

# Queering the humanitarian principles of neutrality and impartiality: Implications for humanitarian action, IHL effectiveness and gender justice

**Anna Chernova\***

Senior Policy Adviser, Oxfam, London, UK

Email: [achernova@oxfam.org.uk](mailto:achernova@oxfam.org.uk)

## Abstract

*Institutions are often reluctant to openly engage on controversies around the patriarchal underpinnings of the humanitarian sector, or the hard questions around implementing rights-based approaches in spaces where the dominant social norms run counter to an enabling environment for principled humanitarian and development assistance. A reluctance to engage on these issues can lead to unintended suppression of gender justice efforts under the urgency and scale of needs-based humanitarian response. Pre-crisis unequal power relations can be visible or invisible, difficult to measure and even more difficult to address through*

\* This article expresses the views of the author. These personal reflections are not intended as a comprehensive statement of the agreed policies of Oxfam.

The advice, opinions and statements contained in this article are those of the author/s and do not necessarily reflect the views of the ICRC. The ICRC does not necessarily represent or endorse the accuracy or reliability of any advice, opinion, statement or other information provided in this article.

*humanitarian action. Engaging on root causes and drivers of human suffering is often viewed as “political” in contexts of closing civic space and restricted humanitarian access. This article will explore tensions and synergies between the humanitarian principles and the gender justice agenda with a view to helping humanitarian actors contribute to long-term goals of transforming social norms. The article applies a critical feminist lens to the humanitarian principles of neutrality and impartiality, with a focus on the wider development agenda, the nature of the State in a State-centric global order, and the continuum of violence. Drawing on critical feminist theory and decolonization discourses, and building on gender analyses of international humanitarian law, this article looks to queer the humanitarian principles of neutrality and impartiality within the context of the shifting aid system in which they are applied. The objective is help address some of the gaps in literature, identify ways in which aid actors can reduce unintended harm to the gender justice agenda, and help contribute to the more transformative agendas of gender justice.*

**Keywords:** gender, conflict, feminism, neutrality, impartiality, humanitarian, queer.



The humanitarian principles intersect with human rights frameworks and development agendas, yet they are often in tension with those frameworks and agendas, and with each other. The development and structure of the aid system and associated legal frameworks can exacerbate these tensions, as the aid system struggles to balance traditional needs-based approaches with rights-based transformative agendas. In practice, the temporal factors of urgency mean that issues of gender justice tend to be inadvertently (or deliberately) displaced by the life-saving priorities of front-line humanitarian responses, which often involve confronting uncomfortable compromises with power holders (State and non-State armed actors) in highly securitized contexts. Queering the humanitarian principles and international humanitarian law (IHL) frameworks can help harness critical research methodologies and feminist theories in service of principled humanitarian action and the effectiveness of IHL and related frameworks in service of alleviating suffering and gender justice objectives. Queer approaches to research question the origin and effects of the concept of categories, placing greater emphasis on the dynamic interplay of norms and laws,<sup>1</sup> policies and practices. This article will seek to queer the humanitarian principles and associated IHL frameworks from gender justice perspectives.

1 Matt Brim and Amin Ghaziani, “Introduction: Queer Methods”, *Women’s Studies Quarterly*, Vol. 44, No. 3–4, 2016, available at: <https://muse.jhu.edu/pub/90/article/632144/pdf> (all internet references were accessed in March 2024).

Practitioners find<sup>2</sup> that rights-based frameworks are under pressure in an increasingly polarized and securitized<sup>3</sup> global rules-based order, undermining humanitarian and development efforts alike. A feminist approach to war and peace, addressing the continuum of violence<sup>4</sup> from a women's rights perspective, offers a valuable contribution to ways in which humanitarians can help reduce unintended harm to longer-term development objectives in humanitarian contexts while maintaining minimum standards for humanitarian action. Feminist approaches emphasize intersectionality and non-linearity of human development, and they interlink closely with decolonization efforts in the wider aid sector.

There are several reasons why the intentional and unintentional contributions made by humanitarian responses to the wider development agendas are increasingly important. In terms of demography, the majority of the world's extreme poor are projected to live in fragile and conflict-affected contexts by 2030;<sup>5</sup> in such contexts, the realization of individual and collective human rights bears a grim outlook<sup>6</sup> due to a wide range of factors, including historical legacies and persistent extreme inequalities. Conflict dynamics are also shifting: crises are increasingly protracted, often more violent and transnational in nature, and there is an increase in non-international armed conflicts (NIACs), where IHL's threshold for application is higher and human rights frameworks are more often invoked. Peace settlements remain elusive and often exclude key groups and issues served by humanitarian responses (notably women and gender perspectives),<sup>7</sup> increasing the risks of resurgent armed conflicts and the need for more humanitarian responses in already overstretched<sup>8</sup> aid systems.

- 2 Megan Daigle, "Gender, Power and Principles in Humanitarian Action", Overseas Development Institute (ODI), Humanitarian Policy Group (HPG), 2022, available at: <https://odi.org/en/publications/gender-power-and-principles-in-humanitarian-action>.
- 3 Norwegian Refugee Council, *Principles under Pressure: The Impact of Counterterrorism Measures and Preventing/Countering Violent Extremism on Principled Humanitarian Action*, 2018, available at: [www.nrc.no/resources/reports/principles-under-pressure/](http://www.nrc.no/resources/reports/principles-under-pressure/).
- 4 Feminist scholars define "the continuum of violence" in a number of ways, largely focusing on the interplay of patriarchy and power, both during peacetime and in situations of violence and armed conflict. By way of example, they draw attention to how sexual violence manifests itself across time and space (from the personal to the political to the public) and the wider systems and structures that underpin sexualized violence. See Denisa Kostovicova, Vesna Bjelic-Dzelilovic and Masha Henry, "Drawing on the Continuum: A War and Post-War Political Economy of Gender-Based Violence in Bosnia and Herzegovina", *International Feminist Journal of Politics*, Vol. 22, No. 2, 2020, available at: <https://doi.org/10.1080/14616742.2019.1692686>.
- 5 World Bank Group, *Strategy for Fragility, Conflict and Violence, 2020–2025*, available at: [www.worldbank.org/en/topic/fragilityconflictviolence/publication/world-bank-group-strategy-for-fragility-conflict-and-violence-2020-2025](http://www.worldbank.org/en/topic/fragilityconflictviolence/publication/world-bank-group-strategy-for-fragility-conflict-and-violence-2020-2025).
- 6 Amnesty International, "International Women's Day: Dramatic Deterioration in Respect for Women's Rights and Gender Equality Must Be Decisively Reversed", 7 March 2022, available at: [www.amnesty.org/en/latest/news/2022/03/international-womens-day-dramatic-deterioration-in-respect-for-womens-rights-and-gender-equality-must-be-decisively-reversed/](http://www.amnesty.org/en/latest/news/2022/03/international-womens-day-dramatic-deterioration-in-respect-for-womens-rights-and-gender-equality-must-be-decisively-reversed/); Civicus, "The Good, the Bad and the Ugly: Civic Space Dynamics", 2022, available at: [https://monitor.civicus.org/globalfindings\\_2023/innumbers/](https://monitor.civicus.org/globalfindings_2023/innumbers/).
- 7 Laura Wise, "Peace Agreements with a Gender Perspective Are Still an Exception, Not the Rule", London School of Economics, 18 June 2021, available at: <https://blogs.lse.ac.uk/wps/2021/06/18/peace-agreements-with-a-gender-perspective-are-still-an-exception-not-the-rule>.
- 8 ALNAP, *The State of the Humanitarian System: 2022 Edition*, ALNAP and ODI, London, 2022, available at: <https://sohs.alnap.org/>.

The humanitarian sector is increasingly recognizing that armed conflict does not affect people and communities equally, with pre-existing dimensions of inequalities, visible and invisible power relations and socio-cultural norms contributing to resilience and vulnerabilities in times of crisis.<sup>9</sup> As feminist approaches draw attention to historical power relations, queer methodologies are also helpful to humanitarians grappling with the colonial legacies of the sector, including challenges around perceived universality of geographically biased legal frameworks (e.g. Eurocentricity) underpinning the aid sector. Feminist scholars argue that our current rules-based system takes its genesis from a hierarchical approach to gender binaries that privilege the (white) male norm and have (in relatively recent history) been developed in Christian Europe and then transmitted through socio-cultural, economic and politico-military imperial endeavours to the world,<sup>10</sup> shaping our current rules-based order. This dynamic is often invoked across conflict-affected and fragile contexts when challenging the universality and equity of legal frameworks and the international institutions operating within those frameworks. As norms inform legal frameworks, and compliance with legal frameworks (re-)enforces norms, it is important to look at both the humanitarian principles and rules, as well as their application, when queering humanitarian approaches.

This article explores humanitarian experiences through a feminist lens, drawing on the discourses driven by women's rights, women-led and LGBTIQ+ organizations and movements in humanitarian spaces, with a particular focus on the role that sexuality and gender identities play in assessing vulnerabilities and delivering principled humanitarian responses. Solutions to these challenges require intersectional approaches and long-term perspectives. As the humanitarian–development–peace nexus<sup>11</sup> gains traction as a way of working, there is an increased focus on the “how” in humanitarian response and its many intersections with longer-term development agendas. This increased focus is in line with critical research theories, challenging traditional approaches to the study of history, international relations and other related disciplines. For example, localization, including local humanitarian leadership, tops the agendas of many humanitarian donors and systems, but given a globally shrinking civic and humanitarian space, can local organizations applying a gender justice and/or

9 Rose Pinnington, *Gender, Inclusion and Humanitarian Principles in Conflict Contexts*, Chatham House, December 2023, available at: [www.chathamhouse.org/2023/12/gender-inclusion-and-humanitarian-principles-conflict-contexts](http://www.chathamhouse.org/2023/12/gender-inclusion-and-humanitarian-principles-conflict-contexts).

10 David Eichert, “Decolonizing the Corpus: A Queer Decolonial Re-examination of Gender in International Law’s Origins”, *Michigan Journal of International Law*, Vol. 43, No. 3, 2022, available at: <https://repository.law.umich.edu/mjil/vol43/iss3/3/>.

11 UN Office for the Coordination of Humanitarian Affairs (OCHA), “Operationalising the Humanitarian, Development and Peace Nexus”, 2022, available at: <https://2022.gho.unocha.org/delivering-better/operationalizing-humanitarian-development-peace-nexus-through-basic-social>.

feminist framework survive successive waves of militarization, intertwined with the broadly patriarchal<sup>12</sup> and often colonial dynamics of the aid system?

The analysis presented in this article explores humanitarian approaches, queering<sup>13</sup> the role of gender and the humanitarian principles – especially from the perspective of national civil society stakeholders, operating without the benefit of diplomatic protections in contexts where the principles of neutrality and impartiality may be in tension. The text explores how the humanitarian principles of neutrality and impartiality interplay with restrictive social norms (such as *mahram*<sup>14</sup> restrictions) in militarized and politicized aid contexts, and considers areas where those negotiating humanitarian access (on the front line and at senior diplomatic levels) can avoid unintended harm to women’s rights and inclusion in the long term. With a focus on the perspectives of marginalized stakeholders, the research highlights tensions in perceptions around humanitarian–donor power relations, risk management and the dynamics of value-driven humanitarian negotiations. The research is meant to highlight cross-sector learning, as well as to suggest best practices aimed at avoiding unintentional harm to future humanitarian action and systems, as well as to the wider development agendas of human rights, inclusion and equality.

