

# International Humanitarian Law (IHL), International Human Rights Law (IHRL) and Complementarity: A Feminist Approach

**Welcome!**

## speakers

Jane Bowness, WILPF Australia Intern

Barbara O'Dwyer, WILPF Australia President

Other academics/practitioners in the field

WOMEN'S INTERNATIONAL LEAGUE FOR  
**PEACE & FREEDOM**



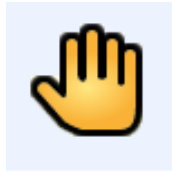
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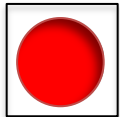
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# **Women's International League for Peace and Freedom (WILPF)**

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WOMEN'S INTERNATIONAL LEAGUE FOR  
**PEACE & FREEDOM**



# IHL, IHRL and Complementarity:

A Feminist Approach





# Barbara O'Dwyer



President  
WILPF Australia



# Miss Jane Bowness



Intern  
WILPF Australia



# Definitions

- IHL = International Humanitarian Law = ‘Laws of War’
  - Includes the Geneva Conventions, Statute of the International Criminal Court, The Hague Convention et al. Treaties and customary law dealing with the rules that apply in armed conflict to protect all parties and other vulnerable groups.
  - ICRC = ‘The Red Cross’



# Definitions

- IHRL = International Human Rights Law / Human Rights
  - Traditionally the laws that regulate the relationship between the state and the individual during peacetime.
  - Most prevalent areas of treaty making, especially by UN bodies.

**\* BOTH BODIES OF LAW DEAL WITH PROTECTIONS OF INDIVIDUALS AND ARE CAPABLE OF OVERLAP\***



Mrs. Eleanor Roosevelt of the United States holding a Declaration of Human Rights Poster in Spanish [November 1949] (UN Photo)





# Feminist critiques of both regimes

## IHL

- Rules are 'base' protections for participants in conflict – 'neutrality approach'
- Some gender-specific provisions, but for the most part women are not accounted for
- Where a provision does consider gender, generally from a male/public perspective and thus ineffective
- Definition of War Crimes and Crimes Against Humanity.
- Enforcement vs Revisionist Arguments

## IHRL

- Women – ECOSOC; relegated to private sphere
- Implementation arguments
- 'Rights' are broad and not of a character able to be enforced in the first place. I.e CEDAW Article 3.
- 'Asian Values' critique
- However, there are treaties and certain bodies that DO take a gender specific approach, focusing on a legislative AND substantive outcome including on women in conflict, i.e UNSCRES1325



# Research Question:

Given that IHRL contains more gender-specific content than IHL, can it 'fill in the gaps' already identified in IHL to provide greater protection for women? (The *complementarity* approach)



# Research Finding:

**Yes!**

- Definition of 'persecution' under the Refugee Convention
- SC Res 1325
- Decisions of ICTY and ICTR
- Travaux Préparatoires of the ICC Statute

to an extent...



Prosecutors of Rwanda and Yugoslavia War Crimes Tribunals Brief Media (UN Photo/ Eskinder Debebe)



# *lex specialis* and the need for reform

- In circumstances where IHRL and IHL cannot be interpreted together, the *lex specialis* principle applies.
- Generally, IHL > IHRL in conflict situations
- While courts have interpreted around this issue to yield a result where IHRL ‘trumps’ IHL, perhaps for a ‘fairer’ result, this affects the systemic integrity of the international legal system as a whole.



# Case Study: Afghanistan

## *Legal Protections*

- The ICC has not yet prosecuted any person for War Crimes or Crimes Against Humanity in Afghanistan under IHL
- Domestic legislation – Afghanistan NAP
- The current stage of reporting to the court mentions 1 gender-based crime involving a bombing of a public building.
  - **In the same report**, at least 109 counts of Rape and other forms of sexual violence were attributed to the Guinean government under military rule, as well as in Columbia's country report.



