

GENDER EQUALITY IN INTERNATIONAL HUMANITARIAN LAW WITH EMPHASIS ON WOMEN IN COMBAT

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ABSTRACT

Women are often depicted as the minority, the weaker section, and the victims in IHL, which is not inaccurate. However, this demographic is fast changing. There is a need to discuss the roles of those women who take up roles in contrast to these depictions, such as soldiers, medical and other personnel within a military outfit. The objective of the present paper is to determine the impact of women's inclusion in combat roles and military outfits. It seeks to analyse, in the bigger picture, the roles taken up by women in International Humanitarian Law and whether they have, in any way, changed over the years and the impacts of the same on society, these women, and the organisations they represent. There is special focus on the regiments of certain nations, chiefly USA and India, including the experiences of certain women who have been recruited by the national military forces of these nations. The paper aims to establish the positive effects of having women take up more significant roles in society and IHL, and play a more facilitative part in each nation's military agenda. The status of women as present over the world is only graphically represented, however it is of essence to have a comparative analysis. The inclusion of women in a more important role in the Indian military forces is also discussed. The paper concludes with the findings and analyses of the authors on the above parameters.

INTRODUCTION

In every realm of law, international and municipal, gender discrimination is hardly ever advocated, and even if done, it is usually with intention of bridging any gap between recognised genders. Keeping in mind the above, it is important to discuss whether these principles seep into legislations and treaties enacted for certain situations that are extraordinary, such as war or other external aggression.

International Humanitarian Law (IHL) in this respect, seeks to address issues that arise during such circumstances. This paper also seeks to discuss whether IHL accommodates these principles or has a different take on the generally presumed 'vulnerable groups' in the law.

HUMANITARIAN LAW

The concept of gender equality and non-discrimination is advocated formally by IHL through several provisions. The Geneva Convention (III) requires that protections given should be provided "without any adverse distinction founded on sex". It clarifies further, with regard to female prisoners of war, that the treatment meted out to them must be "as favourable as that granted to men".¹ Since they are seen as a vulnerable group, special provisions have been provided with the view of prohibiting sexual violence against women.²

However, the reality of these aspects of IHL have only highlighted the various shortcomings of these provisions. IHL has chiefly received criticism from feminists for focusing almost solely on the men when it comes to combat and relegating women to the status of victims or child-bearers. A study of the 42 provisions relating to women within the Geneva Conventions and the Additional Protocols found that almost half of them address women who are expectant or nursing mothers.³ There are also critics who argue that the issue of sexual violence against men in conflict has not yet received the attention it deserves.⁴

¹ Geneva Convention (III), Arts 14, 16.

² Geneva Convention (IV), Art 27; Additional Protocol (I), Art 76(2); Additional Protocol (II), Art 4(2).

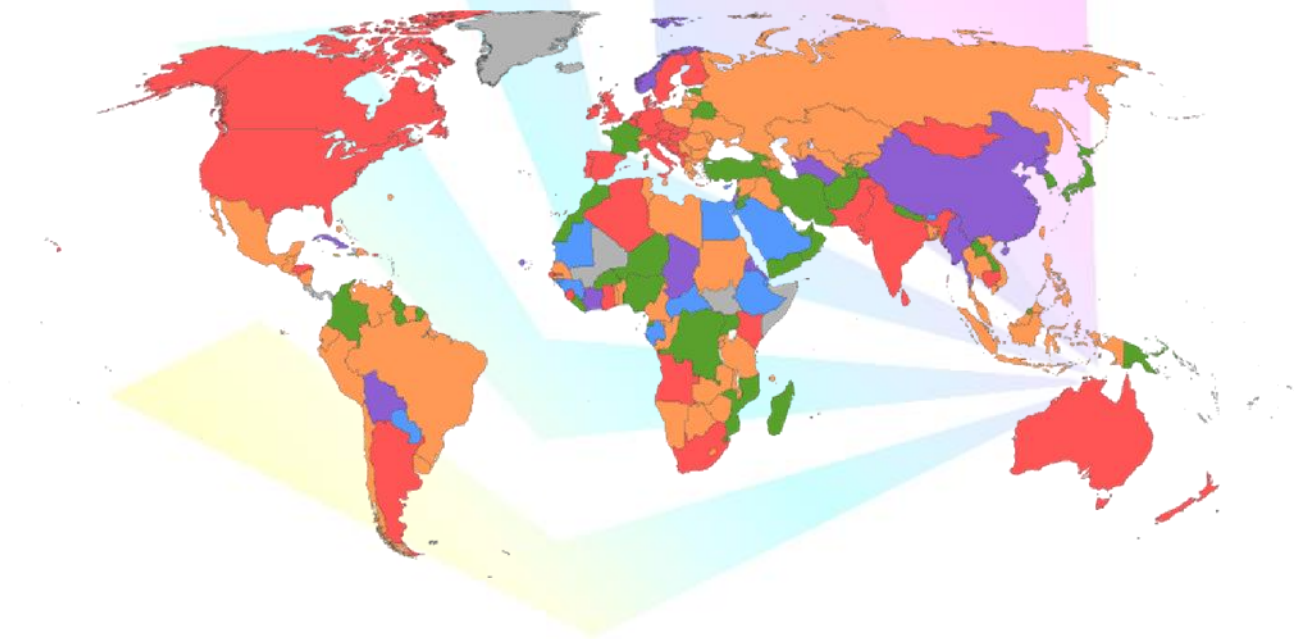
³ Gardam and Jarvis, cited in Durham and O'Byrne, (2010).