Building on gender analyses of IHL and feminist critiques of the humanitarian principles, the article will first unpack the scope of critical (queer) theory in its application to the humanitarian principles, and will then explore the normative interplay of IHL, development and gender justice agendas, including feminist challenges to the principles of neutrality and impartiality. It will go on to

- 12 Ricardo Fal-Dutra Santos, “Challenging Patriarchy: Gender Equality and Humanitarian Principles”, *Humanitarian Law and Policy Blog*, 2019, available at: <https://blogs.icrc.org/law-and-policy/2019/07/18/gender-equality-humanitarian-principles/>.
- 13 Queer approaches to international norms, politics and laws (including the laws of armed conflict) refer to more fluid, non-binary and intersectional international perspectives, drawing attention to how gendered and racialized norms and sentiments have generated a hierarchy of international norms and institutions. When thinking of the humanitarian principles, a queer approach would seek to challenge the norms underpinning the current international humanitarian system (from policies to practices). A queer approach asserts that ideas about gender, sex and sexuality are not natural or universal but are rather (re-)produced through discourse by human beings in a specific historical context. A queer approach to humanitarian principles questions the normative and challenges what seems to have been naturalized through policy and practice. Queering is seen as a continuing process (a conversation), seeking to think about sex, gender and identities in non-hegemonic ways, challenging fixed categories of identity and binary thinking. For more on queer theory and international norms, see D. Eichert, above note 10; Dianne Otto and Emily Jones, “Queering International Law”, *Oxford Bibliographies*, May 2023, available at: [www.oxfordbibliographies.com/display/document/obo-9780199796953/obo-9780199796953-0245.xml](http://www.oxfordbibliographies.com/display/document/obo-9780199796953/obo-9780199796953-0245.xml).
- 14 Derived from the word *haram* (drawn from Islamic jurisprudence), literally meaning something that is prohibited. In humanitarian contexts, the term refers to a restriction on women’s mobility without a male relative chaperone. Georgetown Institute for Women, Peace and Security, “What is Mahram?”, available at: <https://giwps.georgetown.edu/wp-content/uploads/2022/08/Mahram-Womens-Mobility-in-Islam.pdf>; UN Women, *Women’s Rights in Afghanistan One Year After the Taliban Take-Over*, 2022, available at: [www.unwomen.org/sites/default/files/2022-08/Gender-alert-2-Womens-rights-in-Afghanistan-one-year-after-the-Taliban-take-over-en\\_0.pdf](http://www.unwomen.org/sites/default/files/2022-08/Gender-alert-2-Womens-rights-in-Afghanistan-one-year-after-the-Taliban-take-over-en_0.pdf); Office of the UN High Commissioner for Human Rights (UN Human Rights), “Afghanistan: UN Experts Say 20 Years of Progress for Women and Girls’ Rights Erased since Taliban Takeover”, 8 March 2023, available at: [www.ohchr.org/en/press-releases/2023/03/afghanistan-un-experts-say-20-years-progress-women-and-girls-rights-erased](http://www.ohchr.org/en/press-releases/2023/03/afghanistan-un-experts-say-20-years-progress-women-and-girls-rights-erased).

look at the changing nature of war and the operating environment for national and international stakeholders in relation to principled humanitarian action, gender justice and women's rights, with a focus on the principle of impartiality and qualifying vulnerabilities. Highlighting practical implications of the tensions between needs-based and rights-based frameworks (from the perspective of those delivering humanitarian aid in their national contexts), the article will explore possible pathways to help the humanitarian sector and its underpinning principles engage more constructively with the wide range of feminist and decolonization agendas in order to maximize peace and justice dividends in the long term.

## Gender and armed conflict: Queering trends in policy and practice

There are a range of evolving (and stagnating) legal frameworks<sup>15</sup> that address the question of gender and women's rights in conflict contexts.<sup>16</sup> A critical feminist lens on IHL policy and practice would require a reflection on the historical context of this norm formation as well as accompanying trends. When looking at the human security of women (and other marginalized groups), IHL frameworks paint a more limited picture. While the authors and custodians of IHL do not claim a feminist trajectory in IHL promotion, dissemination or implementation, the way IHL interacts with human rights, refugee law and other frameworks can have valuable dividends for transitional justice, recovery and longer-term development agendas. In order to expand on the role that IHL compliance plays in promoting or unintentionally demoting gender justice agendas in humanitarian contexts, it is important to recognize the role that governments have played in the theatre of war, by using IHL to "code" women as civilians<sup>17</sup> and through other (perhaps unintentional or intentional) ways in which legal frameworks perpetuate traditional and often regressive gender norms and roles in times of armed conflict. This interplay between legal frameworks in times of conflict bleeds into post-conflict transitions and often (re-)enforces certain norms in peacetime. In recent decades, building on the work of gender scholars and feminist critiques of IHL, the International Committee of the Red Cross (ICRC) and others have worked to unpack the gendered dimensions of conflict and the implications for IHL (in particular the principles of distinction, proportionality and precaution, as

15 Jann K. Kleffner, "The Unilateralization of International Humanitarian Law", *International Review of the Red Cross*, Vol. 104, No. 920–921, 2022, available at: <https://international-review.icrc.org/articles/the-unilateralization-of-ihl-920>.

16 Catherine O'Rourke, *Women's Rights in Armed Conflict under International Law*, Cambridge University Press, Cambridge, 2020, p. 57.

17 Caroline Kennedy-Pipe and Sophia Dingli, "Gender and Security", in Alan Collins (ed.), *Contemporary Security Studies*, Oxford University Press, Oxford, 2022, p. 162.

well as an increasing number of cross-cutting issues).<sup>18</sup> Building on the efforts of gender-responsive operational agencies, feminist scholars have queried the principles underpinning aid frameworks – including in law.

Across international law, research and practice, there have been a wide range of attempts to define gender. This article takes a queering approach borrowed from feminist theory, working to highlight definitional challenges for institutions and how those contribute (directly or indirectly) to shaping social and legal norms in the humanitarian sector. A common element in the range of definitions of “gender” is the distinction drawn between sex (biological and physical characteristics) and differences based on social assumptions around values and what are perceived as “masculine” and “feminine” behaviours (social constructs).<sup>19</sup> Many institutions and frameworks continue to broadly define “gender” as an “identification of masculinity with characteristics of strength and militarism and of femininity with vulnerability, nurturing and peace”.<sup>20</sup> The traditional data bias toward quantitative rather than qualitative assessments in the humanitarian sector further complicates attempts to move away from binaries and hierarchies in gender norms and towards a recognition of gender, sex and sexuality as multifaceted, fluid and non-determinative of social hierarchy – a phenomenon that is more common in human history than what is often presented as the norm in the rules-based order of the present day.<sup>21</sup> While accepting the differences between sex and gender, and the various, non-monolithic identities people may associate with both, there is no doubt that the long history of development, practice and dissemination of IHL – as well as the policies and practices of operational agencies in how principled humanitarian programmes are designed and delivered – plays a role in shaping and reshaping social norms.

Many operational aid agencies delivering assistance in contexts where structural inequalities are exacerbated by armed conflicts have been developing a more fluid approach to gender in conflict. Some agencies are taking on the controversies around addressing inequalities as drivers of armed conflicts (which some governments perceive as “political”) by exploring the nexus of (social) gender norms and organized violence, including masculinities and femininities in conflict contexts through conflict sensitivity tools,<sup>22</sup> while others have pioneered ways to gender needs assessments in humanitarian contexts.<sup>23</sup> Institutional responses to gender issues in situations of humanitarian crisis display a wide

18 ICRC, *Gendered Impacts of Armed Conflict and Implications for the Application of International Humanitarian Law*, Geneva, June 2022, available at: [www.icrc.org/fr/publication/4634-gendered-impact-armed-conflict-and-ihl](http://www.icrc.org/fr/publication/4634-gendered-impact-armed-conflict-and-ihl).

19 Helen Durham and Katie O’Byrne, “The Dialogue of Difference: Gender Perspectives on International Humanitarian Law”, *International Review of the Red Cross*, Vol. 92, No 877, 2010, available at: <https://international-review.icrc.org/sites/default/files/irrc-877-durham-obyrne.pdf>.

20 C. Kennedy-Pipe and S. Dingli, above note 17, p. 160.

21 D. Eichert, above note 10.

22 Saferworld, “Gender Analysis of Conflict Toolkit”, available at: [www.saferworld-global.org/resources/publications/1076-gender-analysis-of-conflict](http://www.saferworld-global.org/resources/publications/1076-gender-analysis-of-conflict).

23 CARE, “Gender Marker”, available at: [www.care.org/our-work/gender-equality/gender-expertise/gender-marker/](http://www.care.org/our-work/gender-equality/gender-expertise/gender-marker/).

range of approaches to the question of gender, from being gender-blind (assuming that gender is not an issue in the context) to being gender-sensitive (identifying gender dynamics and using them to inform institutional responses) to being gender-transformative (not only identifying and trying to respond to gendered power dynamics, but also working to transform those dynamics in order to be more equitable).<sup>24</sup> Amidst a global backlash against women's rights, there are sadly many recent examples of humanitarian organizations with women's rights mandates – from Uganda<sup>25</sup> to Iraq<sup>26</sup> – that have been accused of “political” interference due to their feminist approaches to the inclusion agenda. Humanitarian organizations looking to build on sector best practice in feminist ways, by addressing underlying drivers of injustice and inequality, can easily find themselves accused of undermining State-sanctioned social and cultural norms and thus allegedly breaching the principles of impartiality and neutrality.

## Queering State-centric approaches and the evolution of alternatives to the status quo

There is a very fine line between the legal and political spheres, and the two are easily blurred in situations of armed conflict. IHL is State-centric and operates within global frameworks and institutions, established in an unequal world order and struggling to be inclusive of the gender justice agenda. Unlike this problem-solving approach,<sup>27</sup> critical feminist theories look at the structural, fundamental changes that are needed and the ontological assumptions that underpin the status quo. One could argue that IHL grew out of liberal approaches in a realist world, resulting in it being applied in a problem-solving political framework for many decades. In contrast, feminists have attempted to engage IHL frameworks by drawing on critical feminist theory. Queer international relations theory is one such approach. It attempts to shed light on ways in which heteronormative discourses of gender and sexuality (propagating a dichotomy of masculinity and femininity) can reinforce a broad historical tradition of heteronormative identity of the “powerful” State.<sup>28</sup>

24 M. Daigle, above note 2.

25 Neela Ghoshal, “What Does Uganda’s Anti-Homosexuality Bill Mean for Humanitarians, Development Partners and the Private Sector?”, Outright International, 29 March 2023, available at: <https://outrightinternational.org/humanitarian-response-to-uganda>.

26 Rasha Younes, “A Push to Silence LGBT Rights in the Kurdistan Region of Iraq”, Human Rights Watch, 2022, available at: [www.hrw.org/news/2022/09/07/push-silence-lgbt-rights-kurdistan-region-iraq](http://www.hrw.org/news/2022/09/07/push-silence-lgbt-rights-kurdistan-region-iraq).

27 The humanitarian sector could be seen as generally taking a “problem-solving” approach (a consensus view of society wherein actions are carried out to stabilize the affected context and return to a perceived “norm”), as humanitarian response broadly deals with addressing consequences (i.e., responding) rather than challenging the status quo (i.e., addressing the underlying drivers of human suffering), which is more the purview of “critical theory”. For a theoretical cross-sectoral overview, see Yahia Mahmoud, Anne Jerneck, Annica Kronsell and Karin Steen, “At the Nexus of Problem-Solving and Critical Research”, *Ecology and Society*, Vol. 23, No. 4, 2018, available at: [www.jstor.org/stable/26796877](http://www.jstor.org/stable/26796877).

28 C. Kennedy-Pipe and S. Dingli, above note 17, p. 162.



In the development of IHL, for example, States have historically limited protections to “some victims” of “some wars”, giving priority to the ability (necessity) of States to conduct military operations (while protecting civilians). IHL “legally conditions” who is entitled to protection.<sup>29</sup> In line with the political trajectory of the times, under pressure from humanitarian stakeholders, the wars of national liberation and decolonization (self-determination) were regulated later – through Additional Protocol I – in recognition of shifting conflict dynamics and the fact that the range of conflicts covered by IHL has not remained static. Additional Protocol II, devoted to NIACs, was an even more difficult diplomatic exercise, and the threshold for its application remained high. Nevertheless, both protocols were considered progressive at the time, and nearly all their provisions were eventually adopted by consensus.<sup>30</sup> Institutions like the ICRC have worked to make IHL more effective and relevant in today’s contexts through the use of commentaries<sup>31</sup> and an emphasis on customary law.<sup>32</sup> However, in a global context of backsliding in terms of State-sanctioned rights-based agendas, respect for IHL is also at risk, and a continued reliance on State-centric agendas may require additional institutional investment in multi-stakeholder consultations – especially as political and social dynamics shift and rules-based order is eroded. This could present a critical juncture for promoting the relevance of and respect for IHL, as well as the humanitarian principles more widely. This does not have to mean reopening the Geneva Conventions at a time that is not favourable to humanitarian (and human rights) principles,<sup>33</sup> but it could mean that it is important to reduce silos in the wider aid sector and to engage more with feminist critiques of principles and frameworks, drawing more on critical theory approaches in the humanitarian sector.