Secretary General Ban Ki-Moon (centre) meets with Luis Moreno-Ocampo (left), outgoing Prosecutor of the International Criminal Court (ICC), and new ICC Prosecutor Fatou Bensouda. (UN Photo/ Eskinder Debebe)





# Case Study: Afghanistan

## *NGO Activities*

- IHL and IHRL guide organisations that prescribe to Human Rights or Humanitarian approaches.
- Humanitarian orgs such as ICRC and some UN operations: Afghan women's rights have come second to ensuring a presence in Afghanistan.
- IHRL NGOs are able to draw a line where women's rights are not respected; can adjust policy as political dynamics change.



Humanitarian Aid Arrives at Sosmaqala IDP Camp in Afghanistan (UN Photo/ Eric Kanalstein)



# Future Research

- Reform of IHL is necessary to yield a more gender-sensitive approach.
- Further data needs to be collected from women in conflict zones on their experiences of war (especially Afghanistan)
- Determine to what extent a top-down legal interpretive approach can ameliorate the lives of women in conflict, as compared with grassroots campaigning or participation policies like including women in the peace building process.
- Analysis of the jurisprudence on the *lex specialis* principle specifically, and whether IHRL could be found to be the more specific law for women's rights issues in conflict should also be undertaken.



# Takeaway



Security Council Debates Women,  
Peace and Security (*UN Photo/Rick  
Bajornas*)



Women and Child in Farah,  
Afghanistan (*UN Photo/Eric  
Kanalstein*)



# Comments from researchers and practitioners



# Dr Helen Durham



Director International  
Law and Policy

International Committee of  
the Red Cross





A gender perspective on IHL insists on emphasizing two principles: first, that **where women (and men) participate in war, their experiences should be recognized as valid**, rather than being excluded from the discourse or reduced to stereotype; and secondly, that **IHL norms apply to all participants in war**, in both a protective and a regulatory sense, regardless of gender.

Durham, H., *in International Review of the Red Cross*, in March 2010 ("The dialogue of difference: gender perspectives on IHL", *IRRC*, vol. 92, March 2010, pp. 31-52, at p. 52).



# Dr Nicole George



Senior Lecturer in Peace  
& Conflict Studies

University of Queensland



This is a very valuable paper which is strongly focussed on the international domain of justice and the legal codes prescribed in International humanitarian and International human rights law. But more and more in the field of peace and conflict studies, **we are trying to understand how the local and the global interact** - see ongoing debates on hybridity for example.

Nicole George



What does the literature have to say about **the interplay between these international justice frameworks and the operation of local systems of justice** which are often vital to the achievement of reconciliation and post-conflict transition and **which sometimes** (although not always) **allow women's voices to be heard and to carry more weight** (particularly in grass-roots peace processes - as occurred in Bougainville for example in the late 1990s).

Dr Nicole George  
7 December 2015



Has the author given thought to the varying gender outcomes that might be produced as there is interplay between these global and local sites of regulatory authority?

Nicole George  
Senior Lecturer  
University of Queensland





# Alison Aggarwal



Principal Adviser/ Manager

Cultural Reform, Australian Defence Force  
**Australian Human Rights Commission**



There is considerable value in considering **how both systems can inform each other from a gender perspective**, and through a complementarity approach **strengthen both systems**. To implement such complementarity requires a range of strategies: including **top-down** legal interpretive approaches **and grassroots campaigning or participation policies** like including women in the peace building process. To ensure its implementation on the ground, **it is necessary for humanitarian organisations to operate from a gendered and women's human rights perspective** in the course of their work.

Alison  
Aggarwal



Note CEDAW Committee's recent General Recommendation 30 on women in conflict prevention, conflict and post-conflict situations:

In the General Recommendation, the Committee:

- discusses the complementarity of IHL and IHRL
- Recommends that State parties, when implementing their obligations under the Convention, give due consideration to the complementary protections for women and girls stemming from international humanitarian, refugee and criminal law.

**Alison Aggarwal**

Principal Adviser/ Manager

Cultural Reform, Australian Defence Force

**Australian Human Rights Commission**

WOMEN'S INTERNATIONAL LEAGUE FOR  
**PEACE & FREEDOM**



# Discussion, Questions, Comments



# Thank you!

## Contact us

**Chris Henderson**

Communications  
Coordinator

WILPF Australia

[communications@wilpf.org.au](mailto:communications@wilpf.org.au)



**Read Jane's paper and take links to the documents mentioned.**