⁴ Lewis, cited in Durham and O'Byrne, (2010).

WOMEN IN COMBAT

While it may seem shocking to some factions of society, the idea of women shattering the illusion which is the male one-upmanship in professional spheres, is fast becoming reality. While it was largely unheard of earlier due to lack of opportunities or maybe even the lack of publicity, women, today are certainly are catching up. The focus for this paper will however remain only on their presence the military and armed conflicts.

Recent studies have found that from 1990 to the present, women have been members of fighting forces in at least 57 countries.⁵ Women and girls join armed forces and groups for a variety of reasons, including protection; disillusionment with the current regime; a desire for promises of positive change by opposition groups, including gender equality; self-enrichment; revenge; or political or economic gain.⁶



⁵ McKay and Mazurana (2004)

⁶ Lorentzen and Turpin (1998)

Women in military world (2016)

- Women not permitted in a countries' military.
- Women permitted in the military, no further information acquired.
- Women permitted in the military, but treated unequally. This may indicate a restriction to certain assignments, a restriction to noncombat situations/medical corps or wide-spread general discrimination.
- Women permitted in the military and generally treated as equals with regards to deployment and assignments.
- Obligatory conscription for women exists. A wide range of policies can be observed with regard to alternative services.
- No data, no armed forces, no stable form of government or ongoing/recent policy changes.

Source: *Obradovic, L. (2016), Gender integration in NATO military forces, London: Routledges*

India

The Indian Military Nursing Service was formed in 1888 and nurses fought in World War I and II where 350 Indian Army nurses either died or were taken as prisoners of war or declared missing in action, this includes nurses who died when SS Kuala was sunk by the Japanese Bombers in 1942.⁷ In 1992, the Indian Army began inducting women officers in non-medical roles.⁸ On 19 January 2007, the United Nations first all-female peacekeeping force made up of 105 Indian policewomen was deployed to Liberia.⁹ In 2014, India's army had 3 percent women, the Navy 2.8 percent and the Air Force performed best with 8.5 percent women.¹⁰ In 2015 India opened new combat air force roles for women as fighter pilots, adding to their role as helicopter pilots in the Indian Air Force.¹¹

⁷ Colin Gonsalves and Usha Sikdar, *Indian Army must stop its discrimination against military nurses*, HINDUSTAN TIMES, December 13, 2017.

⁸ <http://joinindianarmy.nic.in/bravo/entry-schemes-women.htm> (last visited March, 2018)

⁹ *First All-Female U.N. Peacekeeping Force to Deploy to Liberia*, FOX NEWS CHANNEL, January 19, 2007, available at <http://www.foxnews.com/story/2007/01/19/first-all-female-un-peacekeeping-force-to-deploy-to-liberia.html> (last visited March, 2018)

¹⁰ Brinda Karat, *Indian Army's shameful treatment of women recruits*, NDTV, November 28, 2014, available at <https://www.ndtv.com/opinion/indian-armys-shameful-treatment-of-women-recruits-706717> (last visited March 2018)

¹¹ *India paves way for women in military combat roles*, CHANNEL NEWS ASIA, October 24, 2015, available at <https://www.channelnewsasia.com/news/asiapacific/india-paves-way-for-women/2215380.html> (last visited February 2018)

United States of America

In WWI and WWII women served in numerous roles such as the Army Nurse Corps, and the Women's Army Corps (WAC). They carried out various roles such as clerical work, mechanical work, photo analysis, and sheet metal working; in some cases they were utilized as test pilots for fighter planes as WASPS.

