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## Issue 31

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## Introduction



Dear Fellow Legal Professionals and those interested in NATO,

It is with great pleasure that we publish our 31st issue of the NATO Legal Gazette, which is also the second topic-oriented issue.

In this issue, we focus on Gender, and you will find a number of interesting articles addressing Gender perspectives in NATO. In the first article, Dr. Gabriella Colao focuses on United Nations Security Council Resolution 1325 and how it is implemented within NATO structures. Our former colleague from HQ SACT, COL. Jody Prescott (ret.), puts Gender perspectives into the Law of Armed Conflict context, and 1LT. Dr. Elisabeth Schleicher and MAJ. Andy Young share their personal experiences from KFOR, where they served as Gender Advisor and Gender Focal Point, respectively. Their article sees Gender as a tool that can significantly improve operational effectiveness in practice.

Since gender is a very wide topic and not limited to integration of women's perspectives into military operations and military structures, Mrs. Patricia Sellers from the ICC discusses a number of United Nations Security Council Resolutions focused on preventing sexual violence. Last but not least, NATO's diversity officer, Tara Nordick, will share her views on how NATO deals with diversity and gender issues internally.

As envisaged in the Introduction to our first topic-oriented issue, every issue of the NATO Legal Gazette will now focus on both NATO entities and structure, and on CLOVIS. In that regard, Antoaneta Boeva writes about NATO HQ, and Allende Plumed Prado, our CLOVIS knowledge manager, will introduce how CLOVIS Topic Pages can be of great assistance for enhancing your legal knowledge on specific issues. Finally, as usual, you will find a book review corresponding to the topic of gender from our distinguished contributor, Vincent Roobaert.

In closing, I hope the articles in this issue are of professional or private interest to you. I urge you to remember that the challenge of how to better incorporate women into our modern NATO military structures is upon us.

Sincerely yours,

Petra Ochmannova, Deputy Legal Adviser ACT SEE



## CLOVIS: What are TOPIC PAGES?

Allende Plumed Prado  
CLOVIS Team  
ACT SEE Legal Office

Having provided you with general information about CLOVIS in Issue 30 of the NATO Legal Gazette, over the next few issues we would now like to go into more detail on the many features CLOVIS has to offer and explain their purpose and the behind-the-scenes work required.

In the current issue, we will introduce you to the CLOVIS Topic Pages. As you know, CLOVIS' aim is to support and facilitate the work of the NATO Legal community by providing access to NATO documents of legal significance and to information that is processed and curated by lawyers, for the benefit of their peers. To facilitate this, Topic Pages are **theme-oriented sites** offering an overview on a selected area of interest.

The aim of Topic Pages is to concentrate in one place a **coherent, updated and accurate selection of information from various reliable sources** on a given subject, thus enabling users to understand the main issues at a glance, while making available relevant NATO documents. A perfect Topic Page should spare users from wasting hours looking for a specific document that might not even exist and instead, make relevant references available in a click (or two).

Typically, each Topic Page offers:

1. A summary paper on a given topic which is displayed on the front page of the Topic Page (1). These papers are drafted by voluntary contributors or by the lawyers working on the CLOVIS Team and are usually reviewed by a NATO legal advisor regarded as a specialist in that area. The aim of these papers is to set out and clarify NATO's position, practice, and doctrine on a subject and provide links to relevant NATO documents ;
2. A direct access to related documents uploaded on CLOVIS, on the left-hand side of the screen (2); and



3. A possibility to ask questions (3) which the CLOVIS team will answer or direct to better suited points of contact. The questions asked will be visible to all users for their information, with the idea that some users might want to contribute or add further information.

**CLOVIS** Legal Basis For NATO Operations > Home

CLOVIS Home Documents Topics Workspaces Report Broken Link Advanced Search CLOVIS Project Disclaimer Request For Info Documents and Referer

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**2**

**Legal Basis For NATO Operations**

This topic page explains the different legal basis upon which NATO can launch an operation or a mission. Because most operations include the use of force, this concept is presented within the framework of the United Nations Charter. Other legal basis upon which NATO could rely to go on operation are also presented. Finally, this page will briefly explain the differences between an Article 5 and Non-Article 5 operation and the NATO internal decisions making process activated after nations have decided to launch an operation or participate in a mission. [READ MORE](#)

**1**

**You will find below relevant chapters in the Legal Deskbook related to Legal Basis for NATO Operations:**

- [Legal Basis of Military Operations.pdf](#)
- [Other Forms of Legal Basis for the use force.pdf](#)

**3**

Ask A Question

Source: Topic Page on Legal Basis for NATO Operations, CLOVIS

The CLOVIS Team is constantly working on identifying topics of interest and is eager to get ideas from its users. Once a topic is identified, a page is then created and the information displayed in a user friendly and comprehensive manner. The CLOVIS team finally ensures documents linked to the Topic Pages are updated on a regular basis.

Source: Home page, CLOVIS

**CLOVIS** CLOVIS Home > Home

CLOVIS Home Documents Topics Workspaces Report Broken Link

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**DISCUSSIONS**  
CLOVIS Forum

**LINKS**  
Legal Gazette and DATABASES  
Blogs  
Journals

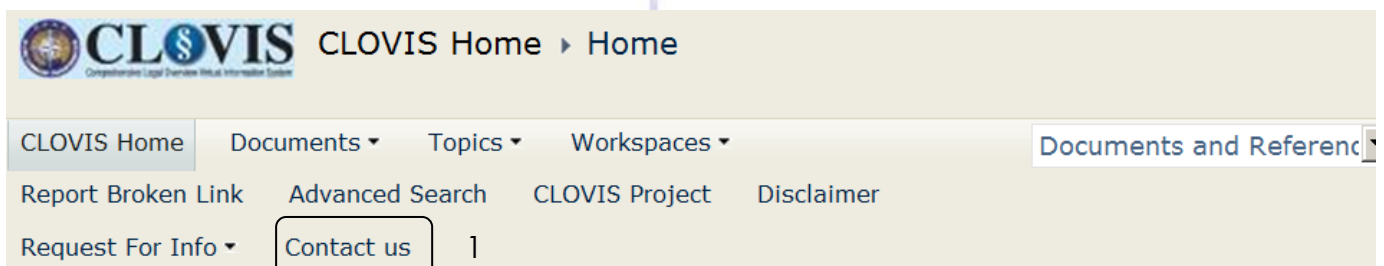
**High**

- Personnel Issues
- NATO Status Agreements
- NATO Basic Documents
- Maritime Issues
- LEGAL Basis for NATO Operations
- Issues in Operations
- NATO Document and Information Management
- Complaints and Appeals within NATO
- NATO Regulations: Authority & Hierarchy
- Centres of Excellence

Currently, approximately ten Topic Pages are created on CLOVIS on, inter alia, NATO Regulations: Authority & Hierarchy; Issues in Operations;

Special Operations from a Legal Perspective; Legal Basis for NATO Operations; Maritime Issues ; NATO Status Agreements and Personal Issues... but many more are under construction. For example, a Topic Page on Gender Issues is soon to be published on CLOVIS.

Finally, if you are interested in helping us build a page on a given topic (Cyber-defence, Closure of NATO Bodies, PMSC, etc...), or would like to construct one yourself, do not hesitate to contact us. Please note that all contributions and collaboration on existing Topic Pages are more than welcome! You will find our contact information details at the "Contact Us" (1) link on the CLOVIS Site.



The screenshot shows the top navigation bar of the CLOVIS website. The logo on the left reads "CLOVIS" with the tagline "Comprehensive Legal Database with Interactive Tables". To the right of the logo is the text "CLOVIS Home > Home". Below this is a horizontal menu with the following items: "CLOVIS Home", "Documents ▾", "Topics ▾", "Workspaces ▾", and "Documents and Referenc...". A second row of links includes "Report Broken Link", "Advanced Search", "CLOVIS Project", and "Disclaimer". A third row contains "Request For Info ▾", a red-bordered box around the text "Contact us", and the number "1".

If you do not already have an account and either work in NATO legal billet or work on legal issues for a NATO Nation, please do not hesitate to contact **Jessica Johnson** at her email: [jessica.johnson@shape.nato.int](mailto:jessica.johnson@shape.nato.int) (NCN: 254 8412) to obtain access to CLOVIS.

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## What is NATO HQ?

Antoaneta Boeva<sup>1</sup>  
NATO HQ Legal Office

NATO is a political-military Alliance, and NATO Headquarters (NATO HQ) is the home of the North Atlantic Council and the most "political" part of NATO. In essence, then, talking about NATO HQ Brussels means talking about how the political side of NATO works. It is there that Allied representatives, supported by the NATO Secretary General and the International Staff, participate in a continuous, complex interaction aimed at identifying areas of agreement and disagreement; explaining, understanding and overcoming difficulties; identifying bases for consensus; leading in the end to Alliance policy decisions built on the elements identified through that complex interaction.



Located in a rather out-of-the way part of Brussels, NATO HQ thus accommodates not only the continual interaction of the 28 Allies' Permanent Representatives and their missions (as well as those of many of the Partners for Peace), but also for the intensive involvement of Allies in the day-to-day executive decision-making role at NATO.

The North Atlantic Council (the "Council" or, more informally, the "NAC") -- sometimes called "the alpha and the omega of NATO" -- is the only NATO institution established by the Washington Treaty, under Article 9 of which:

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<sup>1</sup> Antoaneta Boeva holds a BA in European Public Law and a MA in International Security and Defence Law, from the University of Grenoble, France. She joined the Office of Legal Affairs in April 2012 and is working on projects involving legal research, information and legal knowledge management, as well as assisting in the overall running of the Office. Prior to joining OLA, she was the Gender and Diversity Officer with the Executive Management Division and has also worked on training, development and performance review issues. The views expressed in this article are solely those of the author and may not represent the views of NATO.

***“The Parties ... establish a Council on which each of them shall be represented, to consider matters concerning the implementation of the Treaty (...).”***

The central and most important institution at NATO HQ – in NATO as a whole, in fact – is the Council. How NATO is organized and operates – and in a very real sense everything done in NATO – comes back, one way or the other, to the NAC and the decisions it makes. Article 9 carries on to set, in simple but powerful words, the framework for getting that work done:

***“(...) The Council shall be organized so as to be able to meet at any time. The Council shall set up such subsidiary bodies as may be necessary; in particular it shall establish immediately a defense committee which shall recommend measures for the implementation of articles 3 and 5.”***

Article 9 of the Washington Treaty provides for the Council's continuous existence, authorizes it to set up subsidiary bodies, and provides that every member of the Alliance is represented, without

*Gender equality is more than a goal in itself. It is a precondition for meeting the challenge of reducing poverty, promoting sustainable development and building good governance.*

***Kofi Annan***

any differentiation, on the Council. Iceland and the United States, for example, may be unequal in their military contributions to the Alliance, but they are legally fully equal members of the Alliance. An additional point of interest is that all the Council configurations (in permanent session at Ambassadorial (PermRep) level, at ministerial level or at level of Heads of State and Government), represent the same body. Legally, it makes no difference what level the Council meets at. Regardless of the level, all decisions taken by the Council are equally valid, and equally binding on Allies.

What is also interesting, though, is that the Washington Treaty says almost nothing about the specific competences of the Council. In effect, it can do just about anything the Allies authorize it to do, limited only by the very broad political-military subject matter of the Alliance itself. And the subject matter of Council decisions is vast: The NAC establishes and sets the terms of reference for all NATO entities, including its military commands and agencies, and the NAC must approve their leadership, their staffing and their budgets. All NATO military operations begin with a NAC decision in principle to undertake the activity, followed by a NAC decision to ask the NATO military authorities to begin the planning for that operation. Later, the CONOPS (concept of operations), OPLAN (operational plan) and ROE (rules



of engagement) must be approved by the NAC before it gives the final order to execute the operation. The NAC also approves the NATO Strategic Concept and other basic policy documents, including rules and procedures applicable NATO-wide. The NAC also approves agreements and partnership frameworks entered into by NATO and non-NATO states and international organizations. It is noteworthy how many of these decisions are quite concrete: they are decisions to DO things, as befits an organization that, at its core, is and always has been an operational one.

### **What is the legal character of a Council decision?**

Perhaps the place to start is to say what it is not: a Council decision is not an international agreement – not a treaty, a convention, a memorandum of understanding or a memorandum of agreement – even though it is made by the authorized plenipotentiaries of the sovereign members of the Alliance. Council decisions are not signed by the members of the Council and they are not coordinated individual decisions by 28 separate Nations. There are no votes, and only rarely do Nations offer explanations of their individual reasons for joining consensus. Rather, they are a collective decision of the Alliance itself. Once taken, they are binding on the members of the Alliance. And since they are binding, this means that members States are expected to ensure that there are no domestic legal barriers to implementing those decisions.

The binding character of Council decisions also derives, in a very real sense, from the way those decisions are taken. One of the most important characteristics of NATO, and of the North Atlantic Council in particular, is the requirement of consensus to make any decision. It is the practice of consensus – with its critical corollary that any Ally has the power to block the taking of any decision – combined with the right of every Ally to participate in the Council, that makes it politically as well as legally possible for NAC decisions to be binding on every member of the Alliance.

The Council agreed its terms of reference at his very first session in 1949. However, just like the Washington Treaty, these TORs did not foresee many of the needs and situations that the Councils would be encountering almost daily. In fact for an institution exercising such power, the Council is remarkably reliant on a multitude of accepted "practices".

### **What is the role of the Secretary General and the International Staff?**

The two other NATO elements located in HQ Brussels – the Secretary General and the International Staff -- are not even mentioned in the Organization's founding document, the Washington Treaty. In 1949, the Allies had not yet realized the need for a permanent secretariat and staff for the

Alliance. Unlike other international or intergovernmental organizations such as the UN or the EU, there is no “NATO Charter” which sets forth tasks to be performed by the International Staff or executive authorities assigned to the Secretary General. The Secretary General is an essential part of the functioning of Headquarters and of the Alliance as a whole, but the position of Secretary General was created only later, in the 1951 Ottawa Agreement, and almost all of the Secretary General's authorities, have been created through a series of subsequent NAC decisions and practice.

The Secretary General is both the Chair of the NAC and Head of a NATO Body -- the International Staff (the IS). In the former capacity, he both defines the Council's agenda and is its spokesperson vis-a-vis the outside world. As a Head of the International Staff he provides policy and administrative support not only to the NAC, but also to the Political and Partnerships Committee (PPC), Operations Policy Committee (OPC) and almost all of the Council's other subordinate committees. As head of the IS, the Secretary General exercises authorities given him by the Council, and ensures that the Council's decisions are carried out. NATO HQ is in practice the hub of the consultative and decision-making processes of the Alliance, and reforms and other key decisions are staffed and decided in NATO HQ Brussels.

Thus, even though he has no formal authority over the Heads of other NATO bodies (whether Supreme Commands or the civilian agencies), as the spokesperson for the Council to which they all report his views and guidance are central to determining a wide range of policies of NATO-wide interest and significance.

The IS numbers something over a thousand civilians, all but a handful of whom are located at NATO HQ. IS functions include what one would expect from central offices of a ministry -- planning, setting and implementing of policy, central HR functions and the like.

The IS is only part of the NATO International Civilian Structure. But the IS is roughly 1/5 of the total international civilian establishment. It is also only part of the overall Headquarters staff, which also includes the International Military Staff.

### **What is the role of International Military Staff?**

NATO Headquarters in Brussels also hosts the national Military Representatives of all Member States. The International Military Staff (IMS) is the executive body of the Military Committee (MC), NATO's senior military authority.

It is responsible for preparing the assessments, evaluations and reports on all NATO military matters, which form the basis of discussion and decisions in the MC. The IMS also ensures that decisions and policies on military matters taken by the NAC and the MC are implemented by the appropriate NATO military bodies.

The IMS represents the essential link between the political decision-making bodies of the Alliance and NATO's Strategic Commanders (the Supreme Allied Commander Europe – SACEUR - and the Supreme Allied Commander, Transformation - SACT) and their staffs, liaising closely with NATO's civilian International Staff located in the same building in Brussels. The IMS is divided into five functional divisions and several branches and support offices.

In fact, a recent "collocation" exercise brought colleagues from the IS and IMS, who work on similar issues even closer together within the NATO HQ building. Officially part of an overarching "HQ Reform", collocation is directed as streamlining the coordination of cross-cutting knowledge and resources, directed at the same issues. The mandates of the various staffs did not change, nor did their formal ways of working. With collocation the IS and IMS have access to the same information and data, which they separately study and report on to their respective chiefs, thus ensuring timely and professional input and preserving the independent and unfettered aspect of the military advice.

### **What is NATO HQ's legal regime?**

As noted above, the Washington Treaty founded NATO and the Council, but otherwise contains almost nothing of concrete relevance to the Organization's governance.