Since the end of the Cold War and the proliferation of NIACs, critical theories, including those queering the gender and sexuality of international relations, have contributed more and more to the implications of frameworks such as IHL for women and gender justice in the armed conflicts of today. Much has been written to acknowledge the impact of technological advances on weapons and tactics, as well as the effect of counterterrorism and urbanization of warfare as priority areas of change requiring attention in terms of IHL

29 Helen M. Kinsella and Giovanni Mantilla, “Contestation before Compliance: History, Politics, and Power in International Humanitarian Law”, *International Studies Quarterly*, Vol. 64, No. 3, 2020, available at: <https://academic.oup.com/isq/article/64/3/649/5851408>.

30 Cordula Droegge and Eirini Giorgou, “How International Humanitarian Law Develops”, *International Review of the Red Cross*, Vol. 104, No. 920–921, 2022, available at: <https://international-review.icrc.org/articles/how-international-humanitarian-law-develops-920>.

31 Ellen Policinski and Charlotte Mohr, “From the Gilded Age to the Digital Age: The Evolution of ICRC Legal Commentaries”, *ICRC Cross-Files*, 8 June 2022, available at: <https://blogs.icrc.org/cross-files/the-evolution-of-icrc-legal-commentaries/>.

32 Jean-Marie Henckaerts and Louise Doswald-Beck, *Customary International Humanitarian Law*, Vol. 1: *Rules*, Cambridge University Press, Cambridge, 2007, available at: <https://ihl-databases.icrc.org/en/customary-ihl/rules>.

33 Emanuela-Chiara Gillard, *Seventy Years of the Geneva Conventions: What of the Future?*, Chatham House Briefing, March 2020, available at: [www.chathamhouse.org/sites/default/files/CHHJ7919-Geneva-Conventions-BP-200324.pdf](http://www.chathamhouse.org/sites/default/files/CHHJ7919-Geneva-Conventions-BP-200324.pdf).

effectiveness. In terms of social change, the traditional roles of men and women have also changed significantly since the Geneva Conventions.<sup>34</sup> There has been an increase in scholarship around the impacts of armed conflict on gender dynamics, and on women and girls in particular, but also around inclusion more widely. Some leading agencies are making a concerted effort to identify and address gendered implications for the application of IHL. In analyzing the role of gender and the diverse experiences of individuals and groups in armed conflict, the ICRC's work on identifying and addressing gaps in IHL effectiveness through a gendered lens helps operational aid agencies draw on IHL in navigating structural inequalities when delivering humanitarian assistance. Such approaches help to build confidence in the relevance and applicability of IHL, but also help reduce unintended harm when operating in situations of armed conflict (of all classifications). Applying a gender lens to the IHL principle of distinction, for example, helps expose important fault lines around perceptions of gender norms, biases and assumptions<sup>35</sup> (i.e., the common assumption that women are more peaceful). As noted by the ICRC, gender biases can affect how the principles of distinction, proportionality and precaution are applied in practice, and further research on gendered harms in conflict is needed to help identify and address trends and patterns across contexts. Building on feminist critiques of IHL principles, many local and international operational agencies have engaged in a wider debate on the applicability of the humanitarian principles (e.g. neutrality and impartiality) in the aid sector.

When viewing the humanitarian principles as key assumptions underpinning the humanitarian sector, the conflict sensitivity<sup>36</sup> lens draws attention to context and institutional mandates. It is understandable that humanitarian agencies tend to have specific mandates and a range of risk appetites (often based on the agency's track record and programmatic portfolio), and that there are operational limitations to the humanitarian principles of neutrality and impartiality when addressing underlying social dynamics around sex, sexuality, gender and power. While many humanitarian agencies have constructively engaged with expanding feminist scholarship in recent decades, the strong data preference toward quantitative analysis biases the sector toward

34 ICRC, *International Humanitarian Law and Gender: Report Summary, International Expert Meeting "Gender Perspectives on International Humanitarian Law"*, October 2007, available at: [www.icrc.org/en/doc/assets/files/other/ihl\\_and\\_gender.pdf](http://www.icrc.org/en/doc/assets/files/other/ihl_and_gender.pdf).

35 ICRC, above note 18.

36 Conflict sensitivity calls upon operational agencies to have a more sound understanding of the two-way interaction between activities and context, and to act to minimize negative impacts of intervention in conflict while maximizing positive ones (within an agency's objectives and mandate). For more, see UN Development Programme and House of Peace, *Institutionalizing Conflict Sensitivity at the Organizational Level*, Conflict Sensitivity Toolbox 3, available at: [www.undp.org/sites/g/files/zskgke326/files/2023-02/CS\\_Toolbox3\\_Institutionalizing\\_Conflict\\_Sensitivity\\_at\\_the\\_Organizational\\_Level.pdf](http://www.undp.org/sites/g/files/zskgke326/files/2023-02/CS_Toolbox3_Institutionalizing_Conflict_Sensitivity_at_the_Organizational_Level.pdf); International Alert, "Conflict and Gender Sensitivity", available at: [www.international-alert.org/expertise/conflict-and-gender-sensitivity/](http://www.international-alert.org/expertise/conflict-and-gender-sensitivity/).

addressing sex inequality rather than gender inequalities.<sup>37</sup> Engaging on drivers of conflict, and pre-conflict inequalities (especially when these touch on perceived socio-cultural norms and identities of conflict-affected populations and could trigger a normative power shift in a community), is often perceived to be “political” by aid agencies, and can lead to challenges in negotiating humanitarian access to those most in need. As gender issues are highly intersectional, many agencies perceive some of these issues to be either outside of their mandate or too sensitive to engage with through public spaces. If humanitarian aid delivery is perceived (locally or internationally) to operate according to traditional biases and binaries around the roles of men and women, this can reinforce gender hierarchies, exclude individuals and groups, and cause unintended harm to women’s rights and gender justice agendas in conflict-affected contexts (despite humanitarian agencies’ efforts to avoid these scenarios).

Some of the humanitarian principles are particularly contested in the wider human rights and feminist communities. Humanitarian practitioners have cited the humanitarian principles (especially neutrality and impartiality) as inhibitors to more meaningful engagement on gendered norms, roles and power relations.<sup>38</sup> While neutrality is an important principle for many key humanitarian actors, in contexts where social norms underpinning an armed conflict are extremely harmful to some groups (e.g. women), the principle of neutrality<sup>39</sup> can be more difficult for principled actors attempting to enjoy the confidence of all stakeholders and avoid controversies of a more political nature.<sup>40</sup> In fact, the fragmentation of the legal regimes governing the situation of the more marginalized groups in conflict has led to some historical collaborations and tensions between humanitarian and human rights actors, keen to push the “boundaries of war” in areas where IHL or other frameworks have not caught up.<sup>41</sup>

Some humanitarians, for example, point to the neutrality principle as a colonial legacy, often deployed to imply that international humanitarian actors are more neutral than local or national humanitarian stakeholders.<sup>42</sup> As noted above, addressing gender justice in conflict contexts is highly intersectional and non-linear. It is difficult to imagine a local community and its first responders in crisis neatly moving from humanitarian to development and peacebuilding objectives, as well as remaining neutral (or even sustaining perceived neutrality) in contexts of armed violence. As the humanitarian sector engages with the

37 Dara Kay Cohen and Sabrina M. Karim, “Does More Equality for Women Mean Less War? Rethinking Sex and Gender Inequality and Political Violence”, *International Organization*, Vol. 76, No. 2, 2022, available at: <https://tinyurl.com/mucnwb75>.

38 M. Daigle, above note 2.

39 Hans Haug, “Neutrality as a Fundamental Principle of the Red Cross”, *International Review of the Red Cross*, Vol. 36, No. 315, 1996, available at: [www.icrc.org/en/doc/resources/documents/article/other/57jncv.htm](http://www.icrc.org/en/doc/resources/documents/article/other/57jncv.htm).

40 Oxfam, “Oxfam’s Role in Humanitarian Action”, Oxfam Policy Compendium Note, June 2023, available at: <https://oxfamlibrary.openrepository.com/bitstream/handle/10546/295043/hpn-role-humanitarian-action-260613-en.pdf?sequence=1>.

41 Page Wilson, “The Myth of International Humanitarian Law”, *International Affairs*, Vol. 93, No. 3, 2017, available at: [www.chathamhouse.org/sites/default/files/publications/ia/INTA93\\_3\\_03\\_Wilson.pdf](http://www.chathamhouse.org/sites/default/files/publications/ia/INTA93_3_03_Wilson.pdf).

42 M. Daigle, above note 2.

localization agenda, it is difficult to do so without acknowledging colonial legacies and associated inequalities. Many leading humanitarian donors (some key donors are also United Nations (UN) Security Council members) are either former colonial powers or regional hegemony, and some have a long tradition of instrumentalizing aid as “soft power” in their foreign policies.<sup>43</sup> Discourse around the Responsibility to Protect agenda and humanitarian engagement on the root causes and drivers of conflict have exposed possible divisions between local (national) voices and international, institutional agendas, as well as tensions with the foreign policy objectives of States<sup>44</sup> in a globalized but unequal world.

The sector-wide engagement with the issue of neo-colonial legacies, racism and anti-racism has shed further light on the issue.<sup>45</sup> When it comes to racial justice, one could draw some parallels between how the humanitarian sector has approached the politically sensitive issues of racism and colonialism and the ways in which the sector has often approached gender. Some stakeholders in the aid sector focus on mainstreaming gender and race through inclusion, while others take a more transformative approach in seeking ways to be actively anti-racist and feminist and to confront colonial legacies embedded in the aid sector. As with issues of racism and colonial legacies, actors in the sector take wide-ranging approaches, from gender-blind to gender-transformative. Some actors prefer to avoid politically sensitive issues of identity and race, citing neutrality and avoiding challenging colonial legacies (given the overlap of those legacies with the donor landscape and/or conflict actors’ own histories). One could also draw parallels with the discourse around “white saviour” mentality and the feminist and wider humanitarian sector critiques of the Western “civilizing” mission, and how international aid agencies risk reinforcing patrimonial colonial legacies through the humanitarian principle of neutrality. There is a vibrant discourse from Myanmar to Ukraine queering the question of whether neutrality, for example, is even morally desirable (let alone feasible) in contexts of armed conflict.<sup>46</sup> Given the strong interconnection between norms and legal frameworks, the humanitarian sector and the institutions within it (especially those operating and collecting evidence in contested spaces of fragile and conflict-affected contexts) are well placed to engage in the evolution of this discourse. As noted above, operational agencies must work to preserve access to those they serve, and are therefore often risk-adverse when engaging on issues of perceived “political” controversy. In order to help transform the humanitarian sector, such

43 Bastian Becker, “Colonial Legacies in International Aid: Policy Priorities and Actor Constellations”, in Carina Schmitt (ed.), *From Colonialism to International Aid: External Actors and Social Protection in the Global South*, Global Dynamics of Social Policy, CRC 1342, Palgrave Macmillan, Cham, 2020, available at: [https://doi.org/10.1007/978-3-030-38200-1\\_7](https://doi.org/10.1007/978-3-030-38200-1_7).

44 B. S. Chimni, “Justification and Critique: Humanitarianism and Imperialism over Time”, in Lothar Brock and Hendrik Simon (eds), *The Justification of War and International Order: From Past to Present*, Oxford University Press, Oxford, 2021, available at: <https://doi.org/10.1093/oso/9780198865308.003.0026>.

45 Saman Rejali, “Race, Equity, and Neo-Colonial Legacies: Identifying Paths Forward for Principled Humanitarian Action”, *Humanitarian Law and Policy Blog*, 16 July 2020, available at: <https://blogs.icrc.org/law-and-policy/2020/07/16/race-equity-neo-colonial-legacies-humanitarian/>.