In the year 1979, enlistment qualifications became the same for both, men and women. While women could enlist, they were prohibited from direct combat roles or assignments. In 1994, the Department of Defence officially banned women from serving in combat. The United States has more women in its military than any other nation.¹²

The terrorist attacks of September 11, 2001 was a pivotal point for women in the Military. As the Army's mission changed in Iraq and Afghanistan, the roles of women also changed in the ranks. In 2016, women had the equal right to choose any military occupational specialty such as ground units that were not authorised before.¹³

On January 24, 2013, Secretary of Defence Leon Panetta removed the military's ban on women serving in combat.¹⁴ Implementation of these rules is ongoing. There is some speculation that this could lead to women having to register with the Selective Service System.¹⁵

On November 21, 2013, the first three women to ever complete the United States Marine Corps' Infantry Training Battalion course graduated from the United States Marine Corps School of Infantry at Camp Geiger, North Carolina.¹⁶ It was said that despite completing the infantry training, those three female graduates would not be allowed to serve in infantry units until there were further studies carried out which could demonstrate and prove that they are

¹² Lucinda Peach, *Women at War: The Ethics of Women in Combat*, HEIN ONLINE, 1994

¹³ WOMEN IN THE ARMY, <https://www.army.mil/women/history/> (last visited February 2018)

¹⁴ Jerry Votava, *US military to permit women to serve in combat units*, JURIST LEGAL NEWS & RESEARCH, January 24, 2013, available at <http://www.jurist.org/paperchase/2013/01/us-military-to-permit-women-to-serve-in-combat-units.php> (last visited February 2018)

¹⁵ *The Legal Implications of Lifting the Combat Restrictions*, WHITEOLIPHAUNT, January 31, 2013, available at <http://www.whiteoliphaunt.com/duckofminerva/2013/01/14670.html> (last visited March 2018)

¹⁶ *After first co-ed infantry class, new perspectives on women in combat*, MARINE CORPS TIMES, November 25, 2013, available at <https://www.marinecorpstimes.com/article/20131124/CAREERS/311240008/After-first-co-ed-infantry-class-new-perspectives-women-combat/> (last visited February 2018)

physically capable.¹⁷ Later on January 3, 2017, it was reported that those three women became the first few to join a Marine combat battalion that would serve as a rifleman, machine gunner and mortar Marine in the 1st Battalion, 8th Marines.¹⁸

In April 2015, the two-and-a-half year of intense training in the Marine Corps' Infantry Officer Course which had become gender-integrated for research, ended without a single female graduate.¹⁹ The final two participants in the Marines' research failed the Infantry Officer Course. Both were dropped the same day, during the gruelling initial Combat Endurance Test.²⁰

Army Ranger Battalions and Navy SEAL units plan to open positions to women by 2015 and 2016, respectively. In August 2015, Capt. Kristen Griest and first Lt. Shaye Haver became the first two women to graduate from the U.S. Army Ranger School, despite failing the portion of the tests required to enlist in the 75th Ranger Regiment.²¹ In 2016, Griest became the first female infantry officer in the US Army when the Army approved her request to transfer there from a military police unit.²²

In December 2015, Defence Secretary Ash Carter stated that starting in 2016 all combat jobs would open to women.²³ The decision was not supported by Chairman of the Joint Chiefs of

¹⁷ Craig Whitlock, *Three women pass Marine 'grunt' test, but Corps holds off on letting them in infantry*, THE WASHINGTON POST, November 20, 2013, available at https://www.washingtonpost.com/world/national-security/three-women-pass-marine-grunt-test-but-corps-holds-off-on-letting-them-in-infantry/2013/11/20/6e04f164-51f6-11e3-9fe0-fd2ca728e67c_story.html?noredirect=on&utm_term=.9ef34de2336b (last visited March 2018)

¹⁸ Jeff Schogol, *First female infantry Marines joining battalion on Thursday*, MARINE CORPS TIMES, January 3, 2017, available at <https://www.marinecorpstimes.com/news/your-marine-corps/2017/01/03/first-female-infantry-marines-joining-battalion-on-thursday/> (last visited February 2018)

¹⁹ Hope Hodge Seck, *Marines' combat test period ends without female grad*, USA TODAY, April 8, 2015, available at <https://www.usatoday.com/story/news/nation/2015/04/08/last-ioc-marine-experiment-women/25478813/> (last visited February 2018)