On the highest level, the essential elements for the civilian side in HQ Brussels are found in the 1951 Agreement on the Status of the North Atlantic Treaty Organization, National Representatives and International Staff, signed in Ottawa on 20 September 1951. The "Ottawa Agreement" defines NATO as a legal entity under international law and specifies the privileges and immunities to be granted to NATO, to the International Staff and to the National Representations (Delegations and Missions) to NATO. On a second level, NATO has a Host Nation Agreement with Belgium, as is usually the case between other NATO entities and NATO countries welcoming them on their soil.

In 1994, an Agreement on the Missions and Representatives of Third States to the North Atlantic Treaty Organisation entered into force, affording to the missions of third States to the Organization and their staffs the immunities and privileges accorded to diplomatic missions and staffs by

Belgium, as the Host Nation of NATO Headquarters. It is under this authority that the Council may invite Partners and other non-Allies to be presence on the compound of NATO HQ or to open a mission to NATO.

### **How does NATO HQ Brussels relate to other HQs?**

Other than being physically home to the NAC , to whom all civilian entities, as well as the two Strategic Commands are directly accountable, there is no hierarchy between NATO HQ and other HQs. As mentioned above, NATO Secretary General does not have formal authority over the Heads of other NATO bodies, and similarly, there is absence of a single hierarchy between offices in NATO HQ and offices in similar functions at other NATO bodies and agencies. For example the Legal Adviser at NATO Headquarters has no authority over the legal offices of any NATO body other than the IS in Brussels.

On the other hand, NATO HQ is practically the hub of the consultative and decision making process of the Alliance, and a multitude of important reforms are born in NATO HQ Brussels and/or the guidance on their detailed implementation is agreed there.

### **Some current reforms of interest:**

NATO HQ is, of course, at the heart of reforms touching upon NATO's functioning, and this whether such reforms concern HQ Brussels only, or the Alliance as a whole. The NATO Secretary General would also be in charge of implementing a series of decisions taken over the past couple of years having to do with management and structural reform of both the military and civilian sides of the NATO bureaucracy, that reach far beyond the NATO HQ Brussels compound. He has proposed and gained (or is on the verge of gaining) NAC consent to major reforms including:

- Streamlining the military command structure;
- Radically reforming the structure of the NATO civilian agencies, consolidating over a dozen autonomous agencies into three consolidated "super-agencies";
- Amending regulations concerning staff salaries and allowances;
- Reforming the dispute resolution process to include a more structured administrative review process, with the possibility of mediation, and created a new NATO Administrative Tribunal.

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## Women, Peace and Security: Implementing UNSCR 1325 The legal framework and challenges for NATO

Dr. Gabriella COLAO, PhD<sup>1</sup>  
JFC Naples Legal Office

The year 2000 saw significant advancement toward the goal of greater protection for women and girls in armed conflicts. There was also more discussion of women's participation in political processes where decisions on security are made. In 2000, the groundbreaking UN Security Council Resolution 1325 on Women, Peace and Security<sup>2</sup> (the UNSCR 1325) recognised the important role of women in the prevention and resolution of armed conflicts and in post-conflict situations. It urged that women be included in all peace negotiations and peace building. The adoption of the UNSCR 1325 is a milestone toward the acknowledgment of the disproportionate and unique impact of armed conflicts on women, and it reaffirms the need to fully implement International Humanitarian and Human Rights Law for the protection of women and girls during and after conflicts. The language of the UNSCR 1325 gives visibility to the challenges the International Community, and consequently NATO, faces in promoting a concept crystallised in the Universal Declaration of Human Rights (UDHR) in 1948<sup>3</sup>. All the thematic treaties that followed have contributed to the implementation of the principles set in the UDHR.

The changes instigated by the UDHR were revolutionary. The Human Rights Based Approach (HRBA) was, and still is, the leverage for transformation, and it is a key element in gender integration. NATO is now prepared to support this requirement for better inclusion. From NATO's perspective, there is greater awareness of the importance of a systemic interpretation of norms. In one of the latest reports issued<sup>4</sup> by the

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<sup>1</sup> Dr. Gabriella COLAO currently works as Legal Advisor at JFC HQ Naples. She holds a PhD on the Responsibility to Protect, Human Rights and the Use of Force. She worked as a Subject Matter Expert on Gender Perspective in Military Operations at JFC HQ Naples and developed the Gender Action Plan for the Headquarters. The views expressed in this article are solely those of the author and may not represent the views of NATO and/or JFC HQ Naples.

<sup>2</sup> On 31 October 2000, the Security Council adopted Resolution 1325 under the presidency of Namibia on Women, Peace and Security. e.g. [http://daccess-ods.un.org/access.nsf/Get?OpenAgent&DS=S/RES/1325\(2000\)&Lang=E](http://daccess-ods.un.org/access.nsf/Get?OpenAgent&DS=S/RES/1325(2000)&Lang=E) It has become one of the best known and the most translated resolutions of the Security Council.

<sup>3</sup> The UDHR was adopted by the General Assembly with Resolution 217 (III) on 10 December 1948, as a result of the work of the Commission on Human Rights headed by Eleanor Roosevelt, with 48 votes in favour, no contrary votes and 8 abstained, among which the significant abstention of USSR. See the document on [www.unhchr.org](http://www.unhchr.org)

<sup>4</sup> See NATO Operations Policy Committee (OPC), *Review of the Practical Implications of UNSCR 1325 for the Conduct of NATO-led Operations and Missions*, dated 16 May 2013 AC/332(ISAF)N(2013)0033 and AC/332(KFOR)N(2013)0012 NATO UNCLASSIFIED

organisation, the following is affirmed: ***“if one is to understand any and all aspects of the implementation of a policy, then an understanding of the policy itself is first required... [..]. A document is an expression of a theory of how to instigate change. Analysing the document in order to extract the theory of change that it represents can then lead to a greater understanding of the meanings it conveys, whether implicit or explicit... [..]. Performing a theory of change analysis of a policy is a way to gain access to what those who formulated it may have intended with it. ”***

In a broader context, UNSCR 1325 represents a catalyst of change. The transformation is logically in line with the changes generated by the UDHR and, before that, by the Charter of the United Nations. The impact they had, from the perspective of International Law, was remarkable.

The UN Charter<sup>5</sup>, for the first time in history, connected peace and security to Human Rights<sup>6</sup>. This connection is now triggering a further logical change, gender integration. This systemic approach shows the relevance of the UNSCR 1325 in military operations, and as a result, its relevance for NATO.



The UDHR was the first symbolic act of the United Nations General Assembly, after the creation of the Organisation. The tragedy of World War II marked the threshold of respect for States that should never be breached, and this was followed by a relevant number of International Human Rights Treaties. By ratifying them, governments accept the obligation of implementing Human Rights at a national level, and agree to fully respect, protect and fulfil them. Human rights carry the weight of universality, interdependence and indivisibility. These three elements demonstrate that their implementation inevitably requires the participation of all stakeholders. It's not possible to fully respond to international problems unless all types of protection, and all angles are considered.

<sup>5</sup> The Charter of the United Nations was signed on 26 June 1945, in San Francisco, at the conclusion of the United Nations Conference on International Organization, and came into force on 24 October 1945. From the original 51 members the organisation now counts 193. The document can be found at <http://www.un.org/en/documents/charter/index.shtml>

<sup>6</sup> During the emerging of the Cold War, the bipolar system of the international relations shadowed this link. Today under the current order, the three elements are interacting among each other and have greatly contributed to the transformation of the concept of defence and security.

The UDHR at art.1 recognizes that **“All Human Beings are born free and equal in dignity and rights[.]”** and continues at art.2 by stating that **“Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind..... [.]”**. Art.28 indicates that **“Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.”** What do these principles tell us in reference to the UNSCR 1325?

All the rights and freedoms embodied in the UDHR are expressed through the term “everyone,” making no distinction between men and women. In the framework of the UN Charter, the social order the UDHR promotes is an order of peace to which all human beings are called to participate without distinction. This recognition of equality should not be a formal act. It should be translated into the national legislation as rights and obligations for all the citizens, a shared responsibility. It should become a significant practice, leaving no space for doubt on the substance of the law. Therefore, the inclusion of women's perspectives in matters affecting their lives or the life of the entire community is not an alternative.

Art. 28 UDHR moreover affirms the importance of an international order where human rights and freedom are guaranteed. This is reflected in the final art.29 of UDHR that reads **“Everyone has duties to the community in which alone the free and full development of his personality is possible [.]”**. The contribution of all the stakeholders is a right and an obligation. It's a duty towards the community. The exclusion of women from political debate, decision-making processes, and specific protection mechanisms is not legitimate under this construction of the law.

The centrality of human rights in the UN system makes them the core of its activity. They express the criteria through which the International Community evaluates modern democracies. Human Rights represent the ethics of the International Community.<sup>7</sup> The “DNA” of all human beings, including women, is written with their language. Through the dissemination of the language and culture descending from Human Rights Law, individuals and States can demand government's compliance with the obligations incorporated in treaties or customary law. Incorporation of different interpretations of Human Rights in Regional Treaties does not diminish the character of universality because universality is logical. There is no human right or natural right unless it is attributable to all human beings<sup>8</sup>, but universality happens on the ground. It can only be realised through the lenses of culture. It can only be implemented in each legal system with ad hoc strategies referring to the context. The cultural interpretation must be

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<sup>7</sup>BONOMO VINCENZO, *I diritti umani nelle relazioni internazionali*, PUL, Mursia 1997 p. 2 e ss

<sup>8</sup> PAPISCA ANTONIO, *La Dichiarazione dei Diritti dell'Uomo commentata da Giovanni Papisca*, Commentary on Human Rights, Published by the Archive of Human Rights at Padua University, e.g. <http://unipd-centrodirittiumani.it/it/dossier/La-Dichiarazione-Universale-dei-diritti-umani-commentata-dal-Prof-Antonio-Papisca/3>

respected, provided that the Regional instruments do not violate the core principles of UDHR.

The Universal vs. Multicultural approach can be a false problem. Human Rights oblige States to protect human dignity against any form of discrimination, any violation of freedom, and any violence. All the signatories of the UN treaty must respect the fundamental principles of human dignity, whatever their cultural or religious interpretation. These are the fundamental and non-negotiable values that refer to the lives of individuals and States and recognised by the International Community as Jus Cogens.

Another pertinent element is that today under the current order<sup>9</sup>, peace, security and human rights have greatly contributed to the transformation of the concepts of defence and security. Along with the broadening relevance of

*There is no gender identity behind the expressions of gender... identity is performatively constituted by the very 'expressions' that are said to be its results.*

**Judith Butler**

Human Rights, the doctrine grounded on State security now encompasses the broader concept of human security. The greater attention to the individual is the catalyst for the preservation of the community. Through this new vision, Human Rights concepts have highlighted human security as an international problem, and created limits States cannot bypass. The threats to peace and security are increasingly interpreted in connection with gross violations of human rights. From this perspective, the logical connection between gender inequalities and threats to international peace and security is evident<sup>10</sup>.

Yet even with the support of the extensive body of International Law of the United Nations, the general protection efforts and participatory processes

<sup>9</sup>See the Final Act of Helsinki, the principles affirmed in the Conference on the Security and Cooperation in Europe held in 1975 after the distension started between USA and URSS were confirmed as a generic commitment to defend human rights. The conference started on 3 July 1973 in Helsinki and continued in Geneva from 18 September 1973 to 21 July 1975. It ended in Helsinki on 1 August 1975, e.g. <http://www.osce.org/it/mc/39504>, visited 15 April 2012

<sup>10</sup> In March 2000, the Security Council issued a Presidential Statement on International Women's Day in March 2000. It recognized the link between peace and gender equality, and the fact that women's full participation in peace operations was essential to sustainable peace. UNSCR 1325 refers to this press which stresses that "peace is inextricably linked with equality between women and men," and which calls for "specialized training for all peacekeeping personnel on the protection, special needs and human rights of women and children in conflict situations." e.g. <http://www.un.org/News/Press/docs/2000/20000308.sc6816.doc.html>



for women have not increased. Political and institutional inertia were the major obstacles to enhancement in practice. As a result, in recent years there has been an increasing violence against women in armed conflicts, a little acknowledgement of the gender dimension when setting up peace-keeping operations. Parallel to the victimisation of women, there has been an increase in the participation of women in armed forces or groups. At the same time there has been a questionable absence of women in peace negotiations or in post-conflict reconstructions<sup>11</sup>. The UNSCR 1325 is there to emphasize that women's rights are posed not only in terms of security needs in conflicts, already addressed in the past, but in terms of what women – and gender equality – can do for lasting peace and security<sup>12</sup>.

For a long time there has been resistance toward the idea that “gender mainstreaming” prevented women's contributions to sustainable peace and security. The major opposition to the inclusion was the result of urgency and lack of resources. In situations of extreme violence, the immediate need to save lives pushed gender concerns to the sidelines, relegating such issues to post-conflict periods and to peace-building phases. For example, non-deadly sexual violence was perceived as a cultural or private matter, even when it was clear that it posed a structural and systematic problem. The perception that security was gender-neutral made women's perspectives on peace and security invisible.

The recognition of Gender Crimes in the Statute of the International Criminal Court as a subcategory of War Crimes has been another great achievement, although a generic prohibition already existed prior to the inclusion in the Statute. In many conflicts these kinds of crimes were and still are perpetrated as a systematic and generalised strategy of attack against the civilian population. Thanks to the UNSCR 1325 and related Resolutions on Sexual Violence in Armed Conflicts, many States and International

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<sup>11</sup> UNSCR 2106, the last of a long series of SCRs on the issue of sexual violence in armed conflict, adopted by the Security Council at its 6984<sup>th</sup> meeting on 24 June 2013 reaffirms, once again, the disproportionate effects of armed conflict on women and girls and continue to urges to strengthening the efforts to address and combat sexual violence, especially as a systematic weapon against communities. See also the press release available at <http://www.un.org/apps/news/story.asp?NewsID=45253&Cr=sexual+violence&Cr1=conflict#.UcsDEvITDDg>. See the presentation to the UN Security Council at the Open Debate on Sexual Violence in Armed Conflict made by the Legal Monitor for the Uganda Programme of the Women's Initiative on Gender Justice, New York 24 June 2013 available at <http://www.iccwomen.org/documents/WI-Presentation-UNSC-FINAL.pdf> and the “Ten-Year Impact Study on Implementation of UNSCR 1325 (2000) on Women, Peace and Security in Peacekeeping”, Final Report to the UN Department of Peace-keeping Operations, Department of Field Support, published by UN Peace-keeping Best Practice Section in 2010, available at

[http://www.un.org/en/peacekeeping/documents/10year\\_impact\\_study\\_1325.pdf](http://www.un.org/en/peacekeeping/documents/10year_impact_study_1325.pdf)

<sup>12</sup> HUDSON NATHALIA FLOREA, *UNSCR 1325: the challenges of framing women's rights as a security matter*, Norwegian Peace-building Resource Center, Policy Brief March 2013 available at [www.peacebuilding.no](http://www.peacebuilding.no)

Organisations, including NATO, are responding to this situation<sup>13</sup>. Starting from the year 2000 there is more awareness of the fact that women's experience in conflict affects international peace and security. Because conflicts are not gender-neutral, women's contribution to prevention, peace-keeping, and conflict resolution, as well as to peace-building, can enhance stability and democracy. Without taking the gender-specific context of conflict and peace-building into account, the substance and legitimacy of actions at the international level may jeopardize their sustainability.

In line with these sets of principles, the UNSCR 1325 stresses the importance of *equal and full* participation of women as active agents and stakeholders in peace and security. While many mission mandates have made reference to the particular impact of armed conflicts on women, only recently have some resolutions made a specific commitment to equality. In the absence of a mandate, it's very unlikely that the gender dimension in the form of equality, participation and ad hoc protection will be addressed and integrated in all phases of the mission. The UNSCR 1325 tried to cover this gap. In a way it is more focused on general strategies that increase the role and full participation of women, and less specific on the protection mandates, especially on sexual violence in armed conflicts. This result has been most recently achieved by the UNSCR 1820(2008), 1888(2009), 1960(2010), and 2106 (2013).

Parallel to the efforts of the International Community, NATO and its partners are also taking concerted action to support the implementation of the UNSCR 1325 and related resolutions in military operations. The first major step was the adoption of an Overarching Policy, developed in the Euro-Atlantic Partnership Council (EAPC). The policy was issued in 2007 and revised in 2011. The document sets the overall framework for the implementation of the principles set in the UNSCR 1325 and related resolutions. Across the four action areas indicated in the resolutions, *prevention, protection, participation and relief and recovery*, the implementation plan upholding the policy relies on both internal and external NATO resources.