46 Navya Khanna, “Decoding Neutrality in Humanitarianism”, July 2022, available at: [www.peaceinsight.org/en/articles/decoding-neutrality-in-humanitarianism/](http://www.peaceinsight.org/en/articles/decoding-neutrality-in-humanitarianism/).

agencies are increasingly partnering with other stakeholders, such as educational institutions and media, to help share and develop learning and move toward reforming (and, where possible, transforming) normative frameworks. IHL dissemination is one such space where these dialogues and dissonances emerge, as it grants access to those affected (or potentially affected) by armed conflict in order to help them understand the wider normative frameworks and to challenge the underpinning assumptions and the genealogy of discourse around the humanitarian principles. Rightly or wrongly, in contexts like Ukraine<sup>47</sup> and Syria,<sup>48</sup> national humanitarian actors have been challenging the humanitarian principles of neutrality and impartiality, as well as some of the other principles of IHL. Some of them have identified international institutions as the focal point for their debates, encouraging further queering of the underlying assumptions of humanitarian frameworks.

## Feminist research methods and IHL: Limitations and emancipatory potential

Feminist thinkers argue that the ontological order of our world is neither natural nor neutral, and therefore that States and institutions (including humanitarian ones) have grown out of an essentially “patriarchal” world order – “a structural and ideological system that perpetuates the privileging of masculinity”<sup>49</sup> and often erects divisions between the “private” and “public” spheres in order to reduce accountability<sup>50</sup> and benefit the status quo, or a return to “traditional values”. The focus of critical feminist discourse is on power<sup>51</sup> and the role that power plays in shaping norms. Such discourse may require more humanitarian organizations to explore informal power and to look beyond the humanitarian statistics in order to address some of the root causes of suffering while delivering life-saving aid.<sup>52</sup>

As societies do not treat men and women equally, some feminist scholars challenge IHL’s basis of equality of protection.<sup>53</sup> Some researchers draw attention

47 Global Fund for Community Foundations (GFCF), “An Open Letter to International Donors and NGOs Who Want to Genuinely Help Ukraine”, 24 August 2022, available at: <https://globalfundcommunityfoundations.org/news/an-open-letter-to-international-donors-and-ngos-who-want-to-genuinely-help-ukraine/>; Tiara Ataii, “Why Ukraine Is Moving the Needle on Old Debates about Humanitarian Neutrality”, *The New Humanitarian*, 16 May 2023, available at: [www.thenewhumanitarian.org/analysis/2023/05/16/ukraine-debates-humanitarian-neutrality-debates](http://www.thenewhumanitarian.org/analysis/2023/05/16/ukraine-debates-humanitarian-neutrality-debates).

48 The Syria Campaign, *Taking Sides: The United Nations’ Loss of Impartiality, Independence and Neutrality in Syria*, 2016, available at: <http://takingsides.thesyriacampaign.org/>.

49 Cynthia Enloe, *Bananas, Beaches and Bases: Making Feminist Sense of International Politics*, University of California Press, Berkeley, CA, 1989, pp. 8–13.

50 Phoebe Donnelly, “Sustaining Feminist Curiosity for the Future of Women, Peace, and Security: Q&A with Cynthia Enloe”, IPI Global Observatory, 6 October 2020, available at: <https://theglobalobservatory.org/2020/10/sustaining-feminist-curiosity-for-future-of-wps-qa-with-cynthia-enloe/>.

51 C. Enloe, above note 49.

52 Oxfam, *Influencing for Impact Guide: How to Deliver Effective Influencing Strategies*, 15 September 2020, available at: <https://policy-practice.oxfam.org/resources/influencing-for-impact-guide-how-to-deliver-effective-influencing-strategies-621048/>.

53 ICRC, above note 34.

to the relatively “impoverished” understanding of IHL in the wider international relations (IR) scholarship, and the consequences of this for keeping IHL relevant in today’s shifting politico-military contexts. With a focus on compliance and civilian targeting, the full strength of what IHL has to offer has perhaps been overlooked by IR scholars. The “productive power” of IHL (and its association with social relations and structures) has also perhaps been overlooked by some scholars,<sup>54</sup> to the detriment of both IHL and IR (including critical feminist theories). Essentialized gender roles tend to be sustained by international law and policy.<sup>55</sup> In contexts of violence and armed conflict (from the household and community to the national and international spheres), social norms play pivotal roles in the conduct of hostilities that can resonate for generations, creating stubborn inequalities through the historical memory of armed conflicts. In contexts where extreme (gender) inequalities and discrimination were already prolific, they are likely to be exacerbated during armed conflicts, contributing to factors driving the vulnerabilities of women.<sup>56</sup> The cumulative effect of patriarchal social norms often engrained in policy-making and practice, from laws and regulations to military practice and training, can reinforce misogyny in social norms, where masculine characteristics are assigned to powerful actors while feminine characteristics are seen as weaker and are assigned to weaker actors.<sup>57</sup> Reading into the language and framing of IHL (in its historical context), a gendered framing can be seen: those who are gendered feminine must be protected by those who are gendered masculine (consider, for example, the masculine concepts of “honour” and “special honour” afforded to women in the Geneva Conventions).<sup>58</sup>

A queer reading of international law, more generally, draws attention to historical biases toward binaries (of male and female) and to the hierarchies of the sexes as ingrained in policy and law (privileging the male, often denying female agency, and relegating the female to the status of a reproductive tool of State-building to be protected for the sake of national growth and military security) and then spread through imperialism and sustained through colonialism.<sup>59</sup> Queer analyses are highly intersectional and push for holistic approaches to the development, continuous review and application of laws. Queering is seen as a continuous process that helps create improved conditions for law to play a more constructive and emancipatory role in societies within local and national contexts. These approaches reinforce feminist research

54 Michael Barnett and Raymond Duvall, “Power in International Politics”, *International Organization*, Vol. 59, No. 1, 2005, available at: <https://tinyurl.com/38mnv76w>.

55 Amy Barrow, “UN Security Council Resolutions 1325 and 1820: Constructing Gender in Armed Conflict and International Humanitarian Law”, *International Review of the Red Cross*, Vol. 92, No. 877, 2010.

56 Judith Gardam and Hilary Charlesworth, “Protection of Women in Armed Conflict”, *Human Rights Quarterly*, Vol. 22, No. 1, 2000, available at: [www.jstor.org/stable/pdf/4489270.pdf](http://www.jstor.org/stable/pdf/4489270.pdf).

57 C. Kennedy-Pipe and S. Dingli, above note 17, p. 161.

58 Anna Crowe, “*All the Regard Due to Their Sex*”: *Women in the Geneva Conventions of 1949*, Harvard Human Rights Program, Research Working Paper Series HRP 16-001, December 2016, available at: [https://hrp.law.harvard.edu/wp-content/uploads/2022/10/Anna-Crowe\\_HRP-16\\_001.pdf](https://hrp.law.harvard.edu/wp-content/uploads/2022/10/Anna-Crowe_HRP-16_001.pdf).

59 D. Eichert, above note 10.

methodologies, which often encourage humanitarians to advance knowledge-building through qualitative methods rather than just binary, quantitative ones, to be more intersectional when analyzing needs and assessing risks, and to communicate the humanitarian principles in a more conflict- and context-sensitive manner.

While reflexive and emancipatory knowledge-building has a long history across various fields of scholarship, what is unique to feminist research is a commitment to building knowledge from women's lives (lived experiences) and an effort to avoid assuming the State as a given unit of analysis.<sup>60</sup> However, scholars point to some serious limitations of IHL and feminist engagements with it (in large part due to the age and historical nature of IHL's development):

- While IHL has a strong treaty basis, the stagnant treaty development since 1977 limits the space for feminist influencing.
- The reliance on customary international law to develop IHL tends to privilege State practice, irrespective of the global exclusion of women from leadership and decision-making in most States.<sup>61</sup>

As noted above, in a global context of regression of the rights-based agenda (including backsliding on women's rights), systematic violations of IHL and closing humanitarian and civic spaces, communities are increasingly challenging what they sometimes perceive as State-centric (and often Eurocentric) approaches that effectively sanction and entrench inequalities, exclude and disenfranchise, exacerbating grievances against unfit social contracts<sup>62</sup> and often triggering the need for humanitarian responses.<sup>63</sup> Queer research methods, with their focus on a constant queering and disruption of assumed norms, as well as feminist challenges to the humanitarian principles and the nature and development of IHL, can help reduce the (perceived or actual) risk of elite capture of State-centric frameworks at a time of democratic backsliding.

While the initial feminist interventions found a "masculine world" of international law, the landscape has been changing and there is an overall increase in the measures governing women's rights in armed conflict.<sup>64</sup> In recent years, the rise of queer IR approaches has produced invaluable insights into the political character of sexual norms and logics. This approach looks closely at the role of sexuality in foreign policy decision-making, rather than merely studying LGBTIQ+ groups and adding them to an existing world order. Rather than adding sexuality

60 J. Ann Tickner, "What Is Your Research Program? Some Feminist Answers to International Relations Methodological Questions", *International Studies Quarterly*, Vol. 49, No. 1, 2005, available at: <https://doi.org/10.1111/j.0020-8833.2005.00332.x>.

61 C. O'Rourke, above note 16, pp. 36–38.

62 UN, "We the Peoples: A Renewed Social Contract Anchored in Human Rights", available at: [www.un.org/en/content/common-agenda-report/assets/pdf/Our\\_Common\\_Agenda\\_English\\_Section\\_2.pdf](http://www.un.org/en/content/common-agenda-report/assets/pdf/Our_Common_Agenda_English_Section_2.pdf).

63 "Roundup: Mass Protests Hint at Deeper Crises behind the Headlines", *The New Humanitarian*, 22 November 2019, available at: [www.thenewhumanitarian.org/news/2019/11/22/Mass-protests-political-freedoms-crises-headlines](http://www.thenewhumanitarian.org/news/2019/11/22/Mass-protests-political-freedoms-crises-headlines).

64 C. O'Rourke, above note 16, p. 14–15.

as just another factor in policy-making, queer approaches investigate how the operations of international power are shaped by sexual norms and logics.<sup>65</sup>

The queer turn in IHL could offer insights into ways to unpack the social norms underpinning the Geneva Conventions, allowing humanitarians to engage with queer theories and the underlying drivers of discrimination around sexuality (and the wide reverberating impacts on the LGBTQI+ community, women, men, girls and boys). This could serve the gender justice agenda more widely, and would help to avoid reducing the LGBTQI+ community to another vulnerable category. The queer turn in IHL could help avoid the “add women and stir”<sup>66</sup> inclusion trap highlighted as an important lesson learned for women’s rights movements. Unpacking the influence of sexuality and gender roles on policy-making could support a wider gender justice conversation in the humanitarian sector (i.e., going beyond the duty to protect those most vulnerable to patriarchal social norms). International criminal law and other frameworks, for example, have come a long way to confirm that rape and other forms of sexual violence are war crimes, crimes against humanity and even genocide, and there is recognition among IHL stakeholders that women have been participants in armed conflicts and not just victims of them.<sup>67</sup> Whether as civilians or combatants, however, women are generally more likely to experience violence in conflict and retain a subordinate position in society; even possible transformative gains in social status toward equality during the societal shifts that occur in times of armed conflict can be swiftly rolled back during recovery and reconstruction.<sup>68</sup> UN Security Council resolutions focused on the Women, Peace and Security agenda have contributed significantly to the expansion of potentially transformative approaches to gender in armed conflicts, but these efforts are still unlikely to be sufficient to expand the construction of gender in IHL.<sup>69</sup> A more concerted effort is needed to bring humanitarian, development and peace frameworks together in order to help break the continuum of violence.<sup>70</sup> How the humanitarian sector responds to the changing nature of conflict, including working with narratives and memory, disseminating knowledge and engaging in civic education on the humanitarian principles and IHL, plays an important role in (re-)shaping the nature of the humanitarian system away from binaries that privilege harmful social norms. The ways in which IHL is disseminated, and the humanitarian principles reflected in the documented histories of human suffering, factor into community perceptions of humanitarian institutions and wider trust factors in the shifting humanitarian system.

65 Melanie Richter-Montpetit, “Everything You Always Wanted to Know about Sex (in IR) But Were Afraid to Ask: The ‘Queer Turn’ in International Relations”, *Millennium*, Vol. 46, No. 2, 2018, available at: <https://journals.sagepub.com/doi/full/10.1177/0305829817733131>.

66 Sahana Dharmapuri, *Just Add Women and Stir?*, Consortium on Gender, Security and Human Rights, 2010, available at: [https://genderandsecurity.org/sites/default/files/Dharmapuri\\_-\\_Just\\_Add\\_W\\_Stir.pdf](https://genderandsecurity.org/sites/default/files/Dharmapuri_-_Just_Add_W_Stir.pdf).

