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THE LAW OF ARMED CONFLICT AND THE OPERATIONAL RELEVANCE OF GENDER: THE AUSTRALIAN DEFENCE FORCE'S IMPLEMENTATION OF THE AUSTRALIAN NATIONAL ACTION PLAN

JODY PRESCOTT

INTRODUCTION

It was not until a tour of duty in Afghanistan as a legal advisor with the International Security Assistance Force (ISAF) that I began to sense a disconnect between the different areas of operational law regarding the significance of women in armed conflict, both as combatants and civilians. On any given day, my rule of law officer, a female lieutenant colonel, and I might be meeting with members of women's rights international and non-governmental organisations. Under the effects-based approach to operations method of operational analysis¹ being used at that time in the headquarters, the legal office had been assigned responsibility for developing an effective and holistic assessment of the progress of the international community's rule

1 See Colonel Jody M Prescott, 'The Development of NATO EBAO Doctrine: Clausewitz's Theories and the Role of Law in an Evolving Approach to Operations' (2008) 27 *Penn State International Law Review* 125, 126-7, 131-5 (description of NATO EBAO methodology and its relationship to the Comprehensive Approach).

of law development efforts, and my role of law officer had convinced me that metrics regarding the treatment of women in the Afghan judicial and corrections systems could provide a particularly valuable and relevant measure of progress.

On another day, I might find myself engaged in a dynamic targeting situation if the legal advisor who ordinarily provided real-time law of armed conflict (LOAC) advice was otherwise occupied. Not surprisingly, the targets in that theatre were generally individual men, but the civilians who were to be protected during the engagements seemed an amorphous group — civilians are civilians, and the direct effects of a kinetic weapon upon a person are not easily differentiated on the basis of sex or gender. Frankly, although I was aware of UN Security Council Resolution 1325 on Women, Peace and Security,² women's and gender issues had in the past appeared to me to be largely human rights issues even in a combat theatre, and human rights issues seemed to have little to do with core LOAC tasks, such as a commander appropriately assessing proportionality before deciding to engage with armed force. This was a 'war amongst the people',³ however, and I began to sense that we were neglecting half of them.

To sense a disconnect is one thing; to be able to articulate it for one's self in terms of one's experiences and training is often quite another. After I had returned from Afghanistan and started teaching at the US Military Academy, I was given the opportunity to research and present on NATO gender mainstreaming efforts at the Law Department's conference on gender justice. For the first time, I read the work of a number of feminist international law writers, including Hilary Charlesworth, Michelle Jarvis, and most particularly, Judith Gardam. Somewhat uncomfortably, I read detailed deconstructions of LOAC that challenged my baseline assessment of its impartiality and its even-handed application to both soldiers and civilians in armed conflict — people whom I had previously distinguished between solely on the basis of combatancy, and no further. I became aware that armed conflict had gender-differentiated impacts, and that its different effects upon women likely had operational significance in military operations such as counterinsurgencies and stability missions. Most importantly from my perspective, I now began to understand that sex and gender were directly relevant to the core norms under LOAC in deciding when to engage in the use of armed force and against whom.

Since then, Australia, like many other nations, has now promulgated a national action plan (*NAP*) to implement UNSCR 1325 across the whole of its government's

2 SC Res 1325, UNSCOR 5 916th mtg UN Doc S/RES/1325 (31 October 2000) (UNSCR 1325).

3 Toni Pfanner, 'Interview with General Sir Rupert Smith' (2006) 88 *International Review of the Red Cross* 719, 719-22.

activities.⁴ Unlike other nations' militaries, however, the speed and the thoroughness with which the Australian Defence Force (ADF) has moved to incorporate the requirements of UNSCR 1325 and related Security Council resolutions as reflected in the Australian *NAP* into its activities and operations is both heartening and amazing.⁵ What is not clear at this point is whether the ADF's implementation of the *NAP* will culminate in dealing only with the aspects of LOAC and human rights law where they coincide, such as preventing, investigating and prosecuting instances of sex- and gender-based violence (SGBV) in operations.

In arguing that the ADF needs to follow the path set out by Professor Gardam and her colleagues regarding the operational relevance of gender to LOAC to its logical and fundamentally transforming conclusion, this chapter will first briefly describe how the differentiated impact of armed conflict and climate change upon women and girls might influence the modern international security environment in which the ADF operates. Mindful of these operational facts, and consistent with the *NAP*'s requirement to enhance normative mechanisms related to the greater protection of women and girls in armed conflict, this chapter will explore the status of women under the LOAC. Next, it will explore ADF doctrine as it exists at the time of this writing, in order to set a baseline against which to measure the ADF's implementation progress. This chapter will then examine the tasks assigned to the ADF by the *NAP* which are particularly operational in nature, and the way in which these tasks have been translated into action as ADF implementation has progressed. Against this factual, policy and legal backdrop, how the ADF might more fully deal with the broad application of UNSCR 1325 to operational issues involving LOAC will be explored, and certain measures that might foster this result will be recommended.