Immediately after the adoption of the EAPC Policy in 2009, the two NATO Strategic Commands jointly drafted the so-called "Bi-SC Directive 40-1

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<sup>13</sup>In 1997 the ECOSOC already formulated a definition of Gender Mainstreaming in an agreed conclusion: "Mainstreaming a gender perspective is the process of assessing the implications for women and men of any planned action, including legislation, policies or programmes, in all areas and at all levels. It is a strategy for making women's as well as men's concerns and experiences an integral dimension of the design, implementation, monitoring and evaluation of policies and programmes in all political, economic and societal spheres so that women and men benefit equally and inequalities is not perpetuated. The ultimate goal is to achieve gender equality". See Report of the Economic and Social Council for 1997 A/52/3, 18 September 1997, UN Doc A/52/3, 1997 e.g. <http://www.un.org/womenwatch/osagi/pdf/ECOSOCAC1997.2.PDF>

**"Integrating UNSCR 1325 and Gender Perspective into the NATO Command Structure".**<sup>14</sup> In 2012 the revised version was issued. The aim of the Bi-SC Directive is to provide guidance for the integration of Resolutions, Conventions, Protocols and gender perspective<sup>15</sup> into the planning and conduct of NATO-led operations<sup>16</sup>. It's a binding document for all International Military Headquarters or any other entity acting under the ACO or ACT chain of command. It represents the translation of the language of the NATO Action Plan, as endorsed by NAC, and of International law, into one document and concept for all strategic, operational, and tactical activities.

Considerable progress has been made since the first draft of the Bi-SC Directive was issued. NATO has worked to provide a sound policy framework and good working mechanisms. The Alliance's approach evaluates the importance of gender perspectives as a strategic and tactical tool for operational effectiveness<sup>17</sup>. Unquestionably, **"The NAC endorsement of the NATO Action Plan obligates members and partner nations to commit to UNSCR 1325 and related resolutions and protocols as part of NATO's wider policy objectives of enhancing security and stability"**<sup>18</sup>. The focus on effectiveness is part of a more general strategy, the NATO Comprehensive Approach, aimed at including various elements seen as force multipliers or success facilitators.

The positive operational impact of the Bi-SC Directive is actively mainstreaming gender in all phases of NATO activities. However, we cannot underestimate that it is the International Law developed after the establishment of the United Nations that was the impetus for this perspective. Ultimately, what matters is the legitimacy in the conduct of the operation. All of the resolutions, together with the legal framework represented by International Humanitarian and Human Rights Law, form the legal basis for the implementation of Gender Perspective in military operations in the pursuit

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<sup>14</sup> Bi-SC Directive 40-1/2012 NATO UNCLASSIFIED, Releasable to the Public, available on the NATO website at [http://www.nato.int/nato\\_static/assets/pdf/pdf\\_2009\\_09/20090924\\_Bi-SC\\_DIRECTIVE\\_40-1.pdf](http://www.nato.int/nato_static/assets/pdf/pdf_2009_09/20090924_Bi-SC_DIRECTIVE_40-1.pdf) ,

<sup>15</sup> According to the Directive Gender Mainstreaming is defined as "a strategy to achieve gender equality by assessing the implications for women and men of any planned action, including the legislation, policies and programmes in all areas and at all levels, in order to assure that the concerns and experiences of women and men are taken into account in the design, implementation, monitoring and evaluation of policies and programmes in all political, economic and societal spheres. This will lead to that women and men benefit equally and inequality is not perpetuated. Gender mainstreaming in this context represents the process to recognise and incorporate the role gender plays in relation to NATO's various operational missions. Gender mainstreaming does not focus solely on women, but the benefits of mainstreaming practices recognise their disadvantaged position in various communities", para. 1-4.b

<sup>16</sup> The Bi-SC Directive 40-1 refers to the obligation to protect all children, although the focus of the provisions is the protection and women and girls

<sup>17</sup> Bi-SC Directive 40-1 Para.1-2.b

<sup>18</sup> Bi-SC Directive 40-1 para.1-2.d

of International peace and security and create legal obligations. The laws call for standardised practice for all member nations and partners. As an example, the inclusion in the specific Annex of the Standards of Behaviour expected by NATO-led forces is a strategy and a commitment to ensure that sexual violence or facilitation or acceptance is not to be tolerated by Commanders. The protection set through the Annex refers both to acts from NATO forces or from other perpetrators. The authority granted to NATO Commanders is very limited for crimes committed by external actors, but in any case it is oriented to enhance reporting activities and avoid impunity in these crimes, therefore supporting the protection efforts.

The Bi-SC Directive holds that, through the uniform implementation of its provisions, gender mainstreaming should become routine with full regard to operational requirements in order to improve operational effectiveness. However, the language of Gender dimension, Gender mainstreaming or Gender analysis is still not much reflected in NATO basic documents and policy. Some good examples are: intelligence analysis in planning and operations and assessment and reporting.

Lack of Gender analysis can prevent the system from working properly in the near future. With time, and through the dissemination of the Directive, this will be achieved through an adequate adaptation of the work of all the NATO divisions and branches. All the doctrines, policy, and SOPs will be integrated, and this should facilitate the work at staff level.

A critical assumption is that women can exercise influence in all stages of conflict or crisis. This is not always true. A new way of thinking for both men and women would be transformative and inclusive, and could shape a new model of security. To some extent numbers do count. The UNSCR 1325 invokes a new qualitative paradigm in strategic thinking. Although it's important to increase the participation of women in armed forces, it's the awareness of different perspective that will generate a change.

Another concern is that the Bi-SC Directive specifically talks about protection in armed conflicts, raising doubts as to what the implications are outside of this context. The document recognises that major vulnerability occurs in conflicts, and therefore it provides a focus on planning and executing of the operation. It then refers to measures during and after conflicts as part of NATO's wider policy objectives of enhancing security and stability. This clearly means that there is space for a broader application. NATO, in fact, has a number of operations outside the context of armed conflicts.

The Bi-SC Directive also indicates the importance of the role of Gender Advisors and Gender Field Advisors. Their role is to advise commanders on gender issues and to ensure that gender is an integrated part of planning



operations. For that reason, they should be “Subject Matter Experts” in broad areas to ensure that all phases of NATO-led operations can count on initial and regular gender analysis. They should also be experts in the planning, execution and evaluation of NATO-led operations, on procedures to protect civilians, and with specific considerations to gender-based crimes and trafficking of human beings<sup>19</sup>. They should also ensure that gender perspectives are incorporated in capacity building efforts, also mentoring local security forces. Reporting should, to the greatest extent possible, include information and the impact of NATO interventions on the different populations. They are also required to be knowledgeable of the mechanisms of liaison with the civil society and the role of CIMIC in support of a Commander. They would need to understand the gender dimension of communication and media. Therefore, they have a role in coordinating with Public Affairs and Strategic Communication. It remains critical to sustain the professional development of all this knowledge.

Since 2009 the Gender Advisors and Gender Field Advisors have been working in ISAF and KFOR. They are considered essential for the implementation of the UNSCR 1325 and are integral part of the new staffing in the NATO Command Structure.

From NATO's perspective, the experience of the first Gender Advisors in theatre is positive. They have achieved the goal of engaging the senior leadership, and of hosting public outreach events and conferences. They have made significant progress with local women's organizations that are working at the grassroots level. At Headquarters, they have ensured that the gender perspective has been incorporated in operational planning documents, and tested in some exercises. All of these top-down and bottom-up processes confirm that both mission effectiveness and the protection of civilians can be maximised through mainstreaming gender perspectives in all phases and across current NATO operations.

The Bi-SC Directive additionally requires Gender Advisors to determine measures to protect against Gender Based Violence (GBV), particularly rape and sexual abuse, expanding their role and duties to cover aspects that require specific investigative knowledge and legal capacity.

All these extensive requirements raise questions as to what extent all this expertise, and to what extent various functions can be merged into one individual, whether at the tactical, operational or strategic level. Realistically, a group could be formed with different roles and skills tailored to individuals to ensure that all the appropriate mechanisms are in place when the Gender Advisors posts are definitively part of the NATO Command Structure. Moreover, consideration must be given to the different approaches member

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<sup>19</sup> See also “NATO Policy on Human Trafficking” available at <http://www.nato.int/docu/comm/2004/06-istanbul/docu-traffic.htm>

nations are taking in mainstreaming gender perspective in their national forces.

Some NATO members have interpreted the UNSCR 1325 as a measure directed exclusively towards women. Given the title of the Resolution, "Women, Peace and Security," it is hard to object to this approach. But this interpretation of the UNSCR 1325 has led them to create at tactical level teams of women only, Female Engagement Teams, thus creating the perception that this is again just a female activity. It's based on the false assumption that being a woman means being a gender expert, rather than focusing on the wider expertise required.

The last element that is worth highlighting is the aspect of education and training. They are both crucial in mainstreaming Gender perspectives. Training is essential. However, education is a key element to provide good leadership in this field. The Bi-SC Directive mainly focuses on training activities with the purpose of including the Gender dimension in each area of NATO – led operations, not as a separate activity, rather as a cross-cutting issue. The ultimate goal should be to naturally incorporate this aspect in each element of the mission. A programmatic approach should focus on understanding the skills and knowledge necessary for women to exercise leadership in the military environment. This would mean support to a process that at higher level creates Key Leaders Training for both men and women.

*"I would rather trust a woman's instinct than a man's reason."*

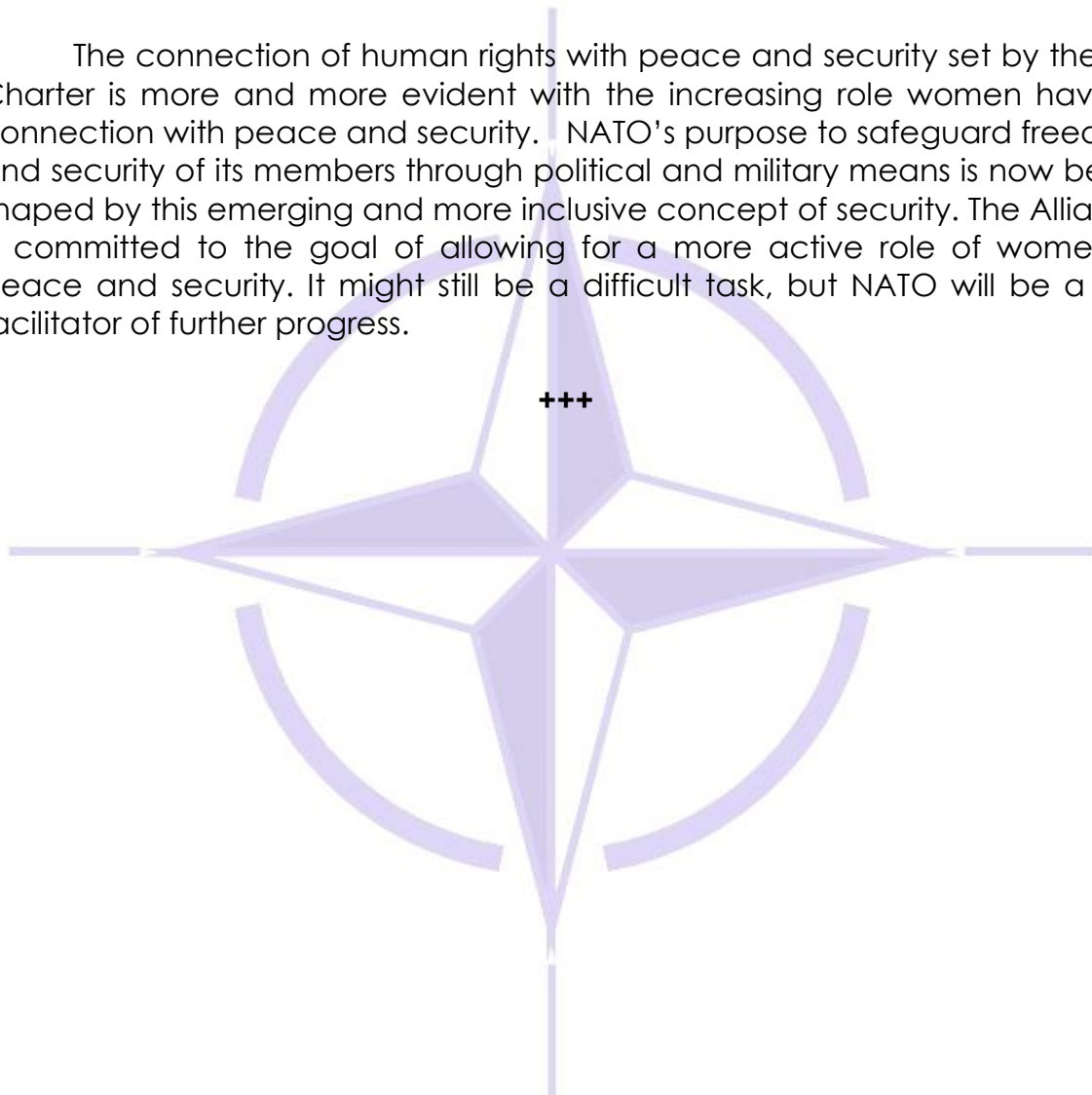
**Stanley Baldwin**

So far, NATO has done an outstanding job of institutionalising gender integration in the organisational structure in a very short time. It will be necessary to understand lessons learned from challenges, and to develop effective practices. More generally, the contribution of the Alliance to the issue of Women, Peace and Security will be fundamental in overcoming a cultural resistance to gender integration in operations. In doing this, NATO is building a pattern according to its mandate and culture, and also respecting cultural sensitivity in missions and operations. With the recent appointment of M.me Mary Skaare as Special Representative for Women, Peace and Security to the NATO Secretary General in September 2012, the Alliance took a big step in raising the importance at diplomatic and political level of this issue.

The roots of a gendered perspective are clearly in the law. Virtually every area of the law is touched by this issue, such as family law, criminal law, Nationality law, employment law, legislative process, human rights law, and so on. It reflects a continuing discussion that goes beyond biological difference. Its relevance extends to all aspects of International Humanitarian and Human Rights Law. Remarkably, we are discovering that these bodies of

law are not neutral. Women are in special need of protection, especially in conflicts. They are also actors, taking part in hostilities and component of new methods of warfare. The old stereotypes of men and women do not provide dependable answers. It's now essential to view security with a different interpretation and focus. As it has been said, this does not seem to be due to insufficiencies in International Humanitarian and Human Rights Law primarily, and can be corrected through national implementation of the obligations created in international law. The conclusion is that it is vital to understand the context and the gender effect of armed conflict.<sup>20</sup>

The connection of human rights with peace and security set by the UN Charter is more and more evident with the increasing role women have in connection with peace and security. NATO's purpose to safeguard freedom and security of its members through political and military means is now being shaped by this emerging and more inclusive concept of security. The Alliance is committed to the goal of allowing for a more active role of women in peace and security. It might still be a difficult task, but NATO will be a key facilitator of further progress.



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<sup>20</sup>ICRC, *International Humanitarian Law and Gender*, Report Summary International Expert Meeting:

'Gender Perspectives on International Humanitarian Law' 4-5 October 2007 Stockholm, Sweden, on [http://www.icrc.org/eng/assets/files/other/ihl\\_and\\_gender.pdf](http://www.icrc.org/eng/assets/files/other/ihl_and_gender.pdf)

## NATO Gender Mainstreaming, LOAC, and Kinetic Operations

Jody M. Prescott<sup>1</sup>

### Introduction



General Sir Rupert Smith coined the term “war amongst the people” to describe the new paradigm in which military action increasingly takes place in a civilian-centric environment.<sup>2</sup> For too long, however, “civilian-centric” has ordinarily been understood from a normative male perspective, rather than including and valuing female perspectives as well. As set out primarily by iterations of Bi-SC Directive 40-1 (Directive),<sup>3</sup> NATO gender

mainstreaming seeks to implement UNSCR 1325 on women, peace and security,<sup>4</sup> and later related resolutions, in all of its activities and thereby factor female perspectives into its operations. This article suggests that when assessed in light of the unique and largely underappreciated feminist critique of the law of armed conflict (LOAC), NATO gender mainstreaming efforts and work in the area of LOAC training show important, but uneven, progress within the Alliance on this important issue. To better appreciate the effect that LOAC-oriented gender mainstreaming might have on Alliance activities and operations, however, we must first picture what its operationalization in a LOAC context might look like . . .

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<sup>2</sup> Toni Pfanner, *Interview with General Sir Rupert Smith*, 88 INTERNATIONAL REVIEW OF THE RED CROSS 719, 719-20 (2006).

<sup>3</sup>Bi-SC Directive 40-1 (Rev. 1), *Integrating UNSCR 1325 and Gender Perspectives in the NATO Command Structure including Measures for Protection During Armed Conflict*, Supreme Allied Commander Europe & Supreme Allied Commander, Transformation (8 Aug. 2012), (NATO Unclassified).

<sup>4</sup> S.C. Res. 1325, U.N. Doc. S/RES/1325 (Oct. 31, 2000) (recognizing the important role played by women in the prevention and resolution of armed conflict, and the need for greater protection of women and girls during armed conflict).