67 ICRC, above note 34.

68 J. Gardam and H. Charlesworth, above note 56.

69 A. Barrow, above note 55.

70 D. Kostovicova, V. Bjicic-Dzelilovic and M. Henry, above note 4.



## The changing political landscapes and the nature of war

Principled humanitarian actors tend to be wary of the politicization of humanitarian action – especially when it comes to aid flows.<sup>71</sup> However, in an unequal and increasingly globalized, interconnected world, the implementation of the humanitarian principles may require additional tools, approaches and indicators. A feminist reading of humanitarian contexts draws attention to the perceptions of those whose voices may be intentionally or unintentionally muted or silenced, and perceptions of humanitarian principles such as neutrality, as formed by those affected by armed conflict.<sup>72</sup> Lending critical research approaches to the study of IHL can help identify threats to, and opportunities for, this key legal framework. Given that women’s rights and gender justice are regulated by a range of regimes and legal frameworks, including IHL, that are sometimes in tension with one another and sometimes overlapping, the proliferation of these norms can be a progressive opportunity but can also create loopholes for States to selectively apply these frameworks (including those with the least accountability for violations).

Due to a range of historical and societal factors, IHL takes the experiences of men (i.e., the historically male-dominated field of armed conflict) as its primary starting point and therefore tends to fail to take account of women as legal subjects and agents in their own right.<sup>73</sup> Just as the changing nature of warfare (e.g. cyber warfare) requires further legal and regulatory attention,<sup>74</sup> it is possible to imagine that the changing nature of social norms may require additional legal attention as well. Some scholars point out an important temporal element that while the Geneva Conventions and Additional Protocols were adopted prior to concerted feminist entry into international law, the Rome Statue of the International Criminal Court is linked to feminist advocacy efforts.<sup>75</sup> Institutions have defined and redefined conflict in a range of ways, from the Convention on the Elimination of All Forms of Discrimination against Women’s broad definition of conflict, which captures situations of low-intensity violence,<sup>76</sup> to the UN Security Council, which resists broad definitions restricting the application of agendas such as Women, Peace and Security to only a number of situations.<sup>77</sup> In terms of IHL specifically, its custodians have noted the dangers of over- and under-classification of conflict (e.g. with regard to how IHL applies to counterterrorism operations), which can lead to similar problems of States choosing what elements

71 Oxfam, *Whose Aid Is It Anyway? Politicizing Aid in Conflicts and Crises*, Oxfam Briefing Paper 145, 10 February 2011, available at: [https://ciaotest.cc.columbia.edu/wps/oxfam/0021553/f\\_0021553\\_17842.pdf](https://ciaotest.cc.columbia.edu/wps/oxfam/0021553/f_0021553_17842.pdf).

72 R. Pinnington, above note 9.

73 J. Gardam and H. Charlesworth, above note 56.

74 Paul D. Williams, “War”, in Paul D. Williams and Matt McDonald, *Security Studies: An Introduction*, Routledge, London and New York, 2018, p. 190.

75 C. O’Rourke, above note 16, pp. 15–16.

76 UN Convention on the Elimination of All Forms of Discrimination against Women, “General Recommendation No. 30 on Women in Conflict Prevention, Conflict and Post-Conflict Situations”, UN Doc. CEDAW/C/GC/30, 18 October 2013, available at: [www.ohchr.org/sites/default/files/Documents/HRBodies/CEDAW/GComments/CEDAW.C.CG.30.pdf](http://www.ohchr.org/sites/default/files/Documents/HRBodies/CEDAW/GComments/CEDAW.C.CG.30.pdf).

77 C. O’Rourke, above note 16, p. 17.

of international law apply to which situation of violence.<sup>78</sup> Some argue that international law frameworks are grounded in a Westphalian conception of sovereign nation-States – an essentially European approach to statehood. In the context of the globalized and increasingly non-State nature of warfare (whether that includes non-State armed groups or private security companies), the State’s monopoly on the use of force has been reduced and space has been created for “new wars” that can elude existing legal frameworks.<sup>79</sup> While compelling cases for IHL relevance have been made, including when addressing issues of counterterrorism and IHL applicability,<sup>80</sup> in today’s globalized, interconnected and hyper-urbanized realities, dominated by NIACs, the binary distinctions<sup>81</sup> which served to uphold IHL (by design) are being eroded.

Given the historically uneven nature of the genesis of legal frameworks governing the status of women’s rights and gender justice in conflicts, some are calling for humanitarians to actively engage in social dynamics in order to be more sensitive to short-term risks but also to the long-term implications of humanitarian action on the conflict and wider human development trajectories of conflict-affected communities. The humanitarian system is increasingly being challenged on issues of gender and the universality (global applicability) of its principles, shedding light on the Eurocentric development of the humanitarian principles, IHL frameworks, humanitarian histories and the wide range of practitioners involved (including those left out of shaping the system). While humanitarian policy and practice has generally recognized gender-specific needs and experiences in times of armed conflict, many institutions still do not fully acknowledge that the timing, typology and conduct of humanitarian responses has an impact on wider issues of gender norms and inclusion (i.e. going beyond the binary picture captured through increased use of tools such as gender desegregated data<sup>82</sup> and similar progressive approaches in the sector). Many struggle to reconcile the humanitarian system’s reliance on quantitative data and “global North” donor base with the pitfalls of relying on binaries and gender hierarchies, and sustained acceptance of the humanitarian principles as universal (given their Western European origins and colonial heritage). Humanitarian

78 Gloria Gaggioli and Pavle Kilibarda, “Counterterrorism and the Risk of Over-Classification of Situations of Violence”, *International Review of the Red Cross*, Vol. 103, No. 916–917, 2022, available at: <https://international-review.icrc.org/articles/counterterrorism-and-risk-of-over-classification-916>.

79 Patrick A. Mello, “In Search of New Wars: The Debate about a Transformation of War”, *European Journal of International Relations*, Vol. 16, No. 2, 2010, available at: [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2571236](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2571236).

80 Tristan Ferraro, “International Humanitarian Law, Principled Humanitarian Action, Counterterrorism and Sanction: Some Perspectives on Selected Issues”, *International Review of the Red Cross*, Vol. 103, No. 916–917, 2021.

81 Mary Kaldor, “In Defence of New Wars”, *Stability*, Vol. 2, No. 1, 2013, available at: <https://storage.googleapis.com/jnl-up-j-sijsd-files/journals/1/articles/24/submission/proof/24-1-211-2-10-20130520.pdf>.

82 Prisca Benelli, Dyan Mazurana and Peter Walker, “Using Sex and Age Disaggregated Data to Improve Humanitarian Response in Emergencies”, *Gender and Development*, Vol. 20, No. 2, 2012, available at: <https://policy-practice.oxfam.org/resources/using-sex-and-age-disaggregated-data-to-improve-humanitarian-response-in-emergency-230711/>.

action remains deeply gendered, and humanitarian actors do not exist outside of gendered norms and roles.<sup>83</sup> Whether such actors acknowledge or recognize their respective humanitarian actions as “political” or not, the types of activities conducted, rationales and timings of responses all contribute to shifting social norms (as well as cultural and other dynamics), challenging agencies working to adhere to the principles of neutrality and impartiality.

## **Impartiality: The aid system and the vulnerability trap for women**

Vulnerability is not an easy category to measure and can be highly subjective, requiring reflexivity and conflict sensitivity. In a situation of armed conflict, individual or group vulnerabilities may be affected by the type of threat, the length of exposure and the ability of those affected to cope. If groups are facing discrimination in peacetime, they are more likely to face marginalization and suffering during armed conflict. The reasons why women may be targeted in armed conflicts can vary greatly, from being overlooked in military planning to being deliberately targeted as standard-bearers of cultural identity or symbols of the future<sup>84</sup> (their reproductive value). The nature of the Geneva Conventions’ references to women’s reproductive and mothering roles is highly gendered. Likewise, women are repeatedly placed in the same category as the wounded and sick. The reproductive capacity of women and their placement as natural “caregivers” are given a strong legal endorsement.<sup>85</sup> In a wider context of international law focusing on the particular assumptions and experiences of men as representing all “humans”,<sup>86</sup> the gendered references to women’s roles in the Geneva Conventions tend to reinforce the societal norms prevalent at the time of the Conventions’ drafting and often inadvertently carry them forward to today.

The social meaning of sex, as well as the treatment of women and their perceived vulnerabilities in the Geneva Conventions, can be seen through the prism of the three categories outlined in the Commentary to Article 14 of Geneva Convention III (GC III): weakness, honour and modesty, and pregnancy and childbirth. Although Article 14 deals with the treatment of women prisoners of war, it captures the historically gendered concepts of women that emerge throughout the Geneva Conventions.<sup>87</sup> The ICRC’s updated 2020 Commentaries on GC III draw attention to a more nuanced reading of the protections offered to women to mean a focus on women’s specific needs in situations of armed conflict, and challenge the underpinning gender assumptions around women’s

83 M. Daigle, above note 2, p. 16.

84 ICRC, *Women and War: Special Report*, 2003, available at: [www.icrc.org/en/doc/assets/files/other/women\\_war\\_special\\_report\\_8-3-03.pdf](http://www.icrc.org/en/doc/assets/files/other/women_war_special_report_8-3-03.pdf).

85 A. Crowe, above note 58.

86 Hilary Charlesworth and Christine Chinkin, *The Boundaries of International Law*, Manchester University Press, Manchester, 2000, p. 17.

87 A. Crowe, above note 58.

agency and non-combatant status implicit through much of the Conventions.<sup>88</sup> A sustained shift toward a more rights-based interpretation of underlying assumptions in IHL, combined with the sector's reflexivity on more ideological issues around gender roles and the "ethics of care" (the ideological assumption that women are different than men, are more peaceful, and have a dedicated role in society to preserve and sustain life – and should be treated and protected as such), could help move away from viewing all women as a homogenous and victimized group in armed conflicts.<sup>89</sup> A sustained learning and multi-stakeholder engagement towards normative and legal shifts could help improve IHL effectiveness and reduce a perception that IHL is unable to move beyond the "male norm". As queering refers to a continuous process of questioning the normative and challenging assumptions, this and other feminist frameworks can help move legal development forward and reduce some of the sector perceptions of stagnation and irrelevance.

Another historical challenge in IHL (in large part due to the nature of State approaches to sovereignty) is its historical track record in classification. The types of conflicts that IHL has addressed have not remained static over the decades, and NIACs have traditionally been resisted and/or overlooked. Internal (including colonial) conflicts were excluded from IHL until 1949, with powerful States resisting the NIAC classification and application of IHL until today. This has inhibited IHL application and relevance in some of the world's most brutal conflicts, including those where women and other groups exposed to systemic, prolonged discrimination and exclusion have been systematically targeted with impunity. But critically, it has also contributed to the narrative of IHL, wherein scholars of inter-State IHL compliance who use historical datasets uncritically replicate a particular historiography of war and IHL development shaped by defence of State sovereignty and imperial power.<sup>90</sup>

Some argue that the focus on sexual violence can obscure women's broader experiences in armed conflicts, and that a normative recognition of gender roles can link women directly with victimhood; this undermines women's agency as active participants and fails to consider women's broader experiences in armed conflicts.<sup>91</sup> In a historical reading of IHL development, scholars point to provisions to protect women that inextricably link a woman's honour to her sexuality (e.g. Article 27 of Geneva Convention IV, reference to rape applying in international armed conflicts).<sup>92</sup> The UN Security Council has particular relevance as one of the few bodies able to sanction due to violations of IHL; however, in line with the Security Council's mandate, sanctions regimes are primarily invoked when there is a threat to peace and security that meets the

88 Catherine O'Rourke, "Geneva Convention III Commentary: What Significance for Women's Rights?", *Just Security*, 2020, available at: [www.justsecurity.org/72958/geneva-convention-iii-commentary-what-significance-for-womens-rights](http://www.justsecurity.org/72958/geneva-convention-iii-commentary-what-significance-for-womens-rights).