THE IMPACT OF CLIMATE CHANGE AND ARMED CONFLICT UPON WOMEN

The international development community has long recognised that climate change has disproportionate effects on women as compared to men.⁶ Likewise, UNSCR 1325 documents the international community's understanding of the disproportionate

⁴ Government of Australia, *Australian National Action Plan on Women, Peace and Security 2012-2018* (2012) <<https://www.dss.gov.au/our-responsibilities/women/publications-articles/government-international/australian-national-action-plan-on-women-peace-and-security-2012-2018>> ('*NAP*').

⁵ Department of the Prime Minister and Cabinet, *Progress Report, Australian National Action Plan on Women, Peace and Security 2012-2018* (2014) <<https://www.dpmc.gov.au/sites/default/files/publications/progress-report-2014-nap-women-peace-security-2012-2018.pdf>> ('*Progress Report*').

⁶ Fatma Denton, 'Climate change vulnerability, impacts, and adaptation: Why does gender matter?' (July 2002) 10 *Gender & Development* 10, 11-12.

effects of armed conflict upon women as compared to men.⁷ It is also understood that armed conflict and natural disasters have gender-differentiated impacts on populations that are not identical.⁸ Finally, there is an increasing recognition on the part of national governments that climate change (including more frequent natural disasters caused by extreme weather events) will likely exacerbate the occurrence and impact of armed conflict.⁹ What is not currently as well appreciated, however, is the dynamic intersection of climate change, armed conflict and the gender-differentiated effects of these two phenomena upon women.

Climate Change

Climate change has gender-differentiated impacts upon women in general, particularly those in developing countries.¹⁰ This is in large part the result of women's disadvantaged status in many countries and cultures. For rural women in developing countries, their vulnerability appears to be grounded largely in three interrelated factors: unequal access to resources, unequal opportunities to change or enhance their livelihoods, and unequal participation in decision-making processes regarding resource use and allocation.¹¹ In terms of unequal access to resources, rural women often find themselves performing such time-consuming, and generally non-remunerative, tasks as animal husbandry and subsistence agriculture,¹² and drawing water to support these important activities as well as for their families' use in their households.¹³ Because of their social and economic inequality vis-à-vis men, however, rural women in developing countries might have restricted access to these resources even though they in fact might be the primary users of the land and water resources utilised to support these activities.¹⁴ This situation is also reflected in the consumption of energy

7 SC Res 1325, UNSCOR 5 916th mtg UN Doc S/RES/1325 (31 October 2000) (UNSCR 1325) 1-3.

8 Sarah Shteir, 'Gendered Crises, Gendered Responses' Civil Military Occasional Paper 01/2013 (Australian Civil Military Centre, 2013) 4-5, <<http://acmc.gov.au/wp-content/uploads/2013/09/Gendered-Crises-Gendered-Responses.pdf>>.

9 US Department of Defense, *Quadrennial Defense Review Report* (February 2010) iv.

10 Gotelind Alber, *Gender, Cities and Climate Change. Thematic Report Prepared for Cities and Climate Change, Global Report on Human Settlements* (2011) 33 <<http://www.unhabitat.org/wp-content/uploads/2012/06/GRHS2011ThematicStudyGender.pdf>>.

11 Dorte Verner (ed), *Adaptation to a Changing Climate in the Arab Countries* (The World Bank, 2012) 279.

12 Ibid 281.

13 Ibid 282.

14 Anne Marie Goetz et al, *Who Answers to Women? Gender & Accountability* (UNIFEM, 2009) 37 <http://www.unifem.org/progress/2008/media/POWW08_Report_Full_Text.pdf>.

resources in developing countries. Women are often responsible for the gathering of biomass energy sources such as firewood, but do not necessarily enjoy the degree of access to these resources they would have were they men.¹⁵

One study has calculated the amount of time spent by women and children (primarily girls) in Africa drawing water to be as much as 40 billion hours a year.¹⁶ Gathering biomass energy resources is similarly time-consuming, and unbalanced rates of consumption and regeneration mean that women must often range ever farther to secure necessary supplies of firewood to be burned directly or converted to charcoal.¹⁷ Because of the time spent in gathering and using water and energy resources, as well as other household chores, women and girls generally have less time available to become educated, or to undertake economic activity that could generate cash earnings.¹⁸ As the men in their families migrate to other areas in search of work, women also find themselves taking on additional chores, further reducing the time available for educational or income-producing activity.

The lack of title to land in their own names in many areas complicates women's participation in decision-making processes as to resource use and allocation. For example, women who do not own land might be unable to secure credit for seeds and improvements on the land they work, and might find that their access to water for use on the land is insecure.¹⁹ Unless they are recognised as land owners, and therefore as clear stakeholders, women might also find themselves unable to become full members in rural organisations that make decisions that affect resource use.²⁰ The combination of all these factors tends to make women a more vulnerable and less resilient population cohort to the effects of climate change, a vulnerability exacerbated by armed conflict in many areas.