²⁰ Hope Hodge Seck, *Last IOC in Marine infantry experiment drops female officers*, MARINE CORPS TIMES, April 7, 2015, available at <https://www.marinecorpstimes.com/news/your-marine-corps/2015/04/07/last-ioc-in-marine-infantry-experiment-drops-female-officers/> (last visited March 2018)

²¹ Ray Sanchez and Laura Smith-Spark, *Two women make Army Ranger history*, CNN, August 21, 2015, available at <https://edition.cnn.com/2015/08/21/us/women-army-ranger-graduation/index.html> (last visited March 2018)

²² Luis Martinez, *Trailblazer Becomes Army's First Female Infantry Officer*, ABC NEWS, April 27, 2016, available at <https://abcnews.go.com/US/trailblazer-armys-female-infantry-officer/story?id=38720413> (last visited February 2018)

²³ Jim Miklaszewski and Halimah Abdullah, *All Combat Roles Now Open to Women, Pentagon Says*, NBC NEWS, December 3, 2015, available at <https://www.nbcnews.com/news/us-news/pentagon-nbc-news-all-combat-roles-now-open-women-n473581> (last visited February 2018)

Staff Gen. Joseph Dunford of the Marine Corps, who wanted to keep certain direct combat positions such as infantry and machine gunner closed to women.²⁴

One significant female contribution was recognised on June 16, 2005, when Sgt. Ann Hester was awarded the Silver Star for her actions during a firefight that had taken place outside Baghdad. This was the first Silver Star in U.S. military history awarded to a woman soldier.²⁵

In March 2016, Ash Carter approved the final plans from military service branches and the U.S. Special Operations Command to open all combat jobs to women, and authorised the military to begin integrating female combat soldiers "right away."²⁶ On October 26, 2016, ten women became the first female graduates from the United States Army's Infantry Basic Officer Leader's Course at Fort Benning, Georgia.²⁷

On September 25, 2017, an anonymous woman became the first to complete the United States Marine Corps' Infantry Officer Course at Marine Corps Base Quantico in Quantico, Virginia and become the first female Marine infantry officer.²⁸

ISSUES

Enlisted below are some of the common concerns that militaries of several nations have with the idea of recruiting women. While some of these views may have changed over time, most nations still hold to them to the detriment of their female soldiers' careers.

²⁴ Eric Bradner, *U.S. military opens combat positions to women*, CNN, December 3, 2015, available at <https://edition.cnn.com/2015/12/03/politics/u-s-military-women-combat-positions/index.html> (last visited February 2018)

²⁵ Mark Thompson, *Women in Combat: Vive a Différence*, TIME, January 25, 2013, available at <http://nation.time.com/2013/01/25/women-in-combat-vive-a-difference/> (last visited February 2018)

²⁶ Kellan Howell, *Defense Secretary Ashton Carter OKs final strategy for women in combat*, THE WASHINGTON TIMES, March 11, 2016, available at <https://www.washingtontimes.com/news/2016/mar/11/ash-carter-approves-final-strategy-women-military-/> (last visited February 2018)

²⁷ Carla Babb, *First Women Graduate US Army Infantry Officer Course*, VOA NEWS, October 26, 2016, available at <https://www.voanews.com/a/first-women-graduate-us-army-infantry-course/3567503.html> (last visited March 2018)

²⁸ First Female Marine Graduates Infantry Officer Course, MARINES, September 25, 2017 available at <http://www.marines.mil/News/Press-Releases/Press-Release-Display/Article/1322691/first-female-marine-graduates-infantry-officer-course/> (last visited March 2018)

Physical concerns

The Center for Military Readiness, an organisation that seeks to limit women's participation in the military, stated that “Female soldiers [are], on average, shorter and smaller than men, with 45-50% less upper body strength and 25-30% less aerobic capacity, which is essential for endurance”.²⁹ Motherhood accounts for 58% of hospitalisations among active-duty female troops.

A 2014-2015 experiment by the Marine Corps with a gender-integrated combat unit found that women were twice as likely to suffer injuries significant enough to remove them from duty, and that women's shooting accuracy was much less than that of men in simulated combat situations. Female soldiers were also found to display poor performance in the basic combat tasks like negotiating obstacles and removing wounded troops from the battlefield.³⁰

In the Austrian Armed Forces and almost all NATO countries, a significantly lower physical performance requirements for entrance and subsequent tests have been applied and maintained for female soldiers to determine their fitness for service.³¹ The Swiss Armed Forces abolished this advantage for female soldiers in 2007.³²

Social concerns

There have been numerous social concerns cited, such as the possibility of romantic relationships between soldiers which would result in disruptions at the war zone. Women have been labelled a distraction, or the distracted, if they opt for motherhood over serving their nation.