## The Platoon Leader's Dilemma

. . . Assume for a moment that it is the year 2020. In one of the many conflict zones that have flared across the world in the wake of accelerating climate change, resource scarcity, and the mass movements of people, a young NATO infantry lieutenant and her platoon are conducting a security mission. Whilst patrolling the lieutenant's platoon is becomes pinned down by cross-fire from a village. The platoon leader quickly assesses her unit's situation. She has a decent view of the buildings, which look to her like dwellings, but she cannot see or hear any civilians. Her rules of engagement are sufficiently robust that she could call in a strike to target the buildings from which her unit is taking fire. However, she is mindful of the guidance given by her theatre-level commander to exercise tactical patience, and avoid destroying dwellings unless necessary for her unit's self-defence. She knows from her training and education that armed conflict has a disparate impact upon women and children, and that the loss of dwellings can have multiple cascading negative effects upon the most vulnerable civilians – generally women and girls. Prior to their deployment, she and her platoon went through realistic and stressful situational training exercises that required them to consider the differentiated impact of their actions on the female civilian population in their area of operations. Further, when she pulls out her smart phone and accesses an application that uses her GPS location to go back to the cloud of intelligence analysis maintained by the theatre-level command, she learns that the village is heavily populated with women and children, and that the water and food resources available to the villagers are of surprisingly high quality.

Having trained and exercised with her platoon on conducting effective withdrawals under fire, she is confident that she can extricate her unit without casualties to a position where her soldiers can watch the

*“Women have served all these centuries as looking glasses possessing the magic and delicious power of reflecting the figure of man at twice its natural size.”*

**Virginia Woolf**

village and be ready to engage their adversaries if they leave the dwellings. The lieutenant makes her decision – this village left intact will likely have a greater beneficial impact on the overall mission than neutralizing the armed band at this moment. “We will get them next time!” she yells to her platoon sergeant. The lieutenant tells the joint terminal air controller to hold his request for air support, the platoon sergeant nods and orders the squads to fall back, and the lieutenant quickly reports to her company commander. Her company commander confirms her decision, and she begins to redeploy her

troops to be able to intercept any of the shooters they had encountered at the village. Patiently, they wait . . .

. . . But it is not 2020 just yet. Starting in 2013, what changes needed to be made within the numerous NATO military systems of personnel selection, doctrine, education, training, planning, intelligence collection and analysis, and operations in order for this measured, tactically savvy and strategically sound decision on the part of this young woman to occur? To set the proper context within which to make this assessment, we must first question what most military lawyers have accepted as a bedrock principle of LOAC – the protective impartiality of the law as it applies to all civilians and fighters no longer in combat.

### **The Feminist Critique of LOAC**

UNSCR 1325 recognizes that armed conflict has a disparate impact upon women and girls as compared to their male counterparts. This differentiated impact likely has a number of inter-related causes, including women's generally lower level of education and economic resources in many conflict areas, the responsibilities they often have as care-givers for families, and prevailing cultural norms that assign them a lower social status than men.<sup>5</sup> These factors affect not only female civilians but also women and girls who are forced to become combatants in these conflicts.<sup>6</sup> As international lawyers, we are familiar with the feminist human rights perspective on these factors, and the laudable efforts to address these issues through such measures as explicitly criminalizing sexual violence in armed conflict, and seeking to increase women's participation in post-conflict decision-making in reconciliation and rebuilding.

What we are less likely to be familiar with, and frankly, may never have discussed in a critical fashion, is the feminist perspective on LOAC itself. Simply stated, the feminist critique of LOAC holds that the core treaties that are LOAC's foundation, and which enjoy near global participation, discriminate against women both as combatants and as non-combatant civilians because the protections they afford women are based upon an unspoken, underlying male-normative perspective, and not on the principle of equal treatment for women as women.<sup>7</sup> Customary LOAC and widely accepted state practice have to some degree ameliorated this shortcoming,

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<sup>5</sup> See JUDITH G. GARDAM & MICHELLE J. JARVIS, *WOMEN, ARMED CONFLICT AND INTERNATIONAL LAW*, 8-9 (2001) (women experience armed conflict in different ways than men due largely to their disadvantaged status).

<sup>6</sup> Johanna Valenius, *Gender Mainstreaming in ESDP Missions*, 23, CHAILLOT PAPER NO. 101 (May 2007).

<sup>7</sup> Judith Gardam & Hilary Charlesworth, *The Need for New Directions in the Protection of Women in Armed Conflict*, 22 *HUMAN RIGHTS QUARTERLY* 148, 161 (2000).

as have certain developments in international human rights law (IHRL), but the male-normative perspective continues to skew understandings of LOAC and its implementation.

For example, the Geneva Conventions (GCs) explicitly state that they are to be applied impartially, and in certain circumstances afford greater protections to women and girls.<sup>8</sup> The underlying premise of impartial treatment of all people, however, is the normative male experience, not the female, and the seemingly greater protections are not based on the equal priority of women's rights and medical requirements from a female perspective, but on women's relationships to others and a dated presumption of women's weakness and modesty. For example, under GC III, women POWs are to be provided separate barracks and hygienic facilities from men, but these "facilities" are defined only as "adequate infirmary[ies];" baths and showers with soap and water; and latrines.<sup>9</sup> Medical inspections focus on such things as cleanliness and the detection of sexually transmitted diseases (STDs),<sup>10</sup> but, for example, the importance of contraception as a woman POW's health issue is not addressed. Instead, the Commentary to GC III notes only that "particular regard" is to be afforded to women POWs who become pregnant "despite the precautions taken"<sup>11</sup> – which apparently consist only of separate barracks and ablution facilities. As evidenced even today by the recent controversial statements of a Japanese municipal official regarding the propriety of forcing women into sexual slavery during World War II,<sup>12</sup> this reflects a dated and discriminatory way of thinking. Women who find themselves imprisoned under such conditions can never truly be considered to have consented to sexual relations with their guards and captors, nor in many cases with their fellow male POWs.<sup>13</sup> Pregnancy among female POWs should not be considered "just one of those things that happens" – both it and the recognition of women's specific medical needs to prevent it are health issues no less important than STDs.<sup>14</sup>

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<sup>8</sup> Valenius, *supra* note 5, at 61.

<sup>9</sup> Geneva Convention Relative to the Treatment of Prisoners of War, Aug. 12, 1949, arts. 29 & 30, 6 U.S.T. 3316, 75 U.N.T.S.135.

<sup>10</sup> *Id.*, art. 31.

<sup>11</sup> GENEVA CONVENTION RELATIVE TO THE TREATMENT OF PRISONERS OF WAR, Jean S. Pictet, ed., 148 (1960).

<sup>12</sup> *Osaka Mayor survives censure over sex slaves comment*, BBC.CO.UK (30 May 2013) <<http://www.bbc.co.uk/news/world-asia-22720226>>.

<sup>13</sup> Mindful of the experience of so-called "comfort women" enslaved in prostitution by Japanese forces during World War II, see George Hicks, *THE COMFORT WOMEN: JAPAN'S BRUTAL REGIME OF ENFORCED PROSTITUTION IN THE SECOND WORLD WAR* (1997), it is questionable whether there really is a distinction between forced and voluntary prostitution in the context of prisoner of war camps.

<sup>14</sup> For example, only recently has the U.S. Army really begun to recognize that the failure to address women's particular health needs in operational settings has a negative and unnecessary impact on readiness. See Gregg Zaroya, *Army task force: Female troops need better health care*, USA Today.com, June 6, 2012, <<http://www.usatoday.com/news/military/story/2012-06-06/female-soldiers-need-better>

From the perspective of the feminist critique of LOAC, perhaps one of the most glaring deficiencies in the application of armed force is the extent to which current interpretations of LOAC and doctrinal and operational applications of it ignore the differentiated impact of conflict upon women and girls in the assessment of proportionality. The common formulation of this

*"If women are expected to do the same work as men, we must teach them the same things."*

***Plato, The Republic***

principle is that a commander may use that force necessary to accomplish the mission that is not prohibited by LOAC, so long as the concrete and direct anticipated military advantage will not be

outweighed by excessive and reasonably foreseeable injury to civilians or damage to their property.<sup>15</sup> In this equation, a civilian is a civilian, and a house is a house, so it appears impartial, but in reality injury to women who are responsible for caring for families will have a much greater impact upon civilians in the area in general, and the loss of a dwelling may expose women and girls to greater insecurity and suffering than it would to men, and maybe even boys. Proportionality analysis as ordinarily expressed in military manuals<sup>16</sup> and applied does not generally factor in the differentiated impact of the proposed action upon women and girls, despite the international community's longstanding recognition of this reality.

Despite its cogent expression in the writing of certain feminist legal theorists, the feminist critique of LOAC has neither registered with feminists in general nor with militaries. The reason for this is uncertain, but it may be due to a number of factors. A cursory survey of feminist legal writing suggests that most feminist writers approach problems of women and girls in armed conflict from a international human rights law (IHRL) perspective rather than a LOAC perspective. As noted earlier, this has led to such important developments as the explicit criminalization of sexual violence in armed conflict, particularly that which is committed against women and girls. Some writers look at such efforts and note an increasing convergence of norms in the areas of LOAC and IHRL, geared towards the greater protection of persons in armed

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health-care> ("basic improvements are needed to help women avoid higher rates of urinary tract or vaginal infections, stress-related menstrual difficulties").

<sup>15</sup> Protocol Additional to the Geneva Conventions of Aug. 12, 1949, and relating to the Protection of Victims of International Armed Conflicts, June 8, 1977, arts. 51(5)(b) & 57, 1125 U.N.T.S. 3.

<sup>16</sup> See, e.g., LAW OF WAR DESKBOOK, International and Operational Law Department, The Judge Advocate General's Law Center and School (Jan. 2010); OPERATIONAL LAW HANDBOOK, International and Operational Law Department, The Judge Advocate General's Law Center and School, JA 422 (2010).



conflict. This may be true to an extent, but there are two fundamental differences between LOAC and IHRL that will for the foreseeable future distinguish them – the standard required before lethal force may be used against another, and the principle of proportionality. Reasonable certainty of another's direct participation in hostilities is the trigger to engage that person with lethal force under LOAC, but under IHRL, the higher standard of the threat of imminent serious injury or death is what must ordinarily be met. This standard interacts closely with the LOAC principle of proportionality, which in essence accepts that innocent civilians may be lawfully injured or killed under certain circumstances. Militaries, largely still male-normative and conscious of the latitude afforded them by the more easily met standard of reasonable certainty in the application of armed force in operations and the principle of proportionality, perhaps equate feminism with IHRL and pacifism, and might also have conflated the feminist critique of LOAC with advocacy of the applicability of IHRL to modern operations,<sup>17</sup> and therefore ignored it.

### **Bi-SC Directive 40-1's Emphasis on Non-Kinetic Operations**

Mindful of the feminist critique of LOAC, we are now better able to assess the potential efficacy of NATO's gender mainstreaming efforts in the use of armed force, particularly its kinetic manifestations. A review of the 2012 version of Bi-SC Directive 40-1 suggests that despite many positive features, it tends to reflect more of an IHRL perspective on the operational issues involving women and girls. This is shown, for example, by its emphasis on enforcement of the NATO Standards of Behaviour and the prosecution of cases of alleged sexual or gender-based violence by personnel provided by the Troop Contributing Nations (TCNs).<sup>18</sup> Although this is certainly an important component of gender mainstreaming, it is not balanced by a similar effort in dealing with the complexities of operationalizing gender from the LOAC perspective.

The Directive sets out many tasks for Gender Advisors (GENADS) and Gender Field Advisors (GFAs) in NATO-led operations. Among these are assisting the J3 with the planning of "Information Operations, Psychological Operations, patrols, and search operations."<sup>19</sup> This highlights the Directive's general avoidance of gender considerations in a kinetic context. Although these non-kinetic operations are very important, information and psychological operations in a theatre of operations such as Afghanistan may be only be indirectly under a J3's purview – in such an environment, a J3 is likely more concerned with kinetic operations. At this operational level, however, a headquarters might therefore find itself involved in dynamic targeting, but depending upon the nationality of the GENADs, they might not

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<sup>17</sup> Jody M. Prescott, *NATO Gender Mainstreaming and the Feminist Critique of the Law of Armed Conflict*, 14 *GEORGETOWN JOURNAL OF GENDER AND THE LAW* 83, 103-104 (2013).

<sup>18</sup> Directive, *supra* note 2, at 3-4, 7, 12, and 13; Annex A, A-2; Annex B.

<sup>19</sup> *Id.*, Annex A, A-2.

be able to participate in the actual dynamic targeting process because of security classification issues regarding the handling of nationally-provided intelligence and technology.<sup>20</sup> Further, a headquarters J3 is also not likely to be involved in the planning of patrols because this would more likely be a tactical-level function – but a headquarters special forces command cell might in fact operate at this level. Gender considerations could be very important in these sorts of operations. However, it is not clear that the Directive contemplates the requirements for participation in this community's work.

The GENADs and GFAs are also tasked with providing the LEGAD with “gender dimensions in the judicial system” and “relevant information where women, girls and boys [sic] legal rights are neglected and/or violated.”<sup>21</sup> This information could be very useful if the LEGAD is working on rule of law issues, but it will be of no value to the advice that the LEGAD provides to the commanders on the factors to be considered in their proportionality analyses before deciding to engage with armed force. This further suggests that the Directive is taking a more human-rights oriented approach to operationalizing gender mainstreaming, and perhaps by omission, not engaging on kinetic force issues. Not addressing important LOAC concepts in the context of gender mainstreaming, such as proportionality, will delay NATO's efforts to truly operationalize gender mainstreaming in a way that effectively impacts upon decisions to use armed force.

## Conclusion

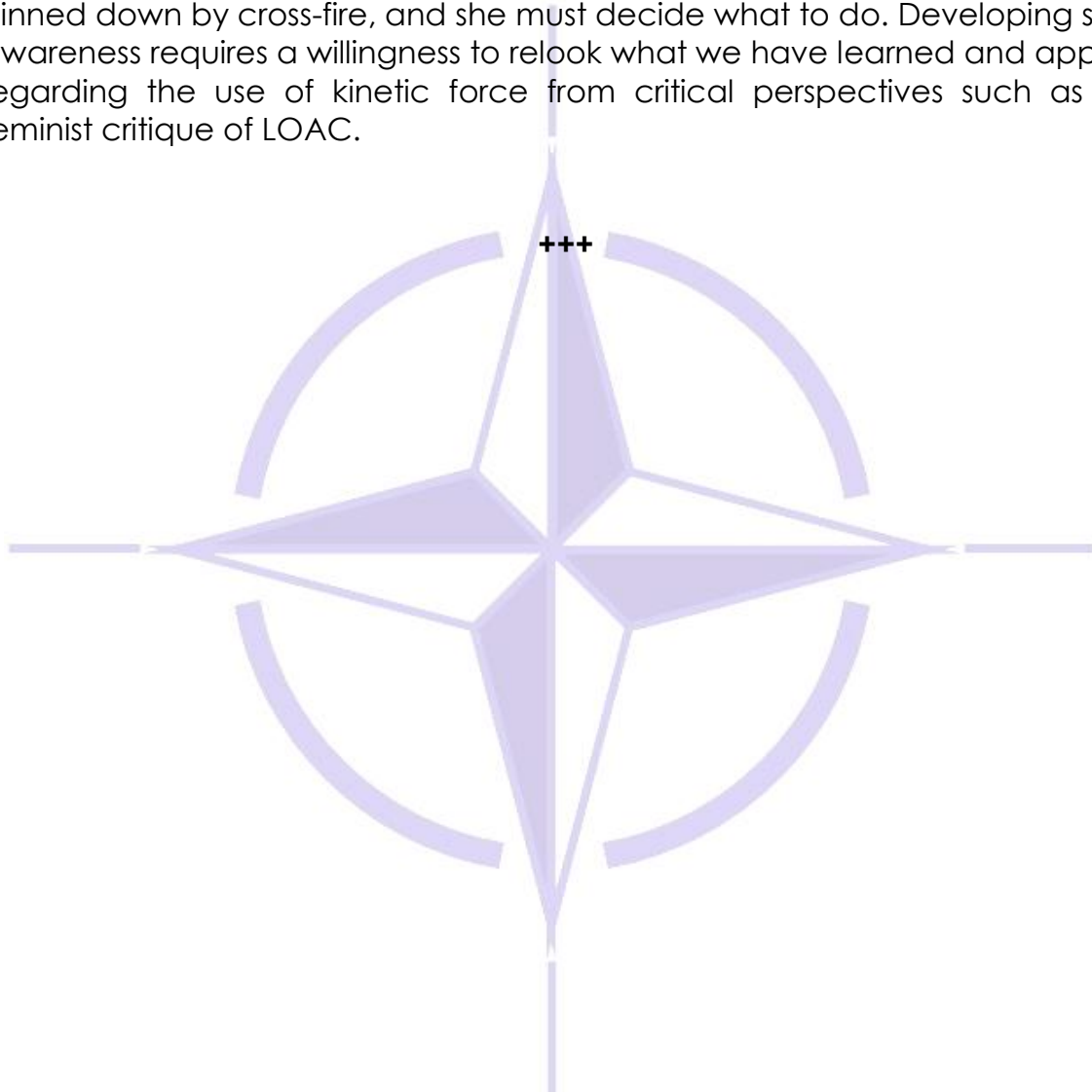
It was not until I was midway through my tour in Afghanistan with ISAF that I began to become aware of a troubling disconnect in our operations and in my education, training and experiences. One day, my office's LEGAD who worked on rule of law issues and myself might be meeting with representatives of different international organisations and non-governmental organisations who worked on women's rights issues. Our goal was to figure out how to best gather data on the legal situation of Afghan women so that we could properly differentiate the status of women in our effects-based assessments of rule of law efforts in Afghanistan. The next day, I might find myself in a window-less room filled with computers and big-screen television monitors, providing advice to a commander on the use of kinetic force, but without noting any need for differentiating the potential impacts of the proposed use of force on the basis of gender. By not fully grappling with the complexities of kinetic operations in the context of gender mainstreaming, the Directive runs the risk of obscuring just how expensive and far-ranging the

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<sup>20</sup> Prescott, *supra* note 16, at 125-26. This possibility is not specific to the gender area, and includes other staff officers irrespective of their staff functionality.