15 Ibid. In Bangladesh, for example, gendered norms regarding asset control lead to 'an assumption that women in agriculture are concerned with subsistence only' — an assumption which reinforces institutional and policy biases that 'worsen[] women's disadvantages in accessing markets, credit, technology and services, and perpetuate[] the lack of recognition surrounding women's role in farming'. Emily Hillenbrand, 'Transforming Gender in Homestead Food Production' (November 2010) 18 *Gender & Development* 411, 413.

16 Goetz, above n 14, 37.

17 Judith Gardam, 'A Role for International Law in Achieving a Gender Aware Energy Policy' in Paul Babie and Paul Leadbeter (eds), *Law as Change: Engaging with the Life and Scholarship of Adrian Bradbrook* (University of Adelaide Press, 2014) 51.

18 Goetz, above n 14, 37.

19 Verner, above n 11, 287.

20 Ibid.

Armed Conflict

Today, in general, armed conflict tends to occur in areas which are less economically developed. As previously noted, women in these areas have a relatively inferior social and economic status as compared to men, and this gender discrimination and its effects make women more vulnerable to the impacts of armed conflict.²¹ These negative effects occur whether women are in the roles of civilians, refugees or even combatants. As civilians, women often find themselves suffering increased physical insecurity. They are more likely to be victims of rape, sexual assault, enslavement and even torture as a result of armed conflict²² — forms of violence over which they have little control. As to sexual violence itself, women are also more vulnerable to 'forced prostitution ... forced impregnation, forced maternity, forced termination of pregnancy, forced sterilization ... strip searches, and inappropriate medical examinations'.²³ This increased physical insecurity has ripple-effects through villages and societies — the threat of violence impedes women's ability to leave their homes and grow and market agricultural and herding products, and thereby diminishes their capability to feed their families and earn hard cash.²⁴ Further, women civilians are negatively impacted by armed conflict even if they are not caught up directly in the fighting. Given their generally inferior status in these areas, they are often dependent upon the men of their families to provide a livelihood, and the absence of men often means that women must step up to the roles of provider and protector in addition to the caregiving and household duties they already perform.²⁵ Finally, because they likely are unable to equitably access economic resources even during times of relative peace, women often lack the ability to withstand the hardships caused by armed conflict or rebuild quickly once the fighting is done.²⁶

The lot of women who are refugees from armed conflict is particularly trying. Living conditions in camps are often inadequate, and women therefore find themselves without appropriate hygienic facilities or basic medical care. Because means of contraception are not generally readily available, they are at risk of increased

21 Judith Gardam and Michelle Jarvis, *Women, Armed Conflict And International Law* (Kluwer Law International, 2001) 8-9.

22 Ann Jones, *War Is Not Over When It's Over* (Henry Holt & Co., 2010), 19-20, 58, 84, 101, 134-5, 143, 150-1, 161-2, 172.

23 Johanna Valenius, 'Gender Mainstreaming in ESDP Missions' (Chailot Paper No. 101, May 2007) 20.

24 Sahana Dharmapuri, 'Just Add Women and Stir?' (Spring 2011) 41 *Parameters* 56, 64.

25 Judith Gardam and Hilary Charlesworth, 'The Need for New Directions in the Protection of Women in Armed Conflict' (2000) 22 *Human Rights Quarterly* 148, 153; Valenius, above n 23, 23.

26 Gardam and Charlesworth, above n 25, 151, 153.

pregnancy during times of increased stress.²⁷ Women are at increased risk of sexual violence in refugee camps as well, but the specialised medical services to treat victims of sexual assault might be in very short supply.²⁸ Depending on the culture, women and girls might eat last in a family, and in times of food scarcity, this could mean that they do not eat at all.²⁹ Because of their generally inferior status, women often find themselves without marketable skills as they try to survive as refugees,³⁰ and even if they are able to return to their homes, they are often marginalised in the rebuilding and reconciliation efforts.

Particularly as nations in the developed world have increased the opportunities for women to serve in military positions that were once exclusively the province of men, it is more common now to find women in these armed forces serving as both leaders³¹ and ordinary combatants.³² Australia officially removed gender restrictions on combat positions effective 1 January 2013,³³ joining other Western nations such as Denmark, Norway and Canada. While women in these countries can now look forward to greater leadership and career opportunities, the position of women combatants in less developed countries, particularly in the conduct of non-international armed conflict,³⁴ is not enviable. These women sometimes achieve leadership roles in irregular military units,³⁵ but often even those who serve as frontline fighters have markedly different experiences than their male counterparts.³⁶ These women fighters also function in many logistical roles, such as setting up camp and

27 Judith Gardam and Hilary Charlesworth, 'Protection of Women in Armed Conflict', Section 2, Workbook Readings, 124, Gender and Peacekeeping Online Training Course, available at <<http://www.genderandpeacekeeping.org>>.

28 'UN Official Voices Concern over Reports of Rape of Somali Women Fleeing Famine' (UN News Centre, 11 August 2011), <<http://www.un.org/apps/news/story.asp?NewsID=39282>>.