89 H. Durham and K. O'Byrne, above note 19.

90 H. M. Kinsella and G. Mantilla, above note 29.

91 J. Gardam and H. Charlesworth, above note 56.

92 A. Crowe, above note 58.

(political) threshold needed to reach the Council's agenda. While there has been some progress, the relatively narrow definitions used by the Security Council limit the scope for enforcement of women's rights.<sup>93</sup>

An important example of the need to address wider social dynamics is the issue of protection of men and boys in times of armed conflict (as well as engaging men on gender justice issues in general). There has been a vigorous debate in women's rights and gender justice spaces around the (perceived) vulnerabilities of men and masculinities in armed conflict. A practical example is around humanitarian evacuations: if women are "vulnerable" by virtue of their sex and the gender norms assigned to them in highly unequal societies, then it is easy to overlook the threats and risks to men in situations of a hypermasculine culture (common to armed conflicts and the organizations that operate within them).<sup>94</sup> From the Balkans to the Middle East, there are examples of powerful drivers of vulnerability and risk to males (e.g. risk of conscription into armies systematically violating IHL and other frameworks or risk of being targeted by those armies due to race, sect, age or political affiliation – or even perceived affiliation). Scholars point to the need to focus on gendered assumptions in humanitarian vulnerability assessments that render men and boys vulnerable through gendered norms and institutions. These scholars point to humanitarian evacuations focusing on women and children, grounded in the assumptions that women are much less likely to directly participate in hostilities and that by virtue of their sex and gender, they are more vulnerable to the primary and secondary impacts of armed conflicts. While these assumptions broadly hold, in many contexts men and boys have particular vulnerabilities due to their sex and gender which render them vulnerable to abuse and sex-selective killing.<sup>95</sup> It can be argued that these norms are reflected and reinforced in IHL, where vulnerabilities have been deeply gendered by social norms dating back many decades. Masculinities and their associated vulnerabilities have been too often overlooked in the policy and practice of the humanitarian sector.

Much of the data underpinning humanitarian country response planning is gender-blind.<sup>96</sup> This issue is not exclusive to fragile and conflict-affected contexts or the humanitarian sector – policy-makers across the globe are struggling to address a prolific and prolonged data gap that has resulted in a "default male" (as human) planning model, with serious long-term consequences for urban planning, infrastructure, inclusion and wider social relations.<sup>97</sup> At times of crisis, these data gaps become critical and heavily politicized, and the humanitarian sector is no exception to such social policy challenges. Approaches to inclusion are focused

93 C. O'Rourke, above note 16, pp. 102–103.

94 Henri Myrntinen, *Men, Masculinities and Humanitarian Settings: A Mapping of the State of Research and Practice-Based Evidence*, UN Women, 2023, available at: [www.unwomen.org/sites/default/files/2023-08/men-masculinities-and-humanitarian-settings-en.pdf](http://www.unwomen.org/sites/default/files/2023-08/men-masculinities-and-humanitarian-settings-en.pdf).

95 R. Charli Carpenter, "Women and Children First: Gender, Norms, and Humanitarian Evacuation in the Balkans 1991–1995", *International Organization*, Vol. 57, No. 4, 2023, available at: <https://tinyurl.com/yx4h5a6v>.

96 M. Daigle, above note 2.

97 Caroline Criado Perez, *Invisible Women: Exposing Data Bias in a World Designed by Men*, Chatto & Windus, London, 2019, pp. 1–25.

on the symptoms rather than the (perceived) causes of vulnerability. While there are some positive shifts in the wider sector, a traditional (problem-solving) and purely reactive approach to humanitarian work (especially at scale) can prove to be conflict-insensitive<sup>98</sup> and can lead to community harm (i.e., pursuing inclusion without addressing any of the root causes or drivers of discrimination). In studies focused on the “do no harm” approach of the sector, providing aid without addressing drivers of vulnerability can be harmful or can be seen as such,<sup>99</sup> especially by national community stakeholders who will live with the consequences of these dynamics long after the international humanitarian response has ended.

Provision of needs-based assistance is highly intersectional in nature and can easily be perceived as a “political” act that shifts gendered power from the home (private) to the public sphere. Some practitioners have cited the humanitarian norm of “impartiality” as a reason to reject tailoring responses to the specific needs of women or gender-diverse persons beyond protection concerns.<sup>100</sup> Those working to address the colonial heritage of today’s global humanitarian architecture point to dynamics of challenging patriarchal and colonial norms and legacies embedded in the history of the humanitarian sector and many of its associated frameworks, institutions and agencies. When applying an intersectional lens, the multiple (and historic) drivers of vulnerability and their nature must also be taken into account.<sup>101</sup> A queer turn in applying the humanitarian principles and approaches to IHL would see a regular questioning of the assumptions underpinning the sector’s approach to the perceived and actual needs (and agency) of those who find themselves in need of humanitarian assistance.

## Short-term compromises and long-term consequences: The female front line

After decades of engagement with feminist movements and concerted lobbying efforts, key humanitarian actors are grappling with gender neutrality in humanitarian crises. Humanitarian stakeholders are increasingly recognizing intersectionality in vulnerabilities and how they vary across contexts. At a minimum, major humanitarian stakeholders are recognizing structural inequalities<sup>102</sup> and attempting to mainstream gender (targeting equality of outcome rather than equality of opportunity).<sup>103</sup> This is an important step toward gender

98 UK Department for International Development, *How to Guide to Conflict Sensitivity*, February 2012, available at: <https://reliefweb.int/report/world/how-guide-conflict-sensitivity>.

99 Oliver Lough, Veronique Barbelet and Sarah Njeri, “Inclusion and Exclusion in Humanitarian Action: Findings from a Three-Year Study”, ODI, HPG, July 2022, available at: [http://cdn-odi-production.s3-website-eu-west-1.amazonaws.com/media/documents/Inclusion\\_exclusion\\_synthesis\\_YQvq77F.pdf](http://cdn-odi-production.s3-website-eu-west-1.amazonaws.com/media/documents/Inclusion_exclusion_synthesis_YQvq77F.pdf).

100 M. Daigle, above note 2.

101 S. Rejali, above note 45.

102 OCHA, *Policy Instruction on Gender Equality 2021–2025*, 29 March 2021, available at: <https://reliefweb.int/report/world/policy-instruction-gender-equality-2021-2025>.

103 A. Barrow, above note 55.

empowerment frameworks, but more will need to be done given the current global context. However, this progress should be taken in the context of two limiting factors:

- a global trend in regression on key strategic women's rights goals (shifting social norms around gender justice); and
- a regression of the rule of law and democracy (increasing civic and humanitarian space restrictions).

Few global institutions are willing to fully recognize that women's rights and gender justice have stalled,<sup>104</sup> and in fragile and conflict-affected contexts where humanitarian responses are in operation, there is a particularly high risk of gender justice backsliding.<sup>105</sup> The issue of humanitarian access<sup>106</sup> and civic space is of particular concern to national and international humanitarian efforts alike. The State-centric nature of IHL development assumes that the States contributing to the process are on a general, broadly linear trajectory toward liberal, democratic governance systems or, at a minimum, that they respect a rules-based international world order. There is now more wide recognition among development actors that human development (especially in fragile and conflict-affected contexts)<sup>107</sup> is not a linear process,<sup>108</sup> and progress along the liberal international order trajectory is not automatic or universal, nor should it be taken for granted. Globally, only around 3% of the world's population live in a context which allows them to organize, participate and communicate with each other freely and without hindrance, and to influence the political, economic and social structures around them.<sup>109</sup> The picture around humanitarian access and the enabling environment is equally grim<sup>110</sup> (particularly for those humanitarians who do not enjoy diplomatic privilege, especially national staff and national organizations operating entirely under the jurisdiction of the conflict-affected State).

This section explores practical implications for national organizations attempting to adhere to principles of neutrality and impartiality designed for international humanitarian responses, grounded in shared principles and in IHL and related frameworks, through a series of examples from conflict-affected

104 Sara Pantuliano, "Women Deliver 2023: We Can't Let the Anti-Rights Movement Prevail", ODI, 17 July 2023, available at: <https://odi.org/en/insights/women-deliver-2023-we-cant-let-the-anti-rights-movement-prevail>.

105 Shereen El Feki and Charbel Maydaa, "How to Live and Love under Repressive Laws", Chatham House, 23 June 2023, available at: [www.chathamhouse.org/2023/06/how-live-and-love-under-oppressive-laws](http://www.chathamhouse.org/2023/06/how-live-and-love-under-oppressive-laws).

106 ICRC, "Glossary: Access", *How Does Law Protect in War?*, available at: [https://casebook.icrc.org/a\\_to\\_z/glossary/access](https://casebook.icrc.org/a_to_z/glossary/access).

107 Mary A. Kabati et al., "Traditional Approaches to Aid and Development Are Failing Us. It's Time to Invest in Community-Driven Change", *From Poverty to Power*, Oxfam, 2 November 2021, available at: <https://frompoverty.oxfam.org.uk/traditional-approaches-to-aid-and-development-are-failing-us-its-time-to-invest-in-community-driven-change/>.

108 Frank Bierman, Thomas Hickmann, Carole-Anne S nit and Leonie Grob, "The Sustainable Development Goals as a Transformative Force?", in Frank Biermann, Thomas Hickmann and Carole-Anne S nit (eds), *The Political Impact of the Sustainable Development Goals*, Cambridge University Press, Cambridge, 2022, available at: <https://tinyurl.com/57zaymv2>.

109 Civicus Monitor, "Civic Space in Numbers", available at: <https://monitor.civicus.org/facts/>.

110 ACAPS, *Humanitarian Access Overview*, July 2022, available at: [www.acaps.org/fileadmin/Data\\_Product/Main\\_media/acaps\\_humanitarian\\_access\\_overview\\_july\\_2022\\_0.pdf](http://www.acaps.org/fileadmin/Data_Product/Main_media/acaps_humanitarian_access_overview_july_2022_0.pdf).

contexts, including Afghanistan, Yemen and Ukraine. The short case studies outlined below draw on front-line issues such as humanitarian negotiations,<sup>111</sup> inclusion and mainstreaming efforts, as well as attempts to apply humanitarian frameworks in ways that favour the more transformative agenda of gender justice alongside concurrent humanitarian efforts. These examples have been chosen to illustrate areas where humanitarian concessions around gender justice may have inadvertently compromised long-term development efforts by reinforcing harmful social norms that disproportionately impact national women's rights and/or women-led organizations delivering humanitarian assistance.

## Afghanistan

The situation around women's rights in Afghanistan is an important case study for the humanitarian, development and peacebuilding sectors. In this context, military rhetoric has been historically deeply gendered (around protection and/or empowerment of women). Following a failed negotiations process<sup>112</sup> dominated by global security concerns and armed stakeholders,<sup>113</sup> the country fell back under the rule of a group espousing social norms running contrary to the letter and spirit of international legal frameworks,<sup>114</sup> leaving Afghan women at risk of extreme discrimination, lacking access to essential services and feeling highly insecure about their future.<sup>115</sup> While there has been a reduction in battle deaths in recent years, the situation around discrimination and violence against women will have long-term impacts<sup>116</sup> along the continuum of violence. Humanitarians have attempted to sound the alarm around extreme forms of gender and other discrimination impacting their work in Afghanistan,<sup>117</sup> but their voices are often muted to protect access negotiations to reach those in need of humanitarian assistance. Some scholars and activists are advocating for a legal framework

111 Frontline Negotiations, "Women Have a Seat at the Negotiation Table", 24 March 2023, available at: <https://frontline-negotiations.org/blog-women-have-a-seat-at-the-negotiation-table/>.

112 Michael Semple, Robin L. Raphael and Shams Rasikh, *An Independent Assessment of the Afghanistan Peace Process June 2018–May 2021*, PSRP, June 2021, available at: [www.politicalsettlements.org/wp-content/uploads/2021/07/An-independent-assessment-of-the-Afghanistan-peace-process.pdf](http://www.politicalsettlements.org/wp-content/uploads/2021/07/An-independent-assessment-of-the-Afghanistan-peace-process.pdf).

113 Masooma Rahmaty, "On International Women's Day, a Closer Look at the Missing Voices of Women in Afghan Peace Talks", IPI Global Observatory, 8 March 2019, available at: <https://theglobalobservatory.org/2019/03/international-womens-day-missing-voices-women-afghan-peace-talks/>.

114 Hugo Slim, "Humanitarians Must Reject the Taliban's Misogyny", *From Poverty to Power*, Oxfam, 10 January 2023, available at: <https://frompoverty.oxfam.org.uk/humanitarians-must-reject-the-talibans-misogyny/>.

