



LAWGEM

International and EU Law and Gender Equality

International Humanitarian Law and Gender

1 July, 2022

Dr Rigmor Argren

Overview

- **Key Feature(s) of IHL**
- **Women under IHL**
- **General protection**
- **Specific protection**
- **Where to Next?**

The Battle of Solferino, 1859



Principle of distinction (General protection):

In order to ensure respect for and protection of the civilian population and civilian objects, the Parties to the conflict shall at all times distinguish between the civilian population and combatants and between civilian objects and military objectives and accordingly shall direct their operations only against military objectives.

AP I, Art 48

Protection from attack:

Legal Provisions:

GCI Art 12:

“Women shall be treated with all consideration due to their sex.”

(See also GC II Art 12; GC III Art 14)

GCIV Art 27:

‘protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault’.

42 provisions in IHL treaty law mention women...

... 19 concern matters such as pregnant or nursing mothers

First type of special protection for women – biological aspects

Second type of special protection for women – from sexual violence

Special protection:

API Art 76:

- 1. Women shall be the object of special respect and shall be protected in particular against rape, forced prostitution and any other form of indecent assault.**
- 2. Pregnant women and mothers having dependent infants who are arrested, ... shall have their cases considered with the utmost priority.**
- 3. ...endeavour to avoid the pronouncement of the death penalty on pregnant women or mothers having dependent infants....**

Awakening feminist legal writings on IHL

- 1. IHL is indeed gendered**
- 2. Gender-sensitive protection of civilians**
- 3. Sexual violence against women acknowledged as WC**

War as Hyper Masculinity:

Soldiers

Victims of war

Victims of Sexual Violence

Intersectionality

Readings of Masculinity in IHL (Mégret)

- **Laws of War: “merely embody a longstanding masculine ideal; what is legal is what is virile and vice versa.” (p. 200)**
- **“the simultaneous authorisation and restriction of violence manifested in the laws of war.” (p. 203)**
 - Lawful under set conditions
 - Conditions set out by whom?

Where to Next?

- **IHL:**
 - **Gardam, 2013: "Work with what we have" – enforcement school**
 - **Intersectional analysis**
- **Feminist Legal Theory:**
 - **Fragmentation?**

Further reading:

- Gardam, Judith and Michelle J. Jarvis, *Women, Armed Conflict, and International Law* (The Hague: Kluwer Law International, 2001)
- Gardam, Judith, 'A New Frontline for Feminism and International Humanitarian Law' in Margaret Davies and Vanessa E. Munro (eds), *The Ashgate Research Companion to Feminist Legal Theory* (London: Routledge, 2013) 252–69
- Mégret, Frédéric, 'The Laws of War and the Structure of Masculine Power' 19 *Melbourne Journal of International Law* (2018) 200–26
- Stern, Orly Maya, *Gender, Conflict and International Humanitarian Law: A critique of the 'principle of distinction'* (Routledge: 2019)