29 Gardam and Charlesworth, above n 25, 155.

30 Jones, above n 22, 172, 202-28.

31 See Dean Davis, 'Female Engagement Team commander speaks about mission in Afghanistan' (DVIDS, 16 October 2010) <<http://www.dvidshub.net/video/97875/female-engagement-team-commander-speaks-about-mission-afghanistan>> (First Lieutenant Quincy Washa discussed her team's operations in Afghanistan).

32 See, for example, Sergeant Warren Wright, 'Two members of Cultural Support Team receive Combat Action Badges' (US Special Operations Command, 12 September 2011) <<http://www.soc.mil/uns/Releases/2011/September/110912-06.htm>> (Sergeant Shelly Amborn and Specialist Sonja Prentiss awarded badges for actions during combat with insurgents in Afghanistan).

33 Department of Defence, 'Removal of Gender Restrictions from ADF Combat Roles' <<http://www.defence.gov.au/women>>.

34 Dharmapuri, above n 24, 62.

35 See, for example, the story of 'Black Diamond', a Liberian rebel soldier who became prominent for her ferocity in the Liberian Civil War, in Alan Huffman, *Here I Am* (Grove Press, 2013) 7-8, 20-2.

36 Dharmapuri, above n 24, 62.

moving equipment and materiel, and as bush-wives for the men, cooks and spies.³⁷ Often, they will have children as the result of either rape or relationships with the men, and they face significant challenges as they seek to reintegrate into post-war societies.³⁸ Disarmament, demobilisation and reintegration provisions in post-war settlements often fail to recognise their special needs.³⁹

In sum, like climate change, armed conflict in many areas has a gender-differentiated impact, and, sadly, the potential exists for the two to accentuate the other. Women in such situations are disproportionately affected because of their inferior economic and social status and their roles as the primary caregivers to their families. The significance of this operational reality becomes crucial when one notes the number of modern conflicts that, even though they might have started primarily as hostilities of military force on military force, have become 'wars amongst the people'. In these civilian-centric conflicts, there might be no decisive engagements, and instead of neutralising the enemy military units, the focus of military effort moves to building stability through influencing the perceptions, attitudes and behaviours of the population. A campaign plan to win such a war is unlikely to succeed if it fails to understand that the effects of a particular kinetic action will cause greater harm to one half of the population than the other. In light of the importance in the *NAP* of normative measures to achieve better outcomes for women and girls in conflict-affected areas, how, then, does LOAC deal with this gender-differentiation of the impacts of armed conflict?

THE STATUS OF WOMEN UNDER LOAC

The 1949 Geneva Conventions explicitly state in Common Article 3 that '[p]ersons taking no active part in ... hostilities ... shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth, or wealth, or any other similar distinction'.⁴⁰ This principle of impartiality, of treating

37 Ibid.

38 Valenius, above n 23, 23.

39 Ibid.

40 Comm. art 3, Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, 12 August 1949, 6 UST 3114, 75 UNTS 31 ('GC I'); Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, 12 August 1949, 6 UST 3217, 75 UNTS 85 ('GC II'); Geneva Convention Relative to the Treatment of Prisoners of War, 12 August 1949, 6 UST 3316, 75 UNTS 135 ('GC III'); Geneva Convention Relative to the Protection of Civilian Persons in Time of War, 12 August 1949, 6 UST 3516, 75 UNTS 287 ('GC IV'). Of these treaties, GC IV provides the greatest number of measures specifically designed to afford women consideration due to their special requirements as pregnant mothers and caregivers to children (see arts 16-18, 20-3); but in so doing it tends to essentialise

all protected persons in the same way, is understood as a cornerstone of customary international law. Unfortunately, when the Geneva Conventions and the Additional Protocols that followed them in 1977 are scrutinised, the rules that implement these treaties are not premised on the notion that men and women are equal; nor do they recognise the operational reality of gender-differentiated effects of armed conflict upon women.

Geneva Conventions (GC) I and II note that 'women will be treated with all consideration due to their sex'.⁴¹ The Commentaries to the Geneva Conventions, recognised as the authoritative interpretations of the treaties, defines 'consideration' as that which is afforded in every country to beings who are weaker than one's self and whose honour and modesty call for respect'.⁴² Accordingly, the protection that women receive is premised on traditional social constructs placing women in an inferior position⁴³ rather than on the operational reality of armed conflict's effects upon them. *GC III*, dealing with prisoners of war, contains important provisions requiring equal treatment of men and women in many instances, such as housing them in separate dormitories⁴⁴ and requiring separate hygienic facilities.⁴⁵ Like *GC I* and *GC II*, however, the rationale for differentiating between men and women prisoners of war is women's inherent weakness, and the need in a prison camp setting to protect them from sexual violence and 'forced'⁴⁶ prostitution, and the effects of pregnancy and childbirth.⁴⁷

Despite these concerns, *GC III* does not require that women's dormitories be supervised by women,⁴⁸ nor that women's reproductive health issues be addressed.

women in these roles. Interestingly, despite common Article 3, it allows no 'adverse distinction based, in particular, on race, nationality, religion, or political opinion' — but not sex (ibid art 13).