<sup>21</sup> Directive, *supra* note 2, at Annex A, A-3.

changes in military systems and policies would need to be to effectively implement it such that it meets both the spirit and the letter of UNSCHR 1325 from a LOAC perspective. The recent move by the U.S. military to begin opening all of its combat branches to women will likely over time have a very important positive effect in terms of gender mainstreaming, if only because of the significance of American forces to the Alliance force structure. But merely increasing the number of women serving in the military will not by itself change the way in which the young platoon leader would view gender in the kinetic context on that dry and stressful day in 2020 when her unit is pinned down by cross-fire, and she must decide what to do. Developing such awareness requires a willingness to relook what we have learned and applied regarding the use of kinetic force from critical perspectives such as the feminist critique of LOAC.



## Integrating a Gender Perspective into Military Operations – A tool to improve Operational Effectiveness

1LT Dr. Elisabeth Schleicher<sup>1</sup>  
MAJ Andy Young<sup>2</sup>

### Introduction

This article discusses how adding a gender perspective to military operations has the potential to improve operational effectiveness and situational awareness and is an effective tool in achieving the mission's mandate.

The foundation of working with a gender perspective derives from the United Nations Security Council which adopted Resolution 1325 on Women, Peace and Security on 31 October 2000.<sup>3</sup> One of the objectives of this resolution is to integrate a gender perspective into every aspect of security. Resolution 1325 is the source of the legal linkage between gender and security and represents the watershed for the incorporation of gender perspectives into NATO operations.<sup>4</sup> Thirteen years after the adoption of this resolution, international and national organizations have undertaken a number of steps to integrate



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<sup>3</sup> United Nations Security Council: [http://www.un.org/events/res\\_1325e.pdf](http://www.un.org/events/res_1325e.pdf) [accessed 05 July 2013].

<sup>4</sup> Jesus Ignacio Gil Ruiz: Women, NATO and the European Union. In: Spanish Ministry of Defence: The Role of Women and Gender in Conflicts. Strategic Dossier 157-B.



gender aspects in military and civilian peace operations. Although integrating a gender perspective has progressed quite far, it is still a new concept to many of us.

Therefore, this article highlights why military operations take a gender perspective into account, the role of a Gender Advisor, often referred to as a GENAD, and the operational impact of applying a gender perspective. In addition, the question of what areas the Gender Advisor and the Legal Advisor can cooperate will be answered.

This article draws on the authors' 18 month experience as Gender Advisor and Gender Focal Point, or GFP, respectively implementing a gender perspective into NATO's Kosovo Force's planning and decision making processes.

As the notion 'Gender' means different thing to different people, it must be emphasized that this article does not address Human Resources issues or gender equality and women's rights within the own forces.

### What does "Gender" mean?



There is almost always confusion between "sex" and "gender", therefore it is crucial to define the term "Gender" as it is frequently misunderstood and misinterpreted. Many languages do not even offer a linguistic distinction between "sex" and "gender". Therefore, it is important to clarify and reinforce the distinction between these two words from the very beginning.

While "sex" refers to biological differences between females and males, "gender" is not determined by biology, but is learned. Societies teach men and women different behaviors and roles depending on their sex.<sup>5</sup>

According to the NATO Bi-Strategic Command Directive (Bi-SCD) 40-1 Revision 1 Integrating UNSCR 1325 and Gender Perspective into the NATO Command Structure, Gender "refers to the social attributes associated with being male and female learned through socialisation and determines a person's position and value in a given context. ... Notably, gender does not

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<sup>5</sup> Geneva Centre for the Democratic Control of Armed Forces (DCAF): The DCAF Background Series on Gender and Security Sector Reform. 08/2010.

equate to woman".<sup>6</sup> In other words, Gender refers to the socially constructed roles of men and women. These roles that men and women have are not physically determined but socially created on the basis of different factors such as age, religion, nationality, ethnicity or social origin. Gender roles are learned, and differ within and between cultures. Moreover, these roles are context and time-specific meaning that unlike a person's sex, gender roles can change and are not static.<sup>7</sup>

"Gender" is often wrongfully classified as a "woman's issue". It is important to dispel this misconception from the outset. Gender, as understood within NATO, is about all groups in society, men, women, boys, girls, old and young people.

An example from civil life will help explain. In many cultures and societies, the job of being a server in a restaurant is performed by men and women. In Kosovo, for example, the job of a server is typically a male job and you will usually not find any female servers. However, this is gradually changing and is an example that gender roles are context and time-specific. Another example is construction work. In the West, construction work is usually a male dominated job. But, for example, in India women account for half of the total construction labor force.

### **Why would a military operation concern itself with gender perspectives?**

What is the rationale behind implementing UNSCR 1325? Studies on the effects of armed conflict show that men, women, boys and girls are affected differently by war and conflict and face different insecurities. This is because of their different gender roles in society. While the biggest threat for men during a conflict often is that of getting killed, women are mostly subject to rape and other forms of sexual violence as a strategic weapon of war. Due to their different roles, men and women also have different security needs and interests. For example, men often view security as "no more fighting", whereas women frequently view security in terms of freedom of movement, access to health care or other resources. To enable a safe, secure and stable environment for the *entire* population these differences must be analyzed and addressed. And this is where the gender perspective comes in as a tool to better understand society as a whole.

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<sup>6</sup>NATO: Bi-Strategic Command Directive (Bi-SCD) 40-1. Integrating UNSCR 1325 and Gender Perspective into the NATO Command Structure. August 2012. p.5., NATO UNCLASSIFIED RELEASABLE TO PUBLIC, [http://www.cimic-coe.org/download/20120808\\_NU\\_Bi-SCD\\_40-11.pdf](http://www.cimic-coe.org/download/20120808_NU_Bi-SCD_40-11.pdf) [accessed 25 June 2013].

<sup>7</sup> Department of Peacekeeping Operations: Gender and Peacekeeping Operations – Generic Training. Training and Evaluation Service. Military Division. New York 2002.

## What's the link between the mission's mandate and applying a gender perspective?

Most mandates for peace operations include a mandate to contribute to a "safe and secure environment" for all people in theatre, or the Protection of Civilians. The commander will need to take into account the different threats and security needs of both men and women to achieve this mandate and therefore must apply a gender perspective to fulfil the mandate.

Based on the mission's mandate the Gender Advisor is tasked to support the mission commander in the planning, conduct and evaluation of the operation by adding a gender perspective into the planning and decision making processes.

A gender perspective is recognizing if and when our operations will affect men and women, boys and girls differently due to the different roles men and women have in society. Also, as many societies in the world have a formal patriarchal structure which places much emphasis on the roles of

*"Male domination is so rooted in our collective unconscious that we no longer even see it."*

**Pierre Bourdieu**

men, it is easy to overlook not only how our operations may impact women and children, but also, more importantly, we could overlook the influence of women on the overall security situation. In other words, implementing a gender perspective means that with every operation, we ask ourselves the question: How does this affect men, women, boys and girls?

For example, in Afghanistan, members of a Provincial Reconstruction Team were trying to identify what a village needed for its development. Everyone they interviewed said that they needed access to water so that women would not have to walk many kilometers every day to collect it. However, they only interviewed men. If they had talked to the women, they would have discovered that for many of them collecting water enabled them to get out of the house for a while and talk with other women. The women's priorities were different. They felt that the village needed health centers and schools for their children.<sup>8</sup>

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<sup>8</sup> Jesus Ignacio Gil Ruiz: Women, NATO and the European Union. In: Spanish Ministry of Defence: The Role of Women and Gender in Conflicts. Strategic Dossier 157-B. § 89.

## **What is the role of a Gender Advisor?**

As with the term Gender itself, there are a lot of misperceptions of what the Gender Advisor's role entails. When soldiers hear the term Gender Advisor, many think that the Gender Advisor would work on internal issues such as dealing with the integration of women into a multinational military environment. Therefore, we found you have to be extremely clear in saying not only what a Gender Advisor does but also what a Gender Advisor does NOT do. Otherwise the Gender Advisor can easily be confused with an Equal Opportunity Advisor.

The role of a Gender Advisor is external and is about increasing the mission's situational awareness and operational effectiveness. The Gender Advisor's main task is to support the mission commander in the planning, conduct and evaluation of the operation by adding a gender perspective into the planning and decision making processes. Therefore the Gender Advisor will work in close cooperation with other relevant elements and branches, the Gender Advisor will help ensure that the military operation engages 100% of the society and that the different security needs within the population are taken into account. Gender can also be seen as a non-kinetic tool and a force multiplier. This means that a Gender Advisor supports the operations by maximizing information gathering and dissemination. Using a Gender perspective helps to get closer to the center of gravity for most operations which is the population.

## **Operational impact of a gender perspective**

Critics often argue that, in the end, a gender perspective only focuses on the female part of the population. While it is true that a lot of gender initiatives aim at women, we must not forget that traditional methods of information gathering obtain almost all of their information from men. So, to have a holistic approach and to be able to provide the commander with a more complete picture of the security situation we need to focus on the one half of society we often overlook.

Implementing UNSCR 1325 and integrating gender perspective provides a greater understanding of the effects of an operation and how it can be designed to have a positive effect on society. By addressing the female part of the population, additional information and improved situational awareness is gained. Moreover, this offers the possibility of communicating with all groups and representatives of the local population. In doing so, knowledge of how resources can be concentrated and used most efficiently is gained. To reach its full potential a Gender perspective



must be integrated and operationalized at all levels of planning and operations.<sup>9</sup>



For example, collecting water and firewood are highly gendered activities in some conflict areas. Women and girls often bear the primary responsibility for these outdoor activities. This is significant from a security perspective as women and girls may be the first to observe actions that might

affect the security environment. Their perspectives can enhance the mission's understanding of the security environment on a daily basis. In addition, collecting firewood, fetching water, and attending public markets to buy food, can expose women and girls to security risks such as rape, assault, and kidnapping. Therefore, consultation with women and women's organizations is essential in the planning of patrol routes and schedules when trying to improve security. Such consultation is crucial, as measures taken to protect women and girls without consultation often result in ineffective or counterproductive effects.<sup>10</sup>

— A gender perspective in military operations is therefore a tool and a new capability for the military to use when assessing the situation.<sup>11</sup>

### Examples from KFOR

This next section will summarize two short examples from our experiences in KFOR where a gender perspective was applied. In summer 2011, the frustrations of the Kosovo Serbian population resulted in civil unrest. The people began to set up roadblocks to deny certain parties Freedom of Movement. Having a Gender Perspective allowed us to see how the roadblocks affected the women and children in these communities by limiting their ability to obtain food and go about their daily lives. We also took into account that many of the women demonstrating at the roadblocks may have been there only because of social pressure. We in KFOR could now understand the impact of roadblocks on the whole society and this helped shape our plan. Our plan took into account these and other effects of the roadblocks and how our actions would affect women and children as well as men. Using a gender perspective in this situation helped to understand the

<sup>9</sup> NATO: Bi-Strategic Command Directive (Bi-SCD) 40-1. Integrating UNSCR 1325 and Gender Perspective into the NATO Command Structure. NATO UNCLASSIFIED, August 2012. p.11.

<sup>10</sup> Ibid, p.13.

<sup>11</sup> Robert Egnell, Petter Hojem, Hannes Berts: Implementing a Gender Perspective in Military Organisations and Operations. Uppsala University. Uppsala 2012. p. 6.

women at the roadblocks and how we could proceed with minimal use of kinetic force.

Another operation that had a clear gender perspective was the unfixing of a women's monastery headed by a very cautious Mother Superior. KFOR is in the process of unfixing religious sites. The unfixing process (replace the KFOR troops guarding the monastery with local police) at a particular monastery had three definite Gender Dimensions; first, the security needs of the cloistered nuns in relationship to the community; second, the identification of a female liaison between the Mother Superior and the Kosovo Police; and third, having a female Kosovo Serb Police officers assigned as part of the force responsible for guarding the monastery on each shift. We had to find a way to bridge the divide between her Serbian Orthodox monastery and the local community. One of the key elements was to identify a female Kosovo Serb liaison in the community to work with the Mother Superior. The Gender Advisor sought out people who had personal relationships with the Mother Superior and used these contacts to develop a better rapport with the Mother Superior than we had before. Working with these individuals and with many other interested parties, a plan was developed that would best address the Mother Superior's concerns.

### **Areas of cooperation with other branches**

It is not solely the Gender Advisor's responsibility to integrate gender perspective. According to the Bi-SCD, it is the responsibility of all staff functions to integrate gender perspective into their respective areas.

Gender Advisors liaise with all elements of staff in order mainstream a gender perspective into all command and staff functions but particularly in the security, operations, and planning areas: J2, J3, J5, J7, J9/CIMIC etc. In cooperation with the J2, the Gender Advisor addresses gender perspectives which may impact the security situation, information collection, knowledge development, analysis and production. The Gender Advisor supports the J3 with assessments and analysis from a gender perspective on operational issues, and supports the planning and execution of operations. For example, information operations, psychological operations, patrols, reconnaissance, and search operations. Regarding the cooperation with the J5, the Gender Advisor supports the campaign plan, operational design and long-term planning with the integration of gender perspective. In cooperation with the J7, the Gender Advisor provides guidance on integrating UNSCR 1325 and gender awareness into collective training and exercises.<sup>12</sup>

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<sup>12</sup> Ibid.

## Gender Structure and Functions

According to the Bi-SCD, which applies to ACT and ACO and thus in operations under SHAPE authority three Gender functions can be discerned: the Gender Advisor (the Gender Field Advisor, or GFA, and the Gender Focal Point.<sup>13</sup>

A Gender Advisor serves in a peacetime HQ and at the strategic/operational levels, whereas the Gender Field Advisor is deployed at operational/tactical levels. Gender Advisor and Gender Field Advisor positions are full-time positions that require adequate training, education, and experience.

The Gender Focal Point is a dual-hatted position that supports the NATO Commander in implementing directives and procedures with gender perspective. The Gender Focal Point maintains functional dialogue with the Gender Advisor/Gender Field Advisor, but reports within the chain of command. The GFP at the tactical level ensures that gender perspective is fully integrated into the daily tasks of the operation. These activities could include, but are not limited to: patrolling, enabling the provision of humanitarian aid, search procedures, assisting national security forces, assessing the different security risks of men and women in monitoring and evaluation activities, and providing gender training for NATO personnel.

For instance, in KFOR there is one Gender Advisor, who directly reports to the KFOR Commander, along with Gender Focal Points who are appointed by the Commander of KFOR within operations sections.

NATO has also established a range of Gender Advisor, Gender Field Advisors and Gender Focal Points positions (some of which are dual hatted) at all levels of its organization. At the strategic level in Headquarters, Supreme Allied Commander Transformation (HQ SACT) and Supreme Headquarters Allied Powers Europe (SHAPE), at the operational level in the Joint Forces Commands Brunssum (JFCB) and Naples (JFCN) and in the missions ISAF and KFOR, and at the tactical level in ISAF Regional Commands and Provincial Reconstruction Teams.<sup>14</sup>

### Link between legal and gender aspects

UNSCR 1325 and its subsequent resolutions,<sup>15</sup> mainly focusing on addressing sexual violence in armed conflicts, serve as the backbone for the interaction between the Gender Advisor and the Legal Advisor. Justice and

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<sup>13</sup> NATO: Bi-Strategic Command Directive (Bi-SCD) 40-1. Integrating UNSCR 1325 and Gender Perspective into the NATO Command Structure. NATO UNCLASSIFIED, August 2012. Annex A.

<sup>14</sup> Civil Military Cooperation Centre of Excellence: Gender Makes Sense. A Way to Improve Your Mission. Second Edition. p. 39.

