of a safe and stable world<sup>122</sup>.

The question however is not why we should adopt a gender perspective but rather how to implement it effectively. In the field of IHL, some feminists argue that meaningful change will only occur when women enter the military in sufficient numbers and gain access to high-ranking positions, allowing them to bring changes from within. A counterargument nevertheless presented by other authors is the risk that women, upon joining the armed forces, might not receive the possibility to achieve higher positions and will be changed by the institution rather than changing it.<sup>123</sup>

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<sup>120</sup> R. EGNELL and M. ALAM, *op.cit.*, p. 11.

<sup>121</sup> *Ibid.*, pp. 10-15.

<sup>122</sup> See: UN Security Council, Security Council resolution 1325 (2000), on women and peace and security, S/RES/1325 (2000), 31 October 2000.

<sup>123</sup> J. G. MATHERS, *op.cit.*, p. 145.

Adopting a gender perspective may also include revising the law. Numerous resolutions, guidelines and standards from the United States Security Council and the General Assembly have been adopted to enhance the protection of women during armed conflicts<sup>124</sup>. However, these frameworks are considered ‘soft law’, reflecting the female part of the dyad as seen in the preliminary pages of this thesis, whereas adopting new treaties and conventions, having at their heart the best interest of women, has a bigger impact being considered ‘hard law’. The International Committee of the Red Cross however shares the idea of revising existing IHL norms by adopting a gender perspective on the Conventions rather than creating new laws. As such, the Geneva Conventions are being revisited with a more modern and inclusive approach. The updated Commentary on the Third Geneva Convention already demonstrates progress in adopting a gender-specific perspective concerning the protection of women prisoners of war, even though the reality might still differ from what the law prescribes.

Feminists are also highlighting the challenge of bringing a gender perspective into the military, which remains a macho domain. The military might be sceptical about embracing a gender perspective because its primary mission is to conduct wars rather than focus on bringing equality among soldiers or within the communities where they are deployed. However, some feminists argue that if women can make significant contributions in the most masculine and patriarchal domain of all, it demonstrates that there are few limits to what can be achieved.<sup>125</sup>

Examples such as Sweden are proof that the implementation of a gender perspective already shows its promises in the military. By adopting gender-related projects, conducting training, and establishing gender-related functions, Sweden shows its determination and commitment to make a positive impact regarding the integration of women and the understanding of their experiences. When a country makes such advancements, sharing these practices is crucial so that other countries can learn from them and advance more rapidly. However, this often remains a challenge, as there is still a lack of adequate sharing of lessons learned between countries and regions<sup>126</sup>. In response, Sweden has implemented courses to facilitate global learning and sharing of best practices.

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<sup>124</sup> See: Resolution 1325 of the UNSC, 31 October 2000; Resolution 1888 of the UNSC; Resolution 1889 of the UNSC; Resolution 1894 of the UNSC.

<sup>125</sup> R. EGNELL and M. ALAM, *op.cit.*, p. 12.

<sup>126</sup> *Ibid.* p. 2.

Implementing gender approaches goes beyond merely updating legal commentaries or creating new positions within the military. In Colombia, more than 3000 women ex-combatants, benefit from reintegration programs established by the Peace Agreement, which put an end to the conflict between the Government and the guerrilla group FARC-EP in Latin America. The Agreement, through its programs, put an emphasis on strengthening the roles of women as peacebuilders by focusing on their reintegration as mothers, entrepreneurs, students, citizens, and political leaders while recognising the difficulties that women may encounter to reintegrate society after being part of an armed conflict<sup>127</sup>. By prioritising the reintegration of women into various aspects of civilian life, the Peace Agreement recognises their potential as agents of change and underscores the need for inclusive policies that support their empowerment in post-conflict settings.

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<sup>127</sup> <https://www.unwomen.org/en/news-stories/video/2022/10/the-reintegration-of-former-guerrilla-female-fighters-a-key-piece-in-the-implementation-of-the-peace-agreement-in-colombia>, last visited: 13 August 2024.

## Section 2. Different approaches

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Adopting a feminist perspective should not be limited to International Humanitarian Law or law in general. It's a viewpoint that can and should be embraced across all fields and by everyone (men and women), as it allows one to change one's point of view to understand the experiences of women and bring change in a world striving for equality.

There is not a single universal approach for implementing a gender perspective. They vary depending on the countries, communities and also women. Women do not all share the same life experiences or respond to them in the same way. For example, a Caucasian European woman will navigate society differently than a woman in Afghanistan. Adopting a feminist perspective also means recognising the diverse experiences within womanhood and acknowledging that factors such as culture, race, religion, and socio-economic status shape how women experience the world. Women cannot be confused with a minority group, as they represent half of the world's population. This diversity means that more than one story needs to be shared to ensure that all voices are heard, and to avoid generalising their experiences.