41 *GC I* and *GC II*, above n 40, art 12.

42 Jean S Pictet (ed), *Commentary: The Geneva Conventions Relative to the Protection of Civilian Persons in Time of War* (International Committee of the Red Cross, 1952) 202.

43 Gardam and Jarvis, above n 21, 10-11.

44 *GC III*, above n 40, art 25.

45 Ibid, art 80.

46 It is questionable whether there is really a difference between 'forced' and 'voluntary' prostitution in a prisoner-of-war camp setting.

47 Jean S Pictet (ed), *Commentary: The Geneva Conventions Relative to the Treatment of Prisoners of War* (International Committee of the Red Cross, 1960) 277 ('GC III Commentary').

48 As compared to the quarters in which women who have been convicted of penal offenses are housed. *GC III*, above n 40, art 108. ADF LOAC doctrine, however, specifically includes all women detainees within this protective measure. Chief of Joint Operations, Headquarters Joint Operations Command, *Australian Defence Doctrine Publication (ADDP) 06.4, Law of Armed Conflict* (11 May 2006) 9-7. This approach reflects customary LOAC ('ADDP 06.4').

Contraception is not provided; nor are sanitary supplies for women.⁴⁹ This omission is particularly significant in light of the treatment of pregnant prisoners of war. The Commentary notes that '[p]articular "regard" is required in the case of women prisoners who are pregnant when captured or *become pregnant in captivity despite the precautions taken*'.⁵⁰ Such regard apparently consists of providing separate dormitories not under the supervision of women, and separate latrines. Finally, women prisoners' medical and physical security needs are not adequately addressed, and enlisted women prisoners of war are not given the right to elect women representatives to address their concerns in the representation of the prisoners to the capturing country or external organisations.⁵¹

The 1977 Additional Protocols⁵² were promulgated almost thirty years after the Geneva Conventions, and they clarify and amplify important protections for both civilians and combatants. However, the Commentary to AP I makes it obvious that protections for women against sexual violence are based on outdated notions of women's 'honour',⁵³ a social construct, rather than sexual violence being seen as a crime against their persons. Perhaps the most significant defect of AP I from the perspective of armed conflict's gender-differentiated impact is in its formulation of the principle of proportionality. AP I prohibits attacks 'which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated'.⁵⁴ Based upon information reasonably available at the time, the question of whether the incidental damage is excessive is a matter for the individual commander to decide.⁵⁵ This rule as stated does not contemplate that different civilians might suffer different and significant indirect effects of a particular

49 Gardam and Jarvis, above n 21, 104.

50 *GC III Commentary*, above n 47, 148 (emphasis added).

51 In camps without officers, for instance, prisoners of war will elect such representatives by secret ballot. *GC III*, above n 40, art 79.

52 *Protocol Additional to the Geneva Conventions of August 12, 1949, and relating to the Protection of Victims of International Armed Conflicts*, 8 June 1977, 1125 UNTS 3 ('AP I'); *Protocol Additional to the Geneva Conventions of August 12, 1949, and relating to the Protection of Victims of Non-International Armed Conflict*, 8 June 1977, 1125 UNTS 609.

53 International Committee of the Red Cross, 'Commentary to Additional Protocol I' [892] <<http://www.icrc.org/ihl.nsf/COM/470-750098?OpenDocument>>.

54 *AP I*, above n 52, art 76(2).

55 Nils Melzer, *Interpretive Guidance on the Notion of Direct Participation under International Humanitarian Law* (International Committee of the Red Cross, 2009) 76. It was compiled on the basis of reports generated from meetings of international experts in the law of armed conflict (LOAC) held between 2003 and 2008; *ibid* at 8.

kinetic action on the basis of their gender — a bomb is a bomb, and a civilian is a civilian under this analysis.

Although proponents of customary international law appear to have overstated the degree to which it recognises the protections to which women are entitled,⁵⁶ it must be recognised that as a matter of customary international law and state practice many of the deficiencies of LOAC from a modern gender equality perspective have likely been ameliorated to a degree. For example, it is not clear that a typical soldier today would know that the different protections women might receive in military operations as to sexual violence or pregnancy are premised upon women's inherent weakness and modesty, or upon their essentialised role as caregivers — nor is it likely that the soldier would care, so long as the required treatment was afforded as ordered. Despite this positive evolution, however, the fact remains that the underlying treaty law likely tends to reinforce a male-normative view of LOAC's application which is both discriminatory and at odds with the gender-differentiated impact of armed conflict upon women. Evidence of this subtle influence is disclosed through examination of ADF doctrine as it exists at the time of this writing, as to both the types of operations most likely to be civilian-centric, and LOAC and targeting doctrine specifically.