<sup>15</sup> UNSCR 1820, 1888, 1889, 1960 and 2106.

security are intrinsically linked together in the resolutions' calls against sexual violence and the protections of women's and children's legal rights. The Gender Advisor should cooperate with the Legal Advisor on gender dimensions in the judicial system, according the relevant UNSCRs and beyond. An example from Afghanistan will help explain. During a search of a house, there are several other gender aspects to consider such as how to address women and their personal belongings. Therefore, the Gender Advisor together with the Legal Advisor trained soldiers on Tactical procedures of search of persons and houses.<sup>16</sup>

Areas of cooperation between the Gender Advisor and the Legal Advisor for example include:

- Provide relevant information where women, girls and boys legal rights are neglected and/or violated. Cooperate on concepts, procedures and mechanisms to address and handle sexual and gender based violence in conflict as Human Security in general.
- Gender Advisors provide subject matter expertise on procedures to protect civilians, with specific consideration given to women, girls and boys, from violence, rape and other forms of sexual abuse, including the trafficking of human beings. This is in compliance with UNSCRs 1325, 1820 and other related resolutions.
- Support the Commander, J1 and LEGAD with any inquiry or investigation initiated by the Commander concerning a breach of NATO Standards of Behavior, or an allegation of violence, rape, or other forms of sexual abuse.<sup>17</sup>
- In cooperation with the Legal Advisor, the Gender Advisor gives special attention to organizations and groups defending women's and children's human rights.
- Support and enable local law, directives and commitments related to UNSCR 1325 and related resolutions, women and gender perspective.<sup>18</sup>

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<sup>16</sup>SWEDINT Gender and Operational Effect. The Gender Field Advisor Function in the Swedish Armed Forces.

<sup>17</sup> NATO: Bi-Strategic Command Directive (Bi-SCD) 40-1. Integrating UNSCR 1325 and Gender Perspective into the NATO Command Structure. August 2012, NATO UNCLASSIFIED, RELEASABLE TO PUBLIC, Annex A, para 5, letter i).

<sup>18</sup> Ibid, Annex A, para 5, letter h).



## Conclusion

UNSCR 1325 committed all United Nations (UN) member States, including all NATO Allies, to ensuring that gender considerations are integrated into security work.

Bi-SC directive 40-1 was issued to define NATO's implementation of UNSCR 1325 and is consistent with existing national action plans. While UNSCR 1325 is the legal authority for signatories, the Bi-SC directive 40-1 is core to integrating gender perspectives in NATO military organizations and operations, tasking the NATO Command Structure HQ and subordinated commands to integrate a gender perspective throughout planning, execution and evaluation of NATO's tasks. The Gender Advisors and Gender Focal Points are the command's experts on Gender and how to operationalize the concept.

This article's aim was to dispel the misperceptions of what the Gender concept in military operations is and to increase the understanding of how a gender perspective can increase mission effectiveness. The authors' practical experience has shown that, when it was kept operational, the concept found endorsement among all levels of command and contributed to situational awareness and led to more comprehensive solutions.<sup>19</sup>

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<sup>19</sup> Compare Robert Egnell, Petter Hojem, Hannes Berts: Implementing a Gender Perspective in Military Organisations and Operations. Uppsala University. Uppsala 2012. pp.v.

## The Weight of the Security Council to Rein in Sexual Violence

Patricia Sellers Viseur<sup>1</sup>

On June 19, 2008, upon the proposal of the United States Ambassador to the United Nations, the 15 members of the Security Council, unanimously adopted Security Council Resolution 1820 (UNSCR 1820).<sup>2</sup> It is a historic Security Council Resolution recognizing that sexual violence committed against civilians, including women and children, could be characterized as war crimes or as components of an attack comprising crimes against humanity or as a constitutive act of genocide. Paragraph 1 of the resolution reads, affirms in part:

***“That effective steps to prevent and respond to such acts of sexual violence can significantly contribute to the maintenance of international peace and security”***

Article I of the Charter of the United Nations articulates that the purpose of the organization is to maintain international peace and security and to remove threats to the peace, suppress acts of aggression or other acts that breach the peace. Accordingly, Chapter 7 of the Charter has primarily tasked the Security Council to determine the existence of any threat to the peace, breach of the peace, or act of aggression to make recommendations or decide the undertaking of appropriate acts. Articles 41 and 42 respectively of Chapter 7 authorize the Security Council to undertake non-lethal measures, such as sanctions that interrupt economic activity, to restore and maintain international peace or lethal measures. UNSCR 1820 enunciates the Security Council's responsibility to be cogent of the commission of sexual violence when considering situations of armed conflict on its agenda, whether they pertain to a state, a Party or Parties to an armed conflict or a matter of concern to the Security Council. Sexually violent conduct, including rapes, genital, breast or anal mutilations, forced nudity or sexual enslavement, under circumstances warranting placement on the agenda Security Council signals a potential breach in the international peace. Moreover, the resolution demands that parties to a conflict consider instances of past acts of rape and other forms of sexual violence, and to

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<sup>2</sup> S/RES/1820, 19 June 2008.

evacuation women and children under imminent threat of sexual violence to safe surroundings. Accordingly, UNSCR 1820, unambiguously links the prevention, suppression or ability to respond to the occurrence of acts of sexual violence, whether as war crimes, crimes against humanity or acts of genocide as a manner to significantly contribute to the maintenance of peace and security.

Its characterization of sexual violence as a war crime, crimes against humanity or an act of genocide are actually the recognition of, if not restatement of the modern jurisprudence. The ad hoc International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR), established under Chapter 7 of the UN Charter, delivered such legal holding in the *Furundzija*<sup>3</sup>, *Delic*<sup>4</sup> and *Akayesu*<sup>5</sup> cases. The UNSCR 1820 also acknowledges the continued development of international law contained in the Rome Statute that governs the International Criminal Court<sup>6</sup>. The UNSCR 1820 reiterates that sexually violent conduct is undisputedly condemned under international humanitarian law, irrespective of the classification of the armed conflict, and under international criminal law. The text of the resolution centers on sexual abuse committed during armed conflict and pressingly urges its application to extend to women, girls and to children, although it frequently refers, in a generic manner, to the civilian population. This is slightly enigmatic or less than precise drafting since during periods of armed conflict, including occupation, it is usually evident that women and (girls and boy) children are subsets, if not the majority of the civilian population. Furthermore, disabled men, elderly men and otherwise exempted males could also comprise segments of the civilian population. The UNSCR 1820 would seemingly be directed at their coverage, too, albeit the emphasis is particularly placed on women and children.

A population that the UNSCR 1820 does not facially address consists of combatants, including child combatants, and persons, again including children, who in non-international armed conflict have not placed themselves outside of combat. Query whether the exclusion of child combatants is merely an oversight or in conformity with the international humanitarian law. An important perambulatory provision of the UNSCR 1820 reminds states that they bear the primary responsibility to respect and ensure the human rights of their citizens, as well as all individuals within their territory as provided for by relevant international law. The overlapping resort to international humanitarian law and international (or regional) human rights

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<sup>3</sup> *Prosecutor v. Anton Furundzija*, Judgment IT-95-17/1-T, 10 Dec. 1998.

<sup>4</sup> *Prosecutor v. Delic et al.* Judgment IT-96-21, 16 November 1998 "Celebici case".

<sup>5</sup> *Prosecutor v. Akayesu*, Judgment, Case No. ICTR-96-4-T, 2 September 1998.

<sup>6</sup> Rome Statute of the International Criminal Court, opened for signature 17 July 1998, UN Doc. A/CONF.183/9 51998, 37 ILM 999 (1998), entered into force 1 July 2002.

law, together with the resolution's stress on ending impunity for sexual violent acts and its non-recognition of amnesty provisions that hinder their redress, augurs for broad interpretation of the legal protection afforded to protect persons from sexual violence.

The UNSCR 1820's most consequent language, given the responsibility and powers granted by the UN Charter affirms the Security Council's:

***“Intention, when establishing and renewing state-specific sanctions regimes, to take into consideration the appropriateness of targeted and graduated measures against parties to situations of armed conflict who commit rape and other forms of sexual violence against women and girls in situations of armed conflict”***

Hence, thoughtful resort to the application of the sanctions regime is within the purview of potential measures to respond to breaches in the peace. It is at this juncture, when contemplation of the strongest instrument of the Security Council may be brought to bear, that the resolution reveals its weak procedural posture. Where in the resolution is the operational mechanisms allowing the Security Council eventually to verify and quantify the breach of the peace based upon acts of sexual violence and then to designate those subject(s) who should be targeted under a sanctions regime?

Other Security Council Resolutions, notably 1612<sup>7</sup> and 1882<sup>8</sup>, contain procedural mechanism whereby the UN Secretary-General reports and monitors to the members of the Security Council violations committed against children during periods of armed conflict.

Security Council Resolution 1882 (UNSCR 1882) specifically addresses the reporting of verified patterns of killings, maiming and sexual violence inflicted upon children. These illegal patterns are conveyed in the UN Secretary General's Annual Report to the Security Council. Perpetrators of such violations are referred to as being “listed” in the Annexes of the reports. Listed parties are required to enter into a time-bound agreement or Action Plan with the UN Secretary General, through his Special Representative for Children and Armed Conflict<sup>9</sup>. The UNSCR 1882 Action Plans require cessation

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<sup>7</sup> S/RES/1612, 26 July 2005.

<sup>8</sup> S/RES/1882, 4 August 2009.

<sup>9</sup> S/RES/1882 paragraph 5 (b) (c) and (d) reads: “While noting that some parties to armed conflict have responded to its call upon them to prepare and implement concrete time-



of violations, submission to a justice mechanisms, and other actions that could include reparations, dissemination of human rights or medical/social programs to address harms visited upon the individual victim/survivors, family, community and where appropriate the state. Perpetrators listed in the annexes for a prolonged period and thus, denominated persistent perpetrators, can be subjected to appropriate measures<sup>10</sup>. To wit, individuals or armed forces or groups responsible for patterns of violations of sexual violence can become the target of Security Council sanctions, the ultimate "peaceful weapon" as envisaged under Article 41 of the UN Charter. Fulfillment or successfully discharging the obligations subscribed to under the Action Plans would result in an individual or party being de-listed from the annexes.

Given the progress embodied in the UNSCR 1882, especially its precise reporting and monitoring mechanism, the UNSCR 1820 is lacking. Even though the UNSCR 1820 clearly calls for potential violators to be subjected to Security Council punitive measures, it is void of an effective reporting and monitoring mechanism. Furthermore, unlike other Security Council Resolutions that relied upon the offices of the UN Secretary-General's Special Representative for Children and Armed Conflict, the UNSCR 1820 did not identify such a high-level representative. Two subsequent Security Council Resolutions 1888 and 1960 respectively responded to fill the procedural and political void.

Security Council Resolution 1888<sup>11</sup> (UNSCR 1888) adopted unanimously in 2009, requested that the UN Secretary General appoint a Special Representative for Sexual Violence and Armed Conflict and urged the deployment of expert teams to address exigencies of conflict related sexual violence. It also asked that women protection officers be stationed in the field to monitor and report verifiable facts and incidences of conflict related

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bound action plans to halt recruitment and use of children in violation of applicable international law;

...

(b) Calls upon those parties listed in the annexes of the Secretary-General's report on children and armed conflict that commit, in contravention of applicable international law, killing and maiming of children and/or rape and other sexual violence against children, in situations of armed conflict, to prepare concrete time- bound action plans to halt those violations and abuses;

(c) Further calls upon all parties listed in the annexes to the Secretary- General's report on children and armed conflict to address all other violations and abuses committed against children and undertake specific commitments and measures in this regard;

(d) Urges those parties listed in the annexes of the Secretary-General's report on children and armed conflict to implement the provisions contained in this paragraph in close cooperation with the Special Representative of the Secretary- General for Children and Armed Conflict and the United Nations country-level task forces on monitoring and reporting;"

<sup>10</sup> S/RES/1882, in paragraph 7(c) "Reaffirms its intention to take action against persistent perpetrators in line with paragraph 9 of its resolution 1612 (2005)".

<sup>11</sup> S/RES/1888, 30 September 2009.

sexual in an annual report through the UN Secretary General to the Security Council. Moreover, it urged the recognition of a link between redress of sexual violence and the establishment of any sustainable peace process.

In 2010, Security Council Resolution 1960<sup>12</sup> (UNSCR 1960), similar to preceding resolutions 1820 and 1888, was adopted unanimously by the Security Council. It, finally, provided the technical mechanisms to make UNSCR 1820 operational. Paragraph 1 of the UNSCR 1960 reiterated the affirmation that sexual violence may impede the restoration of international peace and security and that its effective prevention and redress can “*significantly contribute to the maintenance of international peace and security*” Furthermore, the resolution stridently asks the UN Secretary-General to include in his annual reports submitted pursuant to resolutions 1820 (2008) and 1888 (2009) detailed information on the commission of war related sexual violence and to list in an annex parties who are credibly suspected being responsible for patterns of rape and other forms of sexual violence. The focused attention directed at offending state and non-state parties will be the bases to initiate procedural measures that could lead to a referral to the Security Council's appropriate sanctions committees.

Similar to the operational processes of the UNSCR 1882, under the UNSCR 1960 offenders responsible for patterns of sexual violence must commit to time-bound specific agreements replete with investigations, follow-up adjudication or disciplinary proceedings of the sexual violence. Also, the UNSCR 1960 plainly recognizes sexual violence perpetrated against children. The genesis of UNSCR 1882, in the aftermath of the UNSCR 1612 that concerns all children including child soldiers, certainly raises the specter that patterns of sexual violence committed against child soldiers, now is covered by UNSCR 1882 and 1960 respectively and jointly. Such an interpretation is far from unimaginable according to paragraph 9 of the UNSCR 1960 whereby the UN Secretary General is requested to:

***“Ensure full transparency, cooperation and coordination of efforts between the Special Representative of the Secretary-General for Children and Armed Conflict and the Special Representative of the Secretary-General on Sexual Violence in Conflict.”***

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<sup>12</sup> S/RES/1960, 16 December 2010.

On 14 March 2013, the UN Secretary General submitted the annual report of Sexual Violence in Armed Conflict<sup>13</sup> to the Security Council pursuant to resolutions 1820 and 1888. The Office of Zainab Hawa Bangura, the new UN Special Representative for Sexual Violence in Conflict, who replaced Margot Wallström, compiled the report. It informed the UN Secretary-General of verifiable instances where war related sexual assaults and threats caused the displacement of populations in Colombia, the Democratic Republic of the Congo, Libya, Mali and the Syrian Arab Republic. The Report correlated the spikes in sexual violence and military operations linked to the illegal extraction of natural resources in the Democratic Republic of the Congo. It also informed the UN Secretary General that sexual violence has been perpetrated against men and boys while in detention or during interrogation in places such as Afghanistan, Libya, Mali and the Syrian Arab Republic. Furthermore, the Report noted that forced marriage, rape and sexual slavery by armed actors have been documented in Mali, the Central African Republic, Somalia, South Sudan and Yemen. It was verified that parties to a conflict forcibly abduct women and girls, take them as wives, then rape and use them as sex slaves.

*“In politics, If you want anything said, ask a man. If you want anything done, ask a woman.”*

***Margaret Thatcher***

In the annexes to the report, it “listed” non-state parties to armed conflicts in the Central African Republic and in Mali, and “listed” both state and non-state parties in the Democratic Republic of Congo, the Syrian Arab Republic and in the Ivory Coast, All are responsible for committing patterns of rape and other conflict related sexual violence. Paragraph 115 is the most poignant and relative to the Report. Here, the UN Secretary-General, through his Special Representative, informs the Security Council of the individual and groups against whom their most significant chartered powers, sanctions, should be applied. It merits citing to in its entirety.

***“The unique ability of the Security Council to impose targeted sanctions raises the stakes for perpetrators and, as such, is an important aspect of deterrence. On 31 December 2012, the Security Council Committee established pursuant to resolution 1533 (2004) concerning the Democratic Republic of the Congo included on its list of individuals and entities subject to sanctions Lt. Col. Eric Badege and Jean-Marie Lugerero Runiga of M23. Both were designated for listing on the basis of serious violations of human rights. The Committee also designated FDLR and M23 for committing acts of violence, including sexual violence, against civilian populations in the Democratic Republic of the Congo. These actions follow the Committee’s designation on 30 November 2012 of two M23 leaders for serious violations of***

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<sup>13</sup> A/67/792-S/2013/149 14 March 2013 Sexual Violence in Conflict Report of the Secretary General

***human rights and international law involving the targeting of women; its designation on 13 November of M23 leader Sultani Makenga for serious violations of international law, including sexual violence, involving the targeting of women and children; and its designation in December 2011 of Ntabo Ntaberi Sheka for having planned and ordered a series of attacks in Walikale in August 2010 in which children were raped and abducted. I encourage other sanctions committees of the Security Council — including, as appropriate, the committees concerning Côte d'Ivoire, Somalia, the Sudan and Al-Qaida (specifically with regard to the commission of sexual violence in Mali) — to focus on crimes of sexual violence. I encourage my Special Representative to submit the names of perpetrators to the relevant committees for possible designation.”***

In essence, the weight of the Security Council, namely the ability to invoke measures under Chapter 7 of the UN Charter, is currently being applied to the prevention, and to the commission of acts of war related sexual violence, irrespective of the characterization of the conflict. The mandate of the Security Council must now be interpreted to have integrally recognized that threats and breaches to the peace, the restoration and maintenance of the international peace and security are also reliant upon pronouncing sanctions upon individual actors, state and non-state armed groups who inflict sexual violence upon women, men, girls or boys. The UNSCR 1820, together with resolutions 1882, 1888 and 1960 are prudent, yet forceful mechanism, designed to significantly contribute to international peace.