There are many debates among feminist scholars themselves concerning the variety of feminist approaches, yet most agree on recognising four distinct categories, each with its own criticisms. Briefly explained, the liberal approach considers that women should be equal to men and that the law should treat both genders the same. This should be achieved through structural changes that allow women to access the same positions as men. However, a significant critique of this approach is that it does not challenge existing biases nor try to understand them or acknowledge that the world is predominantly run by men. The liberal approach is satisfied as long as women are granted the same treatment as men. While allowing women to access the same high-ranking positions as men is a crucial first step toward gender equality, it is also essential for these women to adopt a gender perspective. If women in these positions maintain a male-centric viewpoint and do not acknowledge women's experiences, meaningful change is unlikely to occur. This highlights the importance of not only achieving parity but also ensuring that feminists' voices and viewpoints are integrated into decision-making processes.<sup>128</sup>

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<sup>128</sup> H. CHARLESWORTH and C. CHINKIN, *op.cit.*, pp. 38-40; H. CHARLESWORTH, "The Feminist Approaches to International Law", audiovisual, 1 June 2012.

The second approach, cultural feminism, celebrates the different qualities typically associated with men and women and seeks to highlight these differences as a means to build a world rooted in equality. This approach suffers however from critiques as some argue that it tends to generalise women's way of thinking, which in amount also seems to be inescapable: women think in a certain way because they were born as women, and they cannot change it.<sup>129</sup>

The third approach is radical feminism, which aims to eliminate men's dominance over women. It believes that the differences between men and women arise from the power imbalance, with men historically oppressing women. Only once that power is eradicated, will true equality be achieved. As its term indicates, this approach is characterised as being radical, perceived as having a black-and-white vision that may not fully acknowledge the progress already made in granting women greater roles and addressing their needs in society.<sup>130</sup>

Finally, post-modern feminism focuses on the realities of women's lives and acknowledges the plurality of women's viewpoints. This approach also highlights the experiences of women in Third World, whereas the three other approaches tend to be restricted to women from the North.<sup>131</sup> Ratna Kapur is a pioneer in this approach, emphasising the importance of recognising the complex experiences of women in the Third World beyond their portrayal as victim subjects. She argues that the focus on these women often becomes limited to issues such as rape, unwanted pregnancy, and abortions rather than understanding the ways in which their lives are influenced by religion, culture, race, and class.<sup>132</sup>

Different approaches exist, but key elements from each of them can be selectively integrated to create a comprehensive framework for gender equality. Women should indeed be allowed to access the same power positions as men; the distinct qualities among them need to be highlighted as this can bring some positive change; individuals should also question whether the law reflects male dominance while being aware to not generalise the experiences of women. Finding the best approach is undoubtedly challenging, but progress can be made by engaging in open dialogue with women, sharing best practices between countries, and maintaining a commitment to achieving equality. By taking such steps, there is no reason why we cannot move closer to gender equality and create a more inclusive world.

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<sup>129</sup> H. CHARLESWORTH, "The Feminist Approaches to International Law", audiovisual, 1 June 2012.

<sup>130</sup> *Ibid.*

<sup>131</sup> H. CHARLESWORTH and C. CHINKIN, *op.cit.*, pp. 44-48.

<sup>132</sup> R. KAPUR, "The Tragedy of Victimization Rhetoric: Resurrecting the "Native" Subject in International/Post-Colonial Feminist Legal Politics", *Harvard Human Rights Journal*, vol. 15, no. 1, January 2002, pp. 9-10.

### Section 3. Representation does matter

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One undeniable action that significantly contributes to advancing gender equality is increasing women's representation in governments and other leadership positions, as decisions and influential think tanks on this level often shape society's direction. Societies are multicultural and the governments should reflect this diversity. We need more women, just as much as we for example need to listen and represent more coloured or disabled individuals. How can one group (often white men) take adequate measures that apply to all if they don't even understand what the others experience?

However, there are two key criticisms that need to be formulated concerning women in the government. First, having more women in positions of power can be beneficial for society, but it is not sufficient to merely reach parity. Once women attain these important roles, it is crucial that their voices are heard, and their proposals taken seriously. Representation should lead to meaningful participation and influence, rather than being a mere statistic. Second, being a woman does not automatically equate to being a feminist. Sometimes, it can be more beneficial to have men in leadership positions who are committed to adopting a gender perspective than to have women who do not challenge the male-dominated viewpoint.

If we closely examine the history of women and their positions within international legal institutions, some may perceive an evolution from absence to presence. However, it is crucial to consider another perspective: women have always been present, advocating for equality, greater recognition, and more presence in decision-making roles, yet they did not always receive the attention and recognition they deserved. Even if nowadays, there is more representation of women within international institutions, their presence still remains confined to fields traditionally associated with their gender. For instance, as of the time of writing this thesis, 12 out of 18 members of the Committee of the Right of the Child are women. Similarly, there is an overwhelming majority of women in the Committee on the Elimination of Discrimination against Women, namely 22 out of 23. But once turned to other fields, there is a clear lack of female representation. While it makes sense that more women are present in these committees because they are best suited to understand these experiences and can take decisions from a perspective they can identify with, there is no reason why women should not be more present in other committees. Within the Committee against Torture, only 3 out of the 10 members are women. The same concern can be found within the International Court of

Justice, with 4 women out of the 15 permanent judges, and the same ratio applies to the International Law Commission, where women constitute only 4 out of 34 members.