115 UN Women, UN Assistance Mission in Afghanistan and International Organization for Migration, *Afghan Women's Voices – Summary Report of Country-wide Women's Consultations*, March 2023, available at: <https://asiapacific.unwomen.org/sites/default/files/2023-03/af-Consultation-summary-report-2-270323.pdf>.

116 Gabija Leclerc and Rosamund Shreeves, "Women's Rights in Afghanistan: An Ongoing Battle", European Parliament, Members' Research Service, April 2023, available at: [www.europarl.europa.eu/RegData/etudes/BRIE/2023/747084/EPRS\\_BRI\(2023\)747084\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/BRIE/2023/747084/EPRS_BRI(2023)747084_EN.pdf).

117 Antonio Donini, *Afghanistan: Humanitarianism under Threat*, Feinstein International Centre, Tufts University, Medford, MA, 2009, available at: <https://fic.tufts.edu/wp-content/uploads/Donini-Afghanistan-1.pdf>.



around “gender apartheid”,<sup>118</sup> as the degree of marginalization of women and girls in Afghanistan is so extreme. The international community’s failure to act in these conditions has been borne through history by the national and international humanitarians<sup>119</sup> on the ground, who are still trying to respond to basic needs under near-impossible levels of restrictions on principled humanitarian assistance. Operational agencies in Afghanistan report that while some initial shared frameworks were established to try to ensure some form of collective, principled access negotiations, allowing agencies to engage with women and girls in Afghanistan, organizations feel overall that they do not have the adequate frameworks to navigate such a situation, due to lack of political leadership, institutional/sector-wide cohesion and leverage.<sup>120</sup> The humanitarian principles and their intersections with wider development objectives (including gender justice) are under scrutiny.<sup>121</sup> The impartiality principle and the high degree of vulnerability of women and girls in Taliban-ruled Afghanistan (especially in accessing health and education, as well as livelihoods and mobility) featured heavily in State rationales for granting exemptions from Taliban-related sanctions.<sup>122</sup> These humanitarian workarounds are important for life-saving services in the short term, but the needs-based and fragmented humanitarian toolkit can inadvertently obscure the larger issues of extreme inequality and discrimination and can contribute to longer-term damage<sup>123</sup> to the gender justice agenda by (perceived) over-compromising in the short term in favour of humanitarian access.

## Ukraine

Gender inequalities persist in Ukraine (and the wider region), with debates around masculinities and gender norms<sup>124</sup> in a militarized context ahead of the escalation of

118 UN Human Rights, “Experts: Taliban Treatment of Women May be ‘Gender Apartheid’”, 11 July 2023, available at: [www.ohchr.org/en/stories/2023/07/experts-taliban-treatment-women-may-be-gender-apartheid](http://www.ohchr.org/en/stories/2023/07/experts-taliban-treatment-women-may-be-gender-apartheid).

119 Peter Maurer, “Remembering the Shoah: The ICRC and the International Community’s Efforts in Responding to Genocide”, speech given in Geneva, 28 April 2015, available at: [www.icrc.org/en/document/remembering-shoah-icrc-and-international-communitys-efforts-responding-genocide-and](http://www.icrc.org/en/document/remembering-shoah-icrc-and-international-communitys-efforts-responding-genocide-and).

120 Humanitarian Outcomes, *Navigating Ethical Dilemmas for Humanitarian Action in Afghanistan*, United Kingdom Humanitarian Innovation Hub, June 2023, available at: [www.humanitarianoutcomes.org/sites/default/files/publications/ho-ukhih\\_afghanistan\\_final\\_6\\_21\\_23.pdf](http://www.humanitarianoutcomes.org/sites/default/files/publications/ho-ukhih_afghanistan_final_6_21_23.pdf).

121 International Crisis Group, “Taliban Restrictions on Women’s Rights Deepen Afghanistan’s Crisis”, 23 February 2023, available at: [www.crisisgroup.org/asia/south-asia/afghanistan/329-taliban-restrictions-womens-rights-deepen-afghanistans-crisis](http://www.crisisgroup.org/asia/south-asia/afghanistan/329-taliban-restrictions-womens-rights-deepen-afghanistans-crisis).

122 UN, “Security Council Unanimously Adopts Resolution 2615 (2021), Enabling Provision of Humanitarian Aid to Afghanistan as Country Faces Economic Crisis”, 22 December 2021, available at: <https://press.un.org/en/2021/sc14750.doc.htm>.

123 UN, “Security Council Emphasizes that Punitive Restrictions on Women’s Rights, Escalating Hunger, Insecurity Taking Devastating Toll in Afghanistan”, 8 March 2023, available at: <https://press.un.org/en/2023/sc15222.doc.htm>.

124 UNFPA Ukraine, “Masculinity Today: Men’s Attitudes to Gender Stereotypes and Violence against Women”, June 2018, available at: <https://ukraine.unfpa.org/en/publications/masculinity-today-mens-attitudes-gender-stereotypes-and-violence-against-women>.

the Russian invasion of Ukraine and consequent expansion of the humanitarian crisis. Attitudes in Russia<sup>125</sup> further exacerbate inequalities, potentially exporting binary and discriminatory social norms across the region, including in areas of Ukraine that Russia occupies and/or where it exerts influence. Ukraine is an important case study for the application of the humanitarian principles, IHL frameworks and gender justice, with key institutions highlighting the dangers of ignoring gender and human security.<sup>126</sup> Observers have noted complex narratives of gender roles in this conflict, including the under-representation of women in conflict narratives (despite a long history of a feminized security sector).<sup>127</sup> The principle of neutrality in this important international armed conflict has been called out by national organizations,<sup>128</sup> questioning the core humanitarian principles.<sup>129</sup> Given the high degree of global support for Ukraine, including military aid, the principle of neutrality has come into tension with solidarity and the traditional civilian nature of humanitarian assistance. Large arms flows and conflation of aid with military support have also triggered tensions within feminist communities, which have traditionally been associated with non-violence and disarmament.<sup>130</sup> A group of Ukrainian civil society organizations, including many women's rights organizations (e.g. those specifically working on the Women, Peace and Security agenda as well as humanitarian issues) have called for primacy of the self-determination and rights agendas over what they see as attempts to instrumentalize humanitarian aid in geopolitics.<sup>131</sup> Some Ukrainian civil society organizations report<sup>132</sup> that pre-war traditional social norms sometimes prevail, with the security sector apparently reluctant to fully engage all aspects of the Women, Peace and Security agenda.<sup>133</sup> Some report that they have found working on transformative Women, Peace and Security initiatives while delivering humanitarian assistance in this context particularly challenging.<sup>134</sup>

125 Louise Arimatsu and Christine Chinkin, "War, Law and Patriarchy", London School of Economics, 5 April 2022, available at: <https://blogs.lse.ac.uk/wps/2022/04/05/war-law-and-patriarchy/>.

126 Cori Fleser, *Beyond Munitions: A Gender Analysis for Ukrainian Security Assistance*, Atlantic Council, 15 August 2022, available at: [www.atlanticcouncil.org/in-depth-research-reports/issue-brief/beyond-munitions-a-gender-analysis-for-ukrainian-security-assistance/](http://www.atlanticcouncil.org/in-depth-research-reports/issue-brief/beyond-munitions-a-gender-analysis-for-ukrainian-security-assistance/).

127 Suadd Al Orami and Osman Antwi-Boateng, "Surviving the Patriarchy: Ukrainian Women and the Russia-Ukraine War", *Journal of International Women's Studies*, Vol. 25, No. 6, August 2023, available at: <https://vc.bridgew.edu/cgi/viewcontent.cgi?article=3137&context=jivs>.

128 GFCF, above note 47.

129 Hugo Slim, "Solidarity, Not Neutrality, Will Characterize Western Aid to Ukraine", *Ethics and International Affairs*, 3 October 2022, available at: [www.ethicsandinternationalaffairs.org/online-exclusives/solidarity-not-neutrality-will-characterize-western-aid-to-ukraine](http://www.ethicsandinternationalaffairs.org/online-exclusives/solidarity-not-neutrality-will-characterize-western-aid-to-ukraine).

130 Nela Porobić, "Holding onto Nonviolence and Feminism in the Midst of War", Women's International League for Peace and Freedom, 9 May 2022, available at: [www.wilpf.org/holding-onto-nonviolence-and-feminism-in-the-midst-of-war](http://www.wilpf.org/holding-onto-nonviolence-and-feminism-in-the-midst-of-war).

131 Ukraine Peace Appeal, "Ukraine Peace Appeal: Towards a More Informed Solidarity", 2023, available at: [www.ukrainepeaceappeal2023.info/](http://www.ukrainepeaceappeal2023.info/).

132 Ukraine Civil Society Speaker, Women, Peace and Security side event at the Stockholm International Peace Research Institute, Annual Forum on Peace and Development, 2023.

133 Mila O'Sullivan, "'Being Strong Enough to Defend Yourself': Untangling the Women, Peace and Security Agenda amidst the Ukrainian Conflict", *International Feminist Journal of Politics*, Vol. 21, No. 5, 2019.

134 Ukraine Civil Society Speaker, above note 132.

reflecting tensions around narratives in conflict.<sup>135</sup> Some humanitarians have reported that in Ukrainian society, gender stereotypes and norms can reinforce patriarchal social norms (e.g. in attitudes toward unpaid care work);<sup>136</sup> while armed conflict can also be disruptive and transformative with regard to patriarchal social norms, women-led organizations can find themselves expected to provide humanitarian relief, sometimes to the exclusion of space for them to voice critical questions regarding the conduct of hostilities or to meaningfully engage in peace efforts, from ceasefires to political settlements.<sup>137</sup>

## Yemen

The vibrant social, cultural and political dynamics in Yemen have historically generated strong women's rights and women-led movements and organizations determined to claim their rightful place in political and socio-economic decision-making, building on a tradition of civic engagement. This plays out in a broader context of deeply rooted patriarchal social norms, often exacerbated by regional and sometimes global parties to the conflict and/or self-proclaimed mediators,<sup>138</sup> as well as poverty and inequality dynamics that affect women's access to services as well as political participation.<sup>139</sup> As the UN engages regional stakeholders toward a durable ceasefire,<sup>140</sup> attention turns to humanitarian intersections with the peace and development fields. From the perspectives of national civil society stakeholders, strained by years of armed conflict and under-resourced,<sup>141</sup> ceasefire and political settlement discussions are taking place in a highly fragile context. Women's representation is again in focus. *Mahram* restrictions (requiring women to travel with a close male relative or written approval from their male guardian) and other limitations on the movement of women and girls, as well as their access to services, livelihoods and decision-making, remain a characteristic

135 Zainab Moallin, Karen Hargrave and Patrick Saez, *Navigating Narratives in Ukraine: Humanitarian Response amid Solidarity and Resistance*, HPG Working Paper, ODI, 19 September 2023, available at: <https://odi.org/en/publications/navigating-narratives-in-ukraine-humanitarian-response-amid-solidarity-and-resistance/>.

136 CARE, *Rapid Gender Analysis: Ukraine*, October 2023, available at: [https://careevaluations.org/wp-content/uploads/RGA\\_Ukraine\\_2023\\_ENG.pdf](https://careevaluations.org/wp-content/uploads/RGA_Ukraine_2023_ENG.pdf).

137 Ukraine Civil Society Speaker, above note 132; Mila O'Sullivan, "Where Are the Ukrainian Women? Respecting Female Voices Now and in Post-War Times", Henrich Böll Stiftung, 4 April 2022, available at: <https://cz.boell.org/en/node/2573>.

138 Fatma Jaffar, *Speaking Up: The Role of Women in Building Peace in Yemen*, Oxfam, 2023, available at: <https://oxfamilibrary.openrepository.com/bitstream/handle/10546/621481/bp-speaking-up-the-role-of-women-in-building-peace-in-Yemen-080323-en.pdf?sequence=4>; ACAPS, "Yemen: Gender Dynamics, Roles and Needs", April 2023, available at: [www.acaps.org/fileadmin/Data\\_Product/Main\\_media/20230411\\_acaps\\_thematic\\_report\\_yemen\\_gender\\_dynamics\\_roles\\_and\\_needs.pdf](http://www.acaps.org/fileadmin/Data_Product/Main_media/20230411_acaps_thematic_report_yemen_gender_dynamics_roles_and_needs.pdf).