## **Coda**

On 24 June 2013, the Security Council passed UNSCR 2106,<sup>14</sup> that re-enforced the fact finding procedures to ensure full reporting by the Secretary-General's to the Security Council of verified patterns of war related sexual violence. UNSCR 2106 welcomed the recent G8 Declaration in Preventing Armed Conflict, the contribution of the ICC and the ad hoc tribunals, and the participation of civil society that address sexual violence committed during armed conflict against women, men, girls and boys. Yet it noted with concern the “slow implementation of important aspects” of SC Res 1960. Therefore, it strongly endorsed the participation of Gender Advisors in UN Peacekeeping, political and humanitarian missions.

Turning its scrutiny to the parties to armed conflicts, UNSCR 2106 reiterated the incompatibility of grants of amnesties for crimes of sexual violence with efforts to restore and maintain postwar peace and security. It stressed a party's ever present obligations to comply with humanitarian law.

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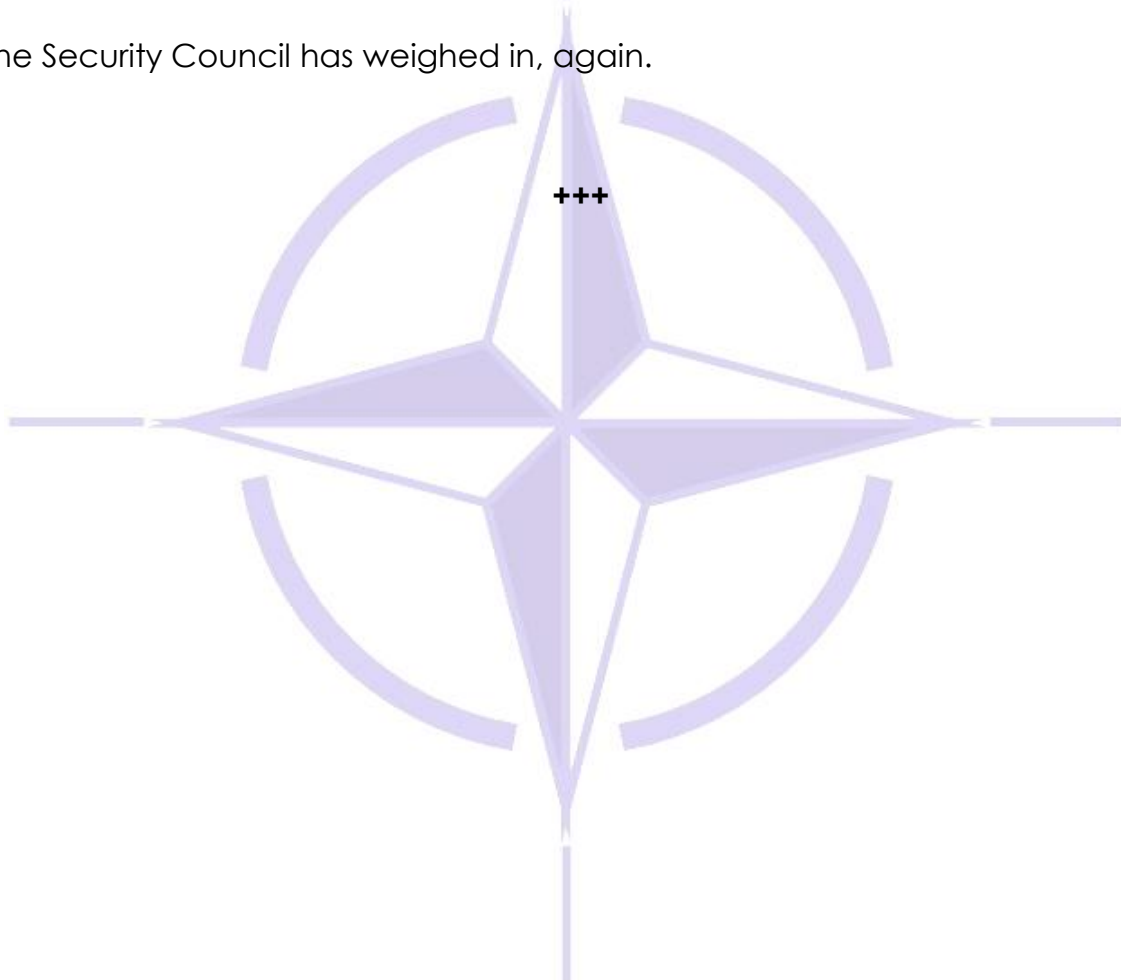
<sup>14</sup> S/RES/2106 24 June 2013



Moreover, UNSCR 2016 unfailingly consolidated the Security Council procedural mechanisms of listing offending parties and directing them to commit to enter into time-bound agreements, as outlined in UNSCR 1612, 1882 and 1960. Paragraph 13, of UNSCR 2016 readily contemplates the imposition of sanctions for persistent offenders. It urged that:

***“existing sanctions committees, where within the scope of the relevant criteria for designation, and consistent with resolution 1960 (2010) to apply targeted sanctions against those who perpetrate and direct sexual violence in conflict; and reiterates its intention, when adopting or renewing targeted sanctions in situations of armed conflict, to consider including, where appropriate, designation criteria pertaining to acts of rape and other forms of serious sexual violence.”<sup>15</sup>***

The Security Council has weighed in, again.



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<sup>15</sup> S/RES/2106 24 June 2013, paragraph 13.

## Gender Enablers within NATO

Tara Nordick<sup>1</sup>  
NATO HQ, Human Resources



Since becoming the NATO Headquarters' Diversity Officer in January 2013, I have encountered, at first hand, many of the challenges which the NATO community faces, to include the challenge of improving the diversity of NATO's Staff. I have learned that diversity does not happen on its own; it needs to be enabled and nurtured. Since

taking on this assignment, I've realised that the key enablers, or drivers, behind diversity are the NATO regulations, policy frameworks and directives. I want to focus on these enablers and how they can improve gender balance within NATO.

### ***How far has NATO come with Diversity Policy?***

The NATO Civilian Personnel Regulations (CPRs) outline the terms and conditions of employment with NATO. The CPR and dependent policies and directives provide the broad framework to apply fair application of the regulations and to ensure the equitable treatment of staff to meet the individual needs of each NATO Body, and in support of NATO's mission.

NATO is constantly improving in the area of diversity. In this regard, NATO regularly amends and modernizes its diversity policies, which help create and support a working environment where people feel valued and safe from harassment, and where they feel respected and fairly treated. NATO has a commitment to improve the Organization's ability to attract and retain the most talented workforce. By expanding our use of fair and

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<sup>1</sup> Tara Nordick currently works in NATO HQ in Executive Management, Human Resources Policy and Strategy Coordination Section as the Diversity Officer. The role of the Diversity Officer is to develop and modernize HR policies in support of NATO HQ aimed at improving gender balance and diversity (GBD). The views expressed in this review are solely those of the author and may not represent the views of NATO.

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equitable policies and directives, we help to do this, and at the same time, help reduce costs associated with absenteeism, high turnover, legal liabilities, and cases dealing with harassment and discrimination complaints.

While the CPRs have gradually improved over time to include provisions on equal treatment, at the 2002 Prague Summit, Heads of State and Government tasked the International Staff (IS) to make recommendations to the North Atlantic Council (NAC) on ways to further encourage the recruitment, retention and professional development of a diverse workforce. By the end of 2003, NATO had agreed on changes to the Civilian Personnel Regulations, to the Policy on Equal Opportunity and Diversity<sup>2</sup> (noted NATO-wide by all NATO Bodies in 2007<sup>3</sup>), and to the Policy on the Protection against Discrimination and Harassment at Work<sup>4</sup>. These policies represent the cornerstones of Gender Balance and Diversity initiatives within NATO. They seek to build and support a workplace that is free from discrimination and provide equal opportunities for Staff regardless of their sex, race, ethnic origin, religion, beliefs, nationality, disability, age<sup>5</sup> or sexual orientation.

In 2012, the NAC approved further CPR changes, which most notably included the adoption of a more gender neutral text throughout, a definition of spouse; recognition of civil registered partners who do not have legal access to civil marriage<sup>6</sup>; and a statement on diversity in staff recruitment<sup>7</sup>. A tele-working Policy proposed by Staff was agreed to and adopted NATO-wide, enabling certain staff to work from home<sup>8</sup>. And within the 10-year anniversary report on gender balance and diversity, comprehensive data, NATO-wide was collated and distributed for the first time.

Senior leadership have restated their commitment to the task of improving gender balance and diversity, recently demonstrated when the Assistant Secretary General for Executive Management (ASG EM) and the ASG for Public Diplomacy (PDD) made presentations on the occasion of International Women's Day on 8 March 2013. Further commitment was

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<sup>2</sup> PO(2003)20, PO(2005)0112, SG(2003)1233(INV) – All documents NATO UNCLASSIFIED

<sup>3</sup> AP-WP(2007)0011 (Advisory Panel Working Paper) – NATO UNCLASSIFIED, Limited Distribution

<sup>4</sup> ON(2003)48-REV1; (NATO HQ Office Notice), NATO UNCLASSIFIED, Policy is currently under review

<sup>5</sup> A minimum age limit of 21 is retained, and the retirement age of 65 is retained. Staff may be invited to work beyond age 65 for up to 2 further years under certain conditions.

<sup>6</sup> CPR Preamble, B. Definitions, (h), PO(2011)0531-REV2 and COR1, NATO UNCLASSIFIED.

<sup>7</sup> 'In NATO bodies having a predominantly civilian establishment, the recruitment and appointment of A category staff should, at the discretion of the Head of the NATO body concerned and to the extent compatible with the provisions of Article 1.2, be effected to provide diverse and equitable geographical Representation', CPRs, Chapter I, Article 1.3.

<sup>8</sup> ON(2012)0090 – NATO UNCLASSIFIED

reflected in August 2012 with the appointment of former Deputy Permanent Representative of Norway Mari Skåre, as the Secretary General's Special Representative for Women, Peace and Security (WPS). Her role is to reinforce and promote the implementation of United Nations Security Council Resolution 1325 on Women, Peace and Security and of related resolutions.

### **How far has NATO come in terms of Gender Balance?**

At the NATO-wide level, we employ just over 5,700 NATO Civilian staff<sup>9</sup>, of which 25% are women. Allied Command Operations (ACO), NATO HQ, and the NATO Support Agency (NSPA) employ a higher proportion of female staff (39%, 37%, and 30% respectively) compared to other NATO Bodies such as NCIA<sup>10</sup>, NETMA<sup>11</sup>, NAEW FC/E-3A Component<sup>12</sup>. Most female civilian staff are employed in support and administrative positions. NATO HQ employs more female staff in senior leadership<sup>13</sup> positions (22%), whereas other NATO Bodies such as Allied Command Transformation and Science and Technology Organisation<sup>14</sup> have few female staff in such posts. The number of women in senior leadership positions at NATO HQ has risen by 10% since 2002. In 2011 and 2012, NATO employed the first female Assistant Secretary General, the first female NATO Spokesperson and the first Secretary General's Special Representative for Women, Peace and Security.

The 10 Year Anniversary Gender Balance and Diversity Report that was published in 2012 provides a statistical overview of the situation at the NATO-wide level. Each Head of NATO Body is responsible for diversity initiatives.

### **What's next for Diversity Policy and Implementation within NATO?**

This year, the IS will report on progress made on the Diversity Action Plan 2012-2014 that was noted by NAC in 2012 in the 10 Year Anniversary Gender Balance and Diversity Report. Statistics from NATO bodies allow us to measure and monitor the progress on diversity in NATO, and to identify the areas where there is a lack of diversity, so that we can make proposals for change.

Policy remains one of the main enablers for change. Recently, a NATO-wide Policy on the Prevention and Management of Harassment, Discrimination,

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<sup>9</sup> This figure represents personnel on the payroll and does not reflect vacant posts.

<sup>10</sup> NATO Communications and Informations Agency

<sup>11</sup> NATO Eurofighter and Tornado Management Agency

<sup>12</sup> NATO Airborne Early Warning Force Command/ E-3A Component

<sup>13</sup> 'Senior Leadership' is defined as grades U1-U4, A5-A7)

<sup>14</sup> STO comprises the Collaboration and Support Office (CSO) and the Centre for Maritime Research and Experimentation (CMRE) and organize, coordinate and conduct scientific research and technology development.



and Bullying in the Workplace was finalized. Other policies in draft that support greater diversity include the Recruitment and Mobility Policy, the Unpaid Leave of Absence, and Disability Policy. In January 2013, Council adopted more CPR amendments concerning the NATO Administrative Tribunal and dispute resolution measures<sup>15</sup>. These new rules include the following diversity statement:

- ***'Effort should be made to ensure both national and gender diversity on the Complaints Committee whenever practicable'***.

Concerning the nominations for appointment to the NATO Administrative Tribunal, the following diversity statement is included:

- ***'They [the Tribunal] should reflect the geographical and gender diversity of the Alliance'***<sup>16</sup>.

In April 2013, Council appointed one woman out of the five members of the Administrative Tribunal<sup>17</sup>.

The 2012-2014 Diversity Action Plan<sup>18</sup> also aims to look at recruitment practices in more detail, with the aim of increasing the number of female applicants. In 2012, for example, only 20% of the selected candidates on the IS were women. However, on its own, increasing the number of female applicants does not necessarily correlate with a higher instance of their selection. Through the IS Recruitment Support Programmes and increased outreach to Nations and Capitals, further analysis can be made to determine potential barriers to selection and specifically to women. As well, discriminatory fields in the recruitment application form are planned to be removed (such as the number of children). The recruitment site on the NATO Internet portal features profiles of NATO employees, and 50% of these showcased profiles are women.

Initiatives that support diversity which are driven through policy and apply tangible data include the Exit Survey and a Diversity Scorecard. The Exit Survey will provide information on the reasons why International Staff leave the Organization, which is essential for identifying potential causes of turnover rates, and especially for women. A Diversity Scorecard is being developed in the NATO HQ by IS to give a graphical snapshot of the Diversity situation (Nationality, Age, and Gender) for any Division, Branch, or Section. This can be used to make managerial choices that potentially improve diversity awareness, or team composition through training and recruitment.

The Action Plan also underlines the importance of creating cultural and diversity awareness through internal and external communication and training.

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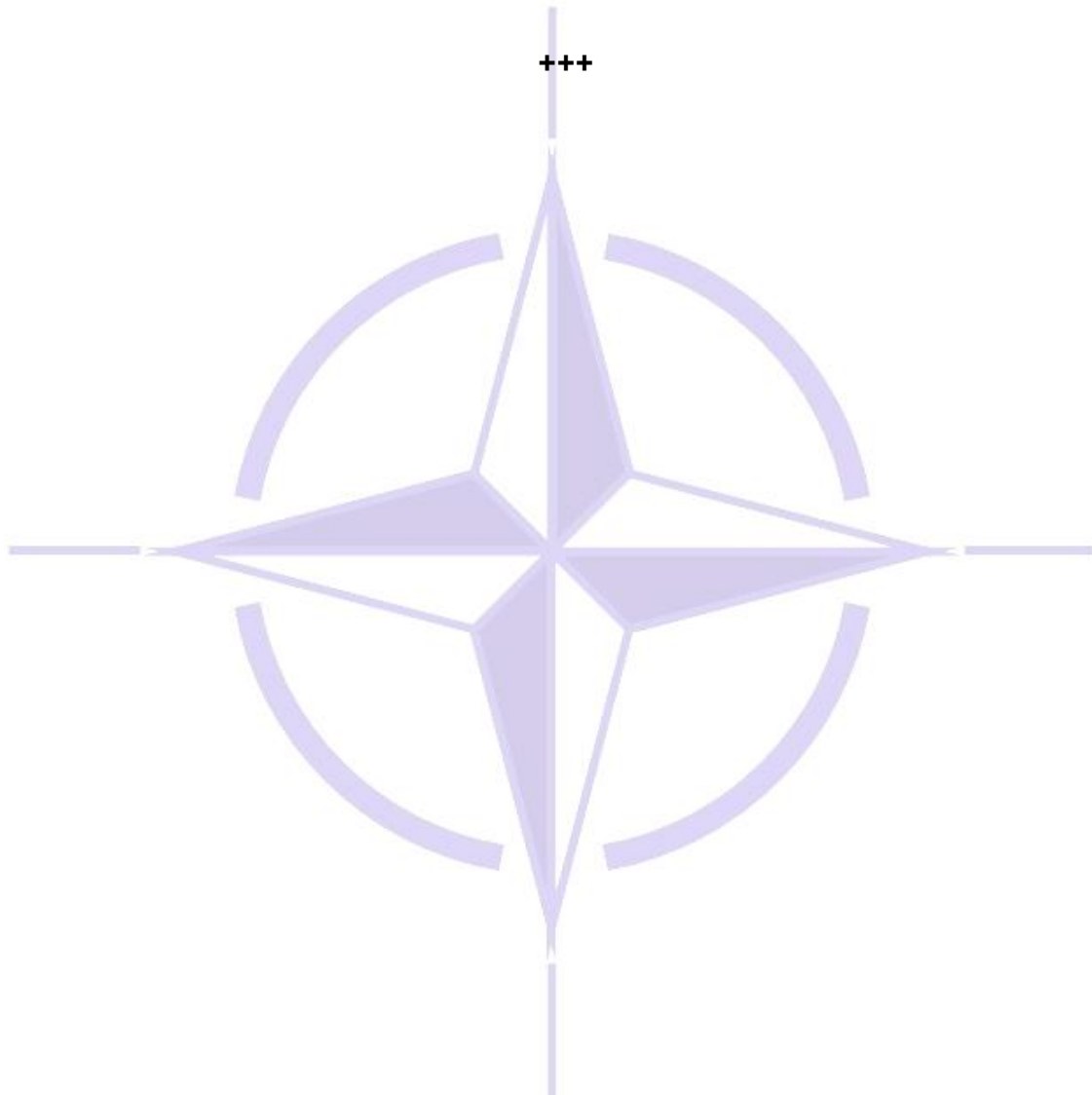
<sup>15</sup> PO(2013)0004-REV1, NATO UNCLASSIFIED