The risk lies in the absence of adequate representation, which can affect the decision-making process and consequently, the outcomes, given that men and women often bring distinct perspectives shaped by their respective experiences. It is indeed argued that one approach may prioritise logic and rationality, focusing on the identification of what is legal and illegal, while the other tends to employ a more relational form of reasoning, taking into account contextual factors, communication, and emotions<sup>133</sup>. This by no means implies that one approach should exclude or even be favoured over the other. On the contrary, attention should be given to both approaches, and they should both be taken into account in order to facilitate action and make informed decisions, especially in pursuit of a world governed by gender equality.

Historically, women have been excluded from most decision-making positions, and even when women like Margaret Thatcher held positions of power, it is often debated whether they brought a feminist perspective into their roles. Questions remain thus as to how the world might have been shaped if more attention was given to the voices of feminist women (or feminist men). Charlesworth illustrates this point with the example of the invasion of Iraq, where the decision to invade was debated predominantly by male leaders, as most world leaders were men at the time. Part of the justification for the invasion was to grant more rights to Iraqi women and help Iraq develop into a more democratic society. However, after the invasion, discussions about women's rights were imposed from a Western viewpoint that did not take Iraqi culture into account. These debates were also dominated by men on both sides: Western men discussing improvements in women's rights and Iraqi men advocating for the consideration of their traditions. Women were thus largely absent from these discussions, and questions remain as to how their society might have been shaped if more attention had been given to their voices.<sup>134</sup>

Excluding women from contributing ideas results in an underdeveloped society. All we can hope for is that we evolve as a society and start paying more attention to women's perspectives. Perhaps having the first woman president of the USA, fighting for women's rights will also bring some positive change. Only time will tell.

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<sup>133</sup> A. BIANCHI, *op.cit.*, pp. 198-199; H. CHARLESWORTH, C. CHINKIN, and S. WRIGHT, "Feminist approaches to international law", *The American Journal of International Law* 85, vol. 85, no. 4, 1991, p. 615.

<sup>134</sup> H. CHARLESWORTH, "The Feminist Approaches to International Law", audiovisual, 1 June 2012.

## CONCLUSION

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Law is intended to be neutral and objective as it should ensure that all individuals are treated fairly and equally. However, the emergence of feminism promoted numerous scholars to scrutinise the law, revealing its inherent biases as it is not as neutral as originally thought. Questioning the impartiality of International Law took longer due to its universal nature and so believed governance over State entities rather than individuals, leading to initial scepticism about its gendered impact. Indeed, concerns of Public International Law may appear gender-neutral on the surface, focusing on sovereignty, territory, and state responsibility, and thus do not bear any prejudicial impact on women. However, it has been demonstrated that international law does affect individuals and is influenced by a predominantly male perspective excluding women's voices.

In this context, it is clear that International Humanitarian Law affects individuals, whether they are combatants, prisoners of war, sick or wounded or civilians. The Geneva Conventions protect these groups of people during armed conflicts, and the way the law is written and understood has thus a significant impact on how these individuals are protected. Regarding prisoners of war, it's crucial to pay attention to women's wartime experiences, as women have become more present in the military, and the laws written in 1949 do not reflect the evolution of women's position in society. This is the reason why an updated Commentary to the Third Geneva Convention was made in 2020 which recognised the patriarchal view on women of the older version.

The terminology used when referring to military personnel is significant. In 1960, women were referred to weaker people in need of protection which was rectified in 2020 by perceiving women as capable as men for being in the military. But if the law adapts its view, it is harder to invoke the same for society in general. For example, it is more challenging to find articles celebrating women's victories in the military or their heroic acts, as the default image remains the male soldier who fights for his country and whose gender is rarely highlighted. In contrast, when discussing women, there is a tendency to emphasise their gender by adding the term "female" before soldier. This distinction reflects the ongoing challenges women face in gaining equal footing and acknowledgement in military roles.

It is also important to note that the experience of women in the military also varies by country and special forces. While in Canada women are considered more equal to men, in Israel there appears to be equality, but discrimination is still present and in North Korea, women have no one to turn to if they become victims of sexual abuse, which is still very much present. Taking into account the experiences of all women matters, as we cannot generalise their stories.

Historically, the world has been shaped by male perspectives, overlooking women's unique experiences and needs. But as more women are stepping into various spheres of power, they are challenging the male default gender and redefining the status quo. While much work remains to be done to address gender biases and inequalities, there is a growing awareness and advocacy for women's rights. Women are increasingly using their voices to share their stories and experiences, highlighting issues that have long been ignored. This shift marks a crucial evolution from viewing women merely as objects to recognising them as active subjects with valuable contributions to society. As times continue to change, we will witness the collective efforts of women to help create a more inclusive and equitable world for all.

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