139 OCHA, "Gender Considerations in the Humanitarian Response in Yemen", 2014, available at: <https://response.reliefweb.int/yemen/gender-considerations-humanitarian-response-yemen>.

140 Office of the Special Envoy of the Secretary-General for Yemen, "Update on Efforts to Secure a UN Roadmap to End the War in Yemen", 23 December 2023, available at: <https://osesgy.unmissions.org/update-efforts-secure-un-roadmap-end-war-yemen>.

141 Thuraya Dammaj, "War Passing Over Women's Bodies", Sana'a Center for Strategic Studies, 27 December 2023, available at: <https://sanaacenter.org/the-yemen-review/nov-dec-2023/21555>.

of the humanitarian context.<sup>142</sup> The delicate transition from humanitarian to peacebuilding and development priorities, applying a triple-nexus (humanitarian–development–peace)<sup>143</sup> lens, will impact social norms, historical patterns and women’s rights. Constraints on women’s freedom of movement in Yemen have been impacting the work of the humanitarian sector, where women (albeit often overlooked) do play leading roles in local humanitarian leadership.<sup>144</sup> As in many other contexts, the humanitarian community struggles to negotiate a coordinated response by employing carveouts; in the meantime, female humanitarians and the women and girls in communities most in need of assistance are bearing the brunt of this policy, with females in (especially rural) communities in need at risk of not receiving critical assistance and female aid workers incurring the costs.<sup>145</sup> Youth and women have been notably absent from some of the key ceasefire and political settlement talks,<sup>146</sup> while key stakeholders cite that the conditions of reduced (armed, battlefield) violence are potentially conducive to a possible peace process that could end the conflict.<sup>147</sup> In the case of Yemen, a consolidated UN mediation effort is taking place in a context of political marginalization at the national level.<sup>148</sup> As urgent humanitarian agendas continue to dominate over development agendas in Yemen, there is a risk that a positive peace agenda, including the participation pillar of the UN Women, Peace and Security resolution, will be inadvertently obscured by humanitarian action.

While queering the application of the humanitarian principles and IHL frameworks is very context-specific, there are common threads across many humanitarian contexts, including exacerbated inequalities, the challenges of consolidating small wins in social reforms through humanitarian action into inclusive development pathways (especially where women’s rights and gender justice norms are concerned), and politicization of aid (its principles and its stakeholders). Addressing the root causes and drivers of extreme forms of discrimination (e.g. against women) can be a necessary prerequisite to applying impartiality in

142 Julien Barnes-Dacey and Cinzia Bianco, “Internalising Peace: How to Build on Saudi-Iranian De-escalation for a Settlement in Yemen”, European Council on Foreign Relations, 19 April 2023, available at: <https://ecfr.eu/article/internalising-peace-how-to-build-on-saudi-iranian-de-escalation-for-a-settlement-in-yemen/>.

143 Civil Society Platform for Peacebuilding and Statebuilding, “Navigating the Nexus: A Case for Yemen”, 17 April 2020, available at: <https://cspps.org/Navigating-the-Nexus-Yemen>.

144 Niku Jafarnia, “Houthis Violating Women’s and Girls’ Rights in Yemen: UN Experts Highlight Widespread Harm”, Human Rights Watch, 6 February 2023, available at: [www.hrw.org/news/2023/02/06/houthis-violating-womens-and-girls-rights-yemen](http://www.hrw.org/news/2023/02/06/houthis-violating-womens-and-girls-rights-yemen).

145 Yemen Women, Peace and Security Roundtable with Civil Society Voices, UK Parliament Hearing (All Party Parliamentary Group on Women Peace and Security), 11 July 2023.

146 Ahmed Nagi, “Catching Up on the Back-Channel Talks in Yemen”, International Crisis Group, 10 October 2023, available at: [www.crisisgroup.org/middle-east-north-africa/gulf-and-arabian-peninsula/yemen/catching-back-channel-peace-talks-yemen](http://www.crisisgroup.org/middle-east-north-africa/gulf-and-arabian-peninsula/yemen/catching-back-channel-peace-talks-yemen).

147 UN, “Truce Providing Serious Opportunity for Ending Yemen’s Long Conflict, Briefers Tell Security Council”, 17 April 2023, available at: <https://press.un.org/en/2023/sc15258.doc.htm>.

148 Jena Jaensch, “A Seat at the Negotiating Table: How Women are Building Peace in Yemen”, *The Interpreter*, 16 January 2023, available at: [www.lowyinstitute.org/the-interpreter/seat-negotiating-table-how-women-are-building-peace-yemen](http://www.lowyinstitute.org/the-interpreter/seat-negotiating-table-how-women-are-building-peace-yemen).

humanitarian work – but this action itself can be perceived as “political” by power holders. Promoting gender justice, including inclusion of LGBTQI+ groups and associated feminist agendas, also leaves humanitarians in many contexts accused of “politicization” and of serving a “Western, colonial agenda”. The principle of neutrality is additionally challenged in contexts of invasion and occupation, especially when the humanitarian donor base and parties to the conflict overlap in time and space, leaving humanitarians navigating challenging political contexts with little recourse to state their case in ways that do not carry operational risks for service delivery agencies. Humanitarian narratives of the gendered nature of violence are often self-censored as a risk management tool. This complicates feminist narratives of conflict – for example, the present article relies on a range of human rights, peacebuilding and humanitarian sources because in a global context of regression of rights and restricted humanitarian and civic space, the risks to operational humanitarian agencies are too high to fully bear witness to the drivers of gendered violence. When exploring humanitarian narratives, there is a high degree of self-censorship, with agencies unable to publicly engage on the root causes and drivers of exclusion and violence for fear of (violent and/or legal) retribution from State and non-State actors, and/or loss of access to the communities they serve. Feminist theories challenge narrators not only to describe the status quo, but also to address the question “how did we get here?”, in order to queer underlying assumptions about the context at hand. Humanitarian stakeholders must therefore engage across the sectors, including academia, to queer how the humanitarian principles apply in specific contexts, as an important point of reflexivity toward more inclusive historical narratives of conflict and violence, as well as aid effectiveness. The following section will explore the interaction of legal frameworks applicable in armed conflicts, and policies and practices that could help humanitarians contribute to emancipatory development objectives.

## **Emancipatory dividends from principled humanitarian action**

While some view IHL as a limited and potentially stagnating legal framework, others point to the emancipatory potential in how the IHL regimes interact with international human rights law, international criminal law, UN Security Council agendas and principled humanitarian action in practice. Undue expectations are often placed on humanitarian frameworks, including IHL. The needs-based approach to civilians in conflict may limit the scope for women’s inclusion and participation in humanitarian decision-making, but its interaction with other rights-based legal frameworks can help expand engagement with a broader set of civil society voices.<sup>149</sup> One could argue that IHL development may be lacking in diverse civil society engagement, in part due to external constraints on civil

149 C. O’Rourke, above note 16, pp. 143–144, 148–149.

society and civic space more widely<sup>150</sup> and in part due to under-resourcing of civil society efforts (as highlighted by Yemeni civil society organizations). Nevertheless, IHL remains a key legal framework that is systematically applied and invoked in practice on a regular basis by a wide range of national and international, State and non-State stakeholders, and the application of the humanitarian principles in contexts of extreme inequality remains an important source of data and historical narratives. For example, the dissemination of IHL is seen as a compliance and prevention tool, an approach that some argue is under-utilized by States and institutions as an important avenue for civic engagement.<sup>151</sup>

These rich and diverse practices in the humanitarian sector create a space for engagement with a range of legal instruments that address longer-term development challenges, but they also create a space where legal frameworks can draw on one another to reduce unintended harms (driven by patriarchal and/or other discriminatory historical norms) and improve, *inter alia*, IHL compliance in the long term. In the practice spaces of the humanitarian sector, a lively debate around new ways of working in the humanitarian–development–peace nexus is seeing increased blurring of humanitarian mandates with development and peace objectives. Some organizations see this as an opportunity for gender justice and women’s rights objectives to be addressed in humanitarian frameworks.<sup>152</sup> This debate goes to the heart of the humanitarian principles of neutrality and impartiality. With militarization on the rise, humanitarian access and civic spaces increasingly restricted, and national humanitarian voices silenced and marginalized by anti-NGO laws and coercion, it is critical to protect the hard-fought operational independence of humanitarian actors. However, humanitarian objections to the triple nexus risk missing the opportunities it offers humanitarians to be more conflict-sensitive and more inclusive,<sup>153</sup> and to potentially bring forward some of the productive elements of IHL development that have been overlooked by other sectors and research fields in the past. In queering the humanitarian principles of impartiality and neutrality, as well as IHL, it is important to recognize their limitations. Looking at these principles and frameworks from the perspective of national organizations working across the

150 Increased militarization and declining respect for IHL, combined with increased restrictions on civic space globally, are having a detrimental impact on local and national accountability. Given the high propensity for anti-NGO laws in many countries, sustained engagement from conflict-affected communities in IHL development becomes an issue of both risk and resources, and can skew civil society engagement in IHL development back toward the “global North”. See Kristina Roepstorff, *Localisation and Shrinking Civic Space: Tying Up the Loose Ends*, Centre for Humanitarian Action, 2020, available at: [www.chaberlin.org/wp-content/uploads/2020/05/2020-05-publication-localisation-shrinking-civic-space-roepstorff-en.pdf](http://www.chaberlin.org/wp-content/uploads/2020/05/2020-05-publication-localisation-shrinking-civic-space-roepstorff-en.pdf).

151 Elizabeth Stubbins Bates, “Emerging Voices: Is Dissemination Sufficient to Promote Compliance with International Humanitarian Law?”, *OpinioJuris*, 13 August 2013, available at: <http://opiniojuris.org/2013/08/13/emerging-voices-is-dissemination-sufficient-to-promote-compliance-with-international-humanitarian-law/>.

152 Niki Ignatiou and Alice Ramsay, *Leading the Way: The Nexus through a Feminist Lens*, ActionAid, 2022, available at: [www.actionaid.org.uk/publications/leading-way-nexus-through-feminist-lens](http://www.actionaid.org.uk/publications/leading-way-nexus-through-feminist-lens).

153 Marc DuBois, *Triple Nexus – Threat or Opportunity for the Humanitarian Principles?*, Centre for Humanitarian Action, 7 May 2020, available at: [www.chaberlin.org/en/publications/triple-nexus-threat-or-opportunity-for-the-humanitarian-principles-2/](http://www.chaberlin.org/en/publications/triple-nexus-threat-or-opportunity-for-the-humanitarian-principles-2/).

humanitarian, development and peacebuilding silos in their respective communities serves as an important stocktake of their limitations and potential intersectional opportunities.

## Conclusion

While the emancipatory contributions to those affected by conflict and poverty are highlighted by proponents of a human security approach in the development sector,<sup>154</sup> much less is said about the emancipatory potential of humanitarian work. Perhaps instead of fearing perceived politicization and increased interlinkages with the development and peacebuilding sectors, it is worth queering the limitations and potentials of shared long-term objectives in fragile and conflict-affected contexts. From the perspective of many local organizations, a development lens and approach to humanitarian crises is often favoured as it allows community-based organizations to address social norms and the underlying drivers of inequality and humanitarian needs in the long term, as well as reducing sector-based silos. The triple nexus of humanitarianism, development and peace is more of an aid effectiveness tool, rather than a transformational gender justice framework, but continued engagement with this approach helps to unpack and query the tensions in the aid sectors. A gender lens (given its both personal and private, as well as political, nature) could serve as a natural entry point for exploring ways in which humanitarians can contribute to the gender justice and women's rights agenda while managing risks associated with perceived politicization. Applying a feminist lens to IHL principles and development can interrogate what emancipatory dividends IHL development, implementation and dissemination could offer in a rapidly shifting global context. Queer theory, as applied to the humanitarian principles and to legal frameworks and actions, would require collaboration between humanitarian policy and practice spaces in order to more substantively and consistently challenge the underlying assumptions of humanitarian action (including colonial and patriarchal heritage), encourage greater diversity of stakeholders in the sector, and help disrupt and shift gendered and racialized power relations with the aim of shaping and reshaping humanitarian systems.

154 Amartya Sen, *Development as Freedom*, Oxford University Press, Oxford, 1999, pp. 4–5.