<sup>16</sup> PO(2013)0034, NATO UNCLASSIFIED

<sup>17</sup> PO(2013)0187, NATO UNCLASSIFIED

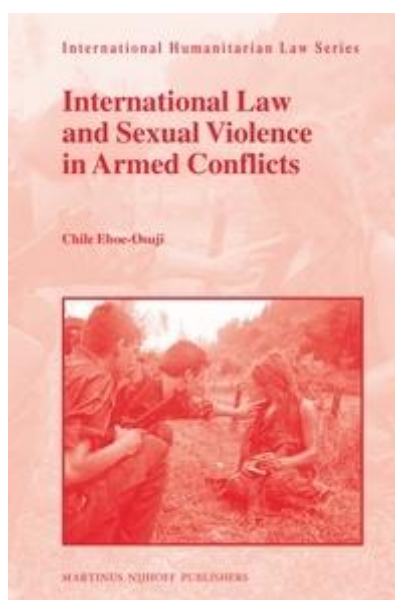
<sup>18</sup> Found within PO(2012)0141 – NATO UNCLASSIFIED

To improve networking and inclusion, further efforts are envisaged to determine the gender and diversity focal points in each IS division and national delegation to foster an exchange of best practices in the area of gender balance and diversity. NATO intends to use social media and networking sites to communicate its in-house initiatives. This will include the creation of a NATO Women's Professional Network. A coaching and mentoring programme is also envisaged to help motivate young professionals and cultivate an inclusive environment whereby different skills are valued and seen as an asset.



## Book review: International law and sexual violence in armed conflicts by Chile Eboe-Osuji<sup>1</sup>

Vincent Roobaert  
Assistant Legal Adviser, NCI Agency<sup>2</sup>



As some of the contributions of this issue of the NATO Legal Gazette have highlighted women and children account for the vast majority of those adversely affected by armed conflict.

Even though the international community, has taken various steps aimed at preventing these negative effects or prosecuting sexual violence against women, it is a fact that women continue to be targeted worldwide despite these efforts. Such efforts include Security Council Resolution 1325 which has been implemented in NATO through the Bi-SC Directive 40-1 “integrating UNSCR 1325 and gender perspectives in the NATO command structure including measures for protection during armed conflict”. This includes, for example, the appointment of gender advisors to support commanders in planning operations by integrating gender dimensions.

In order to end impunity for perpetrators of crimes against women, international courts and tribunals have been created to prosecute war crimes, genocide and crimes against humanity, including rape and other sexual violence. While individuals have been convicted by these tribunals for carrying out or condoning such acts, the occurrence of rapes and sexual violence continues undeterred as if to confirm General Patton’s view that war unquestionably results in sexual violence.

Chile Eboe-Osuji is well aware of the situation faced by women in armed conflicts as he has extensive experience working for the Office of the Prosecutor of the International Criminal Tribunal for Rwanda. However, refusing the current situation, he questions whether it is possible to further develop the rules of international law against sexual violence through the courtrooms of the international courts and tribunals.

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<sup>1</sup> C. Eboe-Osuji, *International Law and Sexual Violence in Armed Conflicts*, Martinus Nijhoff, 2012.

<sup>2</sup> The views expressed in this review are solely those of the author and may not represent the views of NATO and the NCI Agency.

Quite unusually for a legal monograph, the author starts by reviewing various theories in the field of human sciences attempting to explain the origin of evil in armed conflict, including the occurrence of sexual violence.

According to the author, it is only through an understanding of these theories that international lawyers may interpret the rules against sexual violence correctly and increase their effectiveness. First among these explanations are the situational theories put forward among others by Hannah Arendt and Raul Hilberg which explain the cause of evil by the situation in which the actors are drawn. Opposed to these theories, are the dispositional theories which emphasize that these evils are the result of one's personal dispositions. Turning to sexual violence in particular, the author differentiates those theories that are based on the opportunities presented during armed conflicts from deliberate policies endorsed by the chain of command. Armed with this knowledge, commanders should therefore ensure that proper training is in place to avoid acts of sexual violence.

While the need for training or increased supervision of troops is recognized, the author underlines that the current rules only provide for the prosecution of the chain of command when the commander knew or should have known about specific crimes being committed. This entails that there is neither a recognized duty on commanders to carry out due diligence to ensure that no sexual violence are committed nor a duty to take measures against a generic risk of violence – as opposed to a specific instance of violence. In order to address this, the author suggests using increasingly theories developed by the courts, such as joint criminal enterprise.

Turning to the definition of rape, the author recognizes that definitions vary from one international court to another. He notes an evolution in the definitions, however, from considering rape as sexual violence to an act of violence. The latter, he argues, puts the emphasis on coercion rather than the absence of consent of the victim, thereby removing the need to investigate whether or not the victim had consented to the act or not. A general shift to this approach would therefore, in his view, be beneficial.

The author then turns to the handling of rape as genocide or war crimes. While rape has been recognized by international tribunals as genocide in certain instances, the main issue with extending this case-law is the mens rea requirement of genocide, i.e. the intent to destroy the group in whole or in part, which many interpret as meaning a substantial part of the group. The mens rea requirement is also preventing acts of rape to be considered as amounting to act aimed at terrorizing the population. In the AFRC case<sup>3</sup>, for example, sexual violences were not taken into account to conclude to terrorism because the court did not consider that the primary

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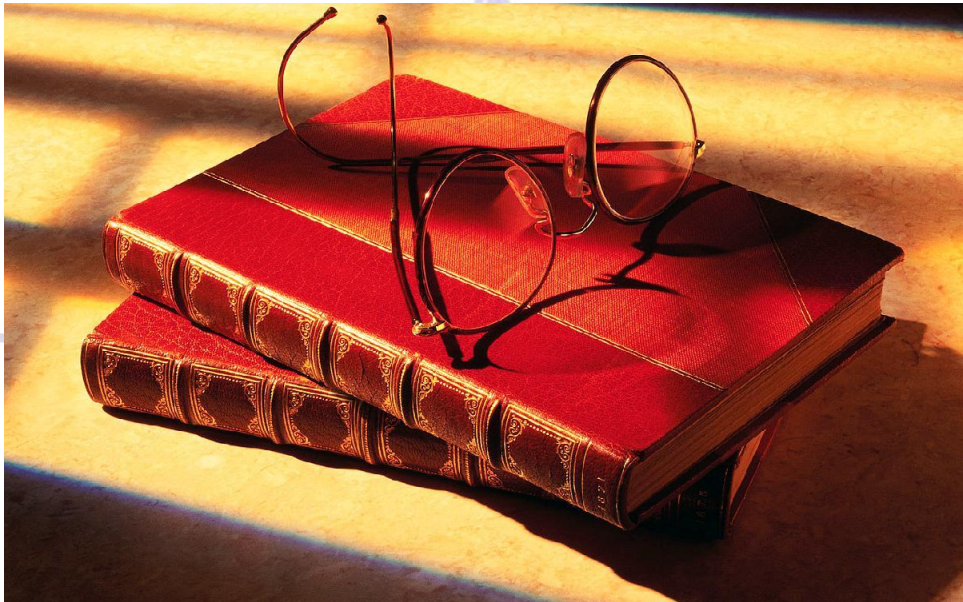
<sup>3</sup> Special Court for Sierra Leone, case no. SCSL-2004-16A, 22 February 2008.



purpose of these violence's was to terrorize the population. The author argues therefore that sexual violence should not be considered on an individual basis and that a pattern of violence could create a climate of fear in the population.

Chile Eboe-Osuji's book is a welcome effort in the field of international law. Indeed, Chile Eboe-Osuji's book aims at guiding international lawyers in presenting their cases to the courts to secure a conviction through an effective interpretation of the current rules. For this reason, Chile Eboe-Osuji's should be seen as a major academic contribution in the fight against sexual violence during armed conflicts.

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**Name:** Yvette Foliant

**Rank/Service/Nationality:** Captain / Army / The Netherlands

**Job title:** Legal advisor , Civil-Military Co-operation Centre of Excellence (Enschede, The Netherlands)

**Primary legal focus of effort:** The COE and CIMIC related issues

**Likes:** Travelling, sports, good food and wine with friends, international law & politics

**Dislikes:** Negativism and dishonesty

**When in Enschede everyone should:** bike through the countryside and enjoy a beer in the city centre

**Best NATO experience:** ISAF, Regional Command North, Masar-e Sharif

**My one recommendation for the NATO Legal Community:** Communicate and share experiences and ideas.



**Name:** Irini Pantzou

**Rank/Service/Nationality:** Captain/HE J/Greek

**Job title:** Legal Advisor, NATO Rapid Deployable Corps-GR (Thessaloniki, Greece)

**Primary legal focus of effort:** preparation for military exercises (concentrated on operational law) as well as legal support and advice on issues related to the application of host nation's law and interpretation of procedures as may arise in the context of HQ's activities.

**Likes:** travelling, jogging, swimming, playing beach volley.

**Dislikes:** traffic jam, overcrowded and noisy places.

**When in Thessaloniki everyone should:** visit Thessaloniki's archaeological sites, the Heptapyrgion Castle, the Old Town, the Archaeological and other Museums, take a walk along the picturesque waterfront promenade, spanning for about 4.5 km from the old port to the Concert Hall, enjoy town's nightlife and entertainment and taste local specialities.

**Best NATO experience:** attending the NATO LEGAL ADVISOR COURSE in Oberammergau (May 2013).

**My one recommendation for the NATO Legal Community:** more chances to gather altogether, so as to establish even more effective working relationships and better means of communication.

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**Name:** Iris Lienhart

**Rank/Service/Nationality:** OF-4 / Legal Branch of the German Armed Forces / German

**Job title:** German Legal Advisor at NATO SCHOOL Oberammergau

**Primary legal focus of effort:** Advising on German military law, personnel, fiscal, contracting, labor & civil law issues as well as teaching tactical, operational & strategic legal topics in NATO SCHOOL's courses and seminars

**Likes:** People with self-reflection and a sense of fairness; skiing, hiking, paragliding and animal protection

**Dislikes:** Superficiality, unreliability and rain in Oberammergau ;-)

**When in Oberammergau everyone should:** Climb the Laber mountain and have a cold Bavarian beer on top, ride the brand new alpine coaster and afterwards relax in the Wellenberg swimming pool

**Best NATO experience:** (So far) NATO Legal Conference in Tallinn in 2013

**My one recommendation for the NATO Legal Community:**

I would not like to recommend something but to refer to some "wise words": "The true test of character is not how much we know how to do, but how we behave when we don't know what to do."





**Name:** Monte DeBoer

**Rank/Service/Nationality:** NATO International Civilian/USA

**Job title:** ACT Legal Advisor

**Primary legal focus of effort:** It varies tremendously, but labour, contract and military law issues form part of my typical work day. As with most LEGADs assigned to a military headquarters, whatever is on the minds of the Command Group quickly becomes my true "legal focus of effort," at least for that day.

**Likes:** Old motorcycles.

**Dislikes:** Electrical gremlins in old motorcycles that I can't find, much less fix.

**When in Norfolk, Virginia USA everyone should:** make a point of coming to the HQ SACT Legal Office so we can treat you to a cup of coffee and plan out an adventure while you are in town. For those that remember the NATO Legal Conference in Istanbul . . . we promise not to make you listen to the Legal Office's lousy attempts at karaoke, though we have gotten better . . . or at least some of us have :>)

**Best NATO experience:** "Best" is a tricky word . . . my most interesting NATO experience was serving as the legal advisor to the Working Group responsible for disestablishing ACLANT and creating ACT.

**My one recommendation for the NATO Legal Community:** Enjoy the practice! Though it can be frustrating at times, it is almost always interesting!

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## HAIL & FAREWELL

### BIENVENUE...

**ACT SEE:** Mrs Emma Burden (GBR CIV)  
 Ms Jessica Johnson (GBR CIV)  
 Ms Jessica Wright (US CIV)  
 Ms Marissa Harrell (US CIV)

**Eurocorps HQ :** LtCol Eric Aguera (FRA A)

**HQ ISAF:** Maj Carl Hill, (US A)  
 Capt Kevin Bolhke, (US A)  
 Maj Jeanette Skow, (US AF)

**HQ LAND COM IZMIR:** LtCol John Frost, (US A)

**HQ MARITIME COM NORTHWOOD:** Lt Tom Evans (GBR N)  
 Cdr Christophe Logette (FRA N)

**HQ Sarajevo:** LtCol Christopher May

**NCIA:** OR-8 Greg Rohel (FRA)  
 OF-3 Jean-Luc PrevotEAU (FRA)

**SHAPE:** Capt Jean Michel BAILLAT(FRA N)

### BON VOYAGE...

**ACT SEE:** Mr Patrick Campbell (US CIV)

**HQ AIR COM IZMIR:** LtCol Kenneth Hobbs (US AF)

**HQ FORCE COM MADRID:** Maj Maria Eugenia Ruiz (SP A)

**HQ ISAF:** Maj Rebecca Thornley (NZL A)  
 Maj Matthew Lund (US A)  
 Staff Sergeant Craig Miller (US AF)  
 Cdr Darren Reed Royal Navy  
 LtCol Brendon Tukey (US AF)  
 Col Christopher Wood (US A)

**HQ MARITIME COM NORTHWOOD:** Lt Adele Marie Frith (GBR N)

**HQ Sarajevo:** LtCol Thomas Dobbs (US AF)

**NCIA:** Ms Claire Gaudin (FRA CIV)  
 Ms Sophie Gosset (FRA CIV)

**JWC:** LtCol Eric Aguera (FRA A)

**SHAPE:** Col Donald (Kirby) Abbott (CAN A)  
 Capt Francois Tremembert (FRA N)  
 Mr Catalin Gravre (ROU CIV)



## UPCOMING EVENTS OF LEGAL INTEREST

### in NATO School, Oberammergau, Germany:

- **NATO Legal Advisor Course**, 7 – 11 October, 2013: The course provides military and civilian legal advisors, in national or NATO billets, an understanding of the legal aspects of NATO operations and activities. Instruction will address legal issues arising at strategic, operational, and tactical NATO headquarters in an environment that encourages development of professional relationships.

For more information please contact the NATO School at: <https://www.natoschool.nato.int/> or [klaiber.bjorn@natoschool.nato.int](mailto:klaiber.bjorn@natoschool.nato.int) or [bengs.brian@natoschool.nato.int](mailto:bengs.brian@natoschool.nato.int)

### in International Institute of Humanitarian Law, Sanremo, Italy:

- **Rules of Engagement Workshop**, 9 – 13 September, 2013: The course examines ROE in detail using the renowned Sanremo Rules of Engagement Handbook. The Workshop is designed as an advanced session that will include briefings on lessons-learned by military Officers and Legal Advisers who have been involved in the drafting and implementation of ROE for national and multinational operations in the land, maritime, and air environments. It will also include ROE case studies, training models, investigation and claims procedures, as well as new developments, including ROE for unmanned systems and cyberspace operations.

### of Note:

- Andres B. Munoz Mosquera, Legal Adviser at SHAPE together with Nicoleta P. Chalanouli, Assistant Legal Adviser Consultant at SHAPE, have written an article on **Regulating and Monitoring PMSCs in NATO Operations**, which was published by the International Institute of Humanitarian Law at San Remo. The article proceeds from the 35<sup>th</sup> Round Table on Current Issues of International Humanitarian Law. You may find this recently published article at this link: [http://www.iihl.org/iihl/Documents/Regulating%20and%20Monitoring%20PMSCs%20in%20NATO%20Operations-Andres%20Munoz%20Mosquera%20\(3\).pdf](http://www.iihl.org/iihl/Documents/Regulating%20and%20Monitoring%20PMSCs%20in%20NATO%20Operations-Andres%20Munoz%20Mosquera%20(3).pdf)

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