ADF DOCTRINE

ADF Operations Doctrine

At the time of this writing, the ADF is conducting a significant review and revision process of its doctrine to ensure that concepts related to women, peace and security are properly embedded within it. For example, peace operations doctrine has already completed this process, and the new version published in 2015 reflects extensive revisions in this regard.⁵⁷ In general, however, it is fair to say that ADF doctrine that has not yet undergone this review and revision process does not deal with the operational reality of gender in a meaningful way. This is also reflected in supporting doctrine, such as targeting, and to a large extent, LOAC doctrine. At the time of this writing, ADF multinational doctrine mentions women only twice, both times in the

56 Jody M Prescott, 'NATO Gender Mainstreaming and the Feminist Critique of the Law of Armed Conflict' (2013) 14 *Georgetown Journal of Gender and the Law* 83, 102-3.

57 Email from Mr Christopher Ross, Doctrine Desk Officer, Joint Doctrine Centre, to Jody M Prescott (4 January 2016). Previously, Chief of Joint Operations, Headquarters Joint Operations Command, ADDP 3.8, Peace Operations (3 June 2011) had only noted that Australia is a party to the UN Convention against Transnational Organised Crime's People Trafficking Protocol, 2-14.

context of the composition of different armed forces.⁵⁸ There is no mention of gender or UNSCR 1325.

Of all the types of operations, one might logically assume that civil-military operations, with their civilian-centric focus, would meaningfully deal with the operational relevance of gender. In fact, at the time of this writing, ADF civil-military operations doctrine is being reviewed and revised to include content relevant to gender and the protection of civilians. To understand the scope of the ADF's undertaking in this regard, it is useful to review the current version of the doctrine. Civil-military operations support the entire spectrum of Australian military operations, from the most kinetic offensive operations to the relatively tamer post-conflict peacebuilding actions. The ADF defines civil-military operations as 'any measures, activities, or planning undertaken by the military which both facilitates the conduct of military operations, and builds support, legitimacy and consent, within the civil population in furtherance of the mission'.⁵⁹ Although Australian Defence Doctrine Publication (ADDP) 3.11 is very detailed and comprehensive, it addresses women only twice, noting that they might be a vulnerable population in host nations and that, when they are detained in the course of an armed conflict, they 'are to be quartered separately from men and supervised by women'.⁶⁰ Gender is mentioned once, in that humanitarian assistance is to be rendered impartially irrespective of gender,⁶¹ and climate change not at all.

In the conflicts which are likely to arise as stressed populations scramble and compete for limited natural resources, the lines between humanitarian crisis and armed conflict will further continue to blur, and neither the international development community nor the military are likely to find themselves in nice, neat operational boxes. The ADF will need to find a way to integrate gender and climate change in its operations, at least to a certain degree, because ignoring these aspects of operations in civilian-centric environments will not simply make them stop affecting the stability of these environments. It is fortunate to have an institution as capable as the Australian Civil-Military Centre (ACMC) to assist in this effort, and it may be useful to the ADF to consider the semi-official work done at the doctrinal level by the Civil Military Cooperation Centre of Excellence (CCOE) in the Netherlands.

CCOE is a NATO-accredited centre of excellence located in the Netherlands. It has a multinational staff from seven different NATO nations, and the nationality

58 Chief of Joint Operations, Headquarters Joint Operations Command, *ADDP 00.3, Multinational Operations* (3 June 2011) 1-5, 3-18.

59 Chief of Joint Operations, Headquarters Joint Operations Command, *ADDP 3.11, Civil-Military Operations* (1 April 2009) 1-2.

60 *Ibid* 1-11, 2B-2.

61 *Ibid* 1-11.

of its commander rotates between Germany and the Netherlands.⁶² Although its general handbook on civil-military operations (CMO) does not mention climate change specifically, it does highlight the importance of understanding the physical environment and ecosystems in the area of operations.⁶³ It also contains a detailed section on the importance of gender awareness in the conduct of CMO.⁶⁴ Importantly, the general handbook is supplemented by a gender guide that addresses the practicalities of working with gender issues in operations, and provides planning guidance and case studies to help better understand how to incorporate gender considerations into operations.⁶⁵ Most importantly for the purposes of this chapter, these two publications are complemented by a third, dealing with the operational significance of the physical environment and its importance to stability operations. The environmental handbook not only deals with the process of climate change and how units can avoid degrading local environments through their activities, but it also explicitly links gender to climate change.⁶⁶

Given the ADF's extensive peacekeeping and humanitarian experience, the CCOE's work could usefully inform the ADF's implementation of the Australian *NAP* in these sorts of missions, so as to more closely align doctrinal understandings of these operational environments with the actual processes at play on the ground. For the purposes of this chapter, however, it is important not just to review this operational doctrine, but instead to push on and deal with the supporting doctrine that might need to be significantly transformed in order to realise Professor Gardam's objectives in achieving greater protection of women and girls in armed conflict.

ADF Supporting Doctrine

For the purposes of this chapter, the two most important supporting ADF doctrinal publications are perhaps those dealing with LOAC and targeting. In general, although ADF doctrine on LOAC does meaningfully mention women and the 'special' protections they receive under LOAC, this occurs predominately in the context of

62 Civil-Military Cooperation Centre of Excellence, 'About CCOE' <<http://www.cimic-coe.org/home/about.php>>.

63 Civil Military Cooperation Centre of Excellence, *CIMIC Field Handbook* (3rd ed, 2012) III-5-3-III-55-4 <<http://www.cimic-coe.org/download/cfh/CIMIC-Handbook.pdf>>.

64 Ibid III-6-1-6-6.

65 Captain Stephanie Groothedde, *CIMIC Centre of Excellence, Gender Makes Sense: A Way to Improve Your Mission* (2013) 2, 15, 17-23, 24-7 (2013) <http://www.cimiccoe.org/download/gender_brochure_web.pdf>.

66 CMDR N Gallagher & MAJ P Wit, *Society Stabilization by Winning the Environment: Ecosystems Assessment Makes Sense ... Full Situational Awareness in CIMIC* (2012) 27, 35, 37, 52, 53-7, 71-5 <http://www.cimic-coe.org/download/Ecosystems_Assessment.pdf>.

safeguarding women from 'rape, forced prostitution and any other form of indecent assault'.⁶⁷ These protections are exceedingly important in terms of implementing UNSCR 1325, and they reflect the Australian *NAP*'s focus in the thematic area of protection on the protection of women and girls from gender-based violence.⁶⁸ Unfortunately, they also reflect the Geneva Conventions' premise of female modesty and status based on relationships with others, or as ADDP 06.4 phrases it, attacks on their honour.⁶⁹

ADDP 06.4 provides an extensive discussion of the principle of proportionality.⁷⁰ Although the two are sometimes conflated by certain writers, the principle of proportionality under LOAC is quite different than that which would be applicable in a self-defence context under human rights law⁷¹ or in a *jus ad bello* situation.⁷² Under LOAC, a commander may use the force necessary to accomplish the mission so long as the direct, anticipated military advantage is not outweighed by excessive incidental injury to civilians or damage to civilian property.⁷³ Because Australia understands that those 'responsible for planning, deciding upon, or executing attacks, necessarily have to reach their decisions on the basis of their assessment of the information from all sources, which is available to them at the relevant time',⁷⁴ the requirement that any injury to civilians or damage to their property not be excessive grants a significant degree of latitude to the commander in making the decision to use a particular type or amount of force. Further, it is also consistent with the standard of reasonable certainty applied by a commander in deciding whether a targeted individual is a combatant or a protected civilian not taking a direct part in hostilities.⁷⁵

67 *ADD 06.4*, above n 48, 9-7, 9-14. *ADDP 06.4* also notes the importance of providing subsistence articles to civilian women and children in particular, and notes that women are to receive medical treatment with all consideration due to their sex, although medical treatment priority is based on need. *Ibid* 6-15 — 6-16, 9-24.

68 *NAP*, above n 4, 14.

69 *ADDP 06.4*, above n 48, 12-8.

70 *Ibid* 2-1, 2-2, 2-4, 2-6, 4-1, 4-14, 5-1, 5-4, 5-7, 5-11, 7-1, 8-10, 8-11, 9-11.

71 See, for example, James Pattison, *Humanitarian Intervention and the Responsibility to Protect: Who Should Intervene?* (Oxford University Press, 2010) 108-9.

72 Michael N Schmitt (ed), *Tallinn Manual on The International Law Applicable to Cyber Warfare* (Cambridge University Press, 2013) R.14, ¶1, 61-62.

73 *Ibid* R.50, ¶3, 131-2.

74 Chief of Joint Operations, Headquarters Joint Operations Command, *ADDP 3.14, Targeting* (2 February 2009) 3A-1 (Australia's Declarations of Understanding to the Additional Protocols) ('*ADDP 3.14*').

75 See, for example, DoD General Counsel, *Joint Targeting Cycle and Collateral Damage Estimation Methodology (CDM)* (10 November 2009) 26 <http://www.aclu.org/files/assets/Manes_Declaration_Exhibits.100810.pdf> (Briefing on US targeting methodology).

Consistent with current ADF doctrine on LOAC, it does not appear that Australian targeting doctrine at the time of this writing distinguishes between civilians on the basis of sex or gender. For example, collateral damage is described in terms of civilians and civilian property, and the principle of proportionality is likewise explained in the same fashion.⁷⁶ Similarly, because targeting doctrine does not require the analysis of sex- or gender-disaggregated data, or the operationally oriented gender analysis that could flow from it, it is not likely that this information is collected as part of standard ADF intelligence gathering operations. Importantly, though, as noted earlier, the ADF has undertaken a thorough and wide-ranging review of its doctrine to determine where it might best incorporate gender perspectives. To better appreciate whether these doctrinal revisions might address some of the challenges identified above, it is now most useful to consider the Australian *NAP* itself, the ADF's implementation of the Australian *NAP* in general, and the implementation measures most relevant to operational aspects in particular.

THE PROGRESS OF THE ADF'S IMPLEMENTATION OF THE AUSTRALIAN
NATIONAL ACTION PLAN (*NAP*)

The Australian *NAP*

Under the *NAP*, the Australian government intends to improve outcomes for women and girls in conflict-affected areas in five specific thematic areas: conflict prevention, increased participation of women in political processes related to conflict, greater protection during all phases of armed conflict, heightened consideration in the implementation of relief and recovery efforts afterwards, and the promotion of normative measures. The *NAP* then sets out strategies to improve outcomes, and lists numerous actions that benchmark how these strategies will be implemented. Of the strategies set out in the *NAP* in which the ADF has a role, three in particular would appear to be relevant to the ADF implementing UNSCR 1325 in an operational sense: integrating 'a gender perspective into Australia's policies on peace and security', promoting implementation internationally, and taking a co-ordinated and holistic approach domestically and internationally to women, peace and security.⁷⁷ As to the use of a gender perspective, the ADF is required to 'develop guidelines for the protection of civilians, including women and girls'.⁷⁸ Importantly, any review of the ADF's incorporation of a gender perspective in its activities and operations must recognise that it is occurring alongside very significant government actions to ensure

⁷⁶ *ADDP* 3.14, above n 74, 1-11, 3-3.

⁷⁷ *Ibid* 19.

⁷⁸ *Ibid*.

equal treatment of women ADF service members and to improve gender diversity in the ADF from a capability perspective.⁷⁹

In terms of promoting international implementation in conflict-affected areas, the ADF will promote 'opportunities for women's leadership and participation in decision-making' at the country level, consider the use of specific capabilities such as 'female engagement teams and the use of gender advisors', and 'promote women's involvement in the development of institutions, including national judiciary, security and governance structures'.⁸⁰ The *NAP* sets out a number of activity benchmarks to gauge the progress of the ADF in accomplishing its tasks, and the ADF has established a Defence Implementation Plan (DIP) to further develop the specific actions that must be taken to meet the *NAP*'s requirements. The DIP is described as a flexible matrix that provides for the inclusion of new tasks as they arise in the course of the ADF's implementation of its *NAP* tasks, and it is reviewed on a quarterly basis by an implementation working group.⁸¹

Progress on the Defence Implementation Plan: Meeting the Benchmarks

In its executive management of gender-perspective incorporation in the ADF, ADF leadership appears to be undertaking an effort that is nothing short of profound institutional change. For example, a Gender Equality Advisory Board (GEAB) has been established. The Australian government's recently published *Progress Report* on the implementation of the *NAP* describes the GEAB as a direction-setting advisory body that drives and shapes the direction of the 'Secretary of Defence's and Chief of Defence Force's gender equality priorities within the broader Defence cultural reform agenda'.⁸² The GEAB is jointly chaired by the Secretary of Defence and the

79 In describing the impact of the continuing government review of the ADF and its treatment of women service members, set out in Human Rights Commission, *Report on the Review into the Treatment of Women at the Australian Defence Force Academy, Phase 1 of the Review into the Treatment of Women in the Australian Defence Force* (2011) and Human Rights Commission, *Review into the Treatment of Women in the Australian Defence Force, Phase 2 Report* (2012). The *Progress Report* notes that these reviews specifically describe 'how the National Action Plan intersects with the work and recommendations of the Review, which is designed to enhance military capability and contributions to peace and security efforts through increased participation of women in the ADF, on deployments, and in senior decision-making roles', *Progress Report*, above n 5.

80 Ibid 23.

81 Department of Defence, *Defence Implementation Plan* <<http://www.defence.gov.au/vcdf/initiatives/NAP-DefenceImplementationPlan.htm>>. Unfortunately, the DIP is not available to the public at this point.

82 *Progress Report*, above n 5, 72.

Chief of Defence Forces, indicating institutional championing of this effort.⁸³ GEAB members include 'Defence officials, ADF Women's advisors, senior private sector and civil society representatives and a Special Advisor (Sex Discrimination Commissioner, Australian Human Rights Commission)'.⁸⁴ The GEAB meets quarterly, and, since December 2013, it has included women, peace and security and National Action Plan implementation as a standing agenda item.⁸⁵ The activities of the GEAB are complemented by the Defence National Action Plan Implementation Working Group (also known more simply as the Implementation Working Group), consisting of representatives from the different Services and other groups within Defence, which is tasked with facilitating progress on the *NAP*.⁸⁶

Under this umbrella of executive-level change management, certain international implementation benchmarks are specifically intended to protect women through concrete actions to prevent, investigate and support prosecution of instances of SGBV.⁸⁷ Of these important actions, the prevention efforts, which include multilateral discussions on the protection of civilians and particularly the need to combat gender-based violence,⁸⁸ are likely to be the easiest to accomplish and continue. Formalising complaint mechanisms to foster the safe reporting of allegations of gender-based violence⁸⁹ is likely to be more complex, depending on the status of ADF units in the host nation, the multilateral nature of the military organisation with which ADF units might be deployed, and the nationalities of the actors involved. These same factors could complicate ADF support for prosecution efforts as well.

Regarding the co-ordinated and holistic approach to be taken by the ADF, one benchmark activity that shows great promise for implementing this strategy is the fostering of continuing 'civil-military cooperation and information sharing in operations'.⁹⁰ Given the capability of the Australian Civil Military Centre (ACMC) and