²⁹ *Women in Combat: Frequently Asked Questions*, CENTER FOR MILITARY READINESS, November 22, 2004, available at

<https://web.archive.org/web/20041220052800/http://www.cmrlink.org/WomenInCombat.asp?docID=237> (last visited February 2018)

³⁰ Dan Lamothe, *Marine experiment finds women get injured more frequently, shoot less accurately than men*, THE WASHINGTON POST, September 10, 2015, available at

https://www.washingtonpost.com/news/checkpoint/wp/2015/09/10/marine-experiment-finds-women-get-injured-more-frequently-shoot-less-accurately-than-men/?utm_term=.52d61e701270 (last visited March 2018)

³¹ *Körperliche und geistige Fitness als Voraussetzung* (in German), AUSTRIAN ARMED FORCES, May 28, 2013.

³² As women have to meet the same minimum physical requirements in all branches of service as men, they are now also assessed at the same TFR (Fitness-Test); SWISS ARMED FORCES, May 28, 2013.

Another argument against the inclusion of women in combat units is that placing women in combat where they are at risk of being captured and tortured and possibly sexually assaulted is unacceptable.³³ Rhonda Cornum, then a Major and flight surgeon, and now a Brigadier General and Command Surgeon for United States Army Forces Command, was an Iraqi prisoner of war in 1991. After her release, she was told not to mention about being molested while in captivity. Cornum, subsequently came out and disclosed the incident subtly by saying, “A lot of people make a big deal about getting molested.” She was noted later, adding: “But in the hierarchy of things that were going wrong, that was pretty low on my list”.³⁴

Tactics

Recent studies from Harvard Business School and MIT have shown that group intelligence of an organisation rises when women are on teams. Women tend to bring along with them a level of sensitivity, and the enhanced ability to read and comprehend emotions of other people. In today's battlefield experiences, social sensitivity is a much needed skill for military professionals. Having women in the military would dramatically increase the ability to extract critical intelligence. This could possibly make a difference to the result of a mission – its success or failure.³⁵

CONCLUSION

The object of this research paper was to look at the position of women in the world when it came to equality in humanitarian law, considering their positions in their respective military/armed forces. Women have faced discrimination for the longest time in various political, social and economic scenarios, and have been termed weak due to their biological design.

³³ *Women in Combat*, CENTER FOR MILITARY READINESS, February 9, 2012, available at <https://www.cmrlink.org/WomenInCombat.asp?DocID=237> (last visited February 2018)

³⁴ Nicholas D. Kristof, *A Woman's Place*, THE NEW YORK TIMES, April 25, 2003, available at <https://www.nytimes.com/2003/04/25/opinion/a-woman-s-place.html> (last visited March 2018)

³⁵ William Denn, *Women in combat roles would strengthen the military*, THE WASHINGTON POST, April 3, 2014 available at https://www.washingtonpost.com/opinions/women-in-combat-roles-would-strengthen-the-military/2014/04/03/f0aeb140-bb50-11e3-9a05-c739f29ccb08_story.html?utm_term=.7b2dffe83e99 (last visited March 2018)

Through the course of this paper, it has been seen that several countries have permitted their women to participate in the military and hold chief positions in the armed forces, even including active armed combat. It is not to be taken lightly as this is an arena that women have long been kept out of. It is also remarkable to see these brave women compete against all odds and perform as well as some of the men involved in armed combat.

The paper also highlights instances of discrimination against these women. It is not something out of the ordinary given our present, where several women still fight for their basic rights. While this may be more common to lesser developed nations, women living in developed nations still face problems of sexual harassment, unequal pay, inadequate maternity benefits, amongst other things.

The paper even mentions a case of molestation while captivated and how the governments would rather the victim did not share such violations.

There is also a brief discussion of another research paper that highlights the benefits of including women in the armed forces as their presence has been related to an elevation of group intelligence and the determination of a successful mission.

The above only prove that the inclusion of women in armed forces can have its benefits which may in turn outweigh the imagined ill consequences of their inclusion. Women have been proving time and again that they can compete with their male counterparts, if only given a fair chance. And that does not seem to be too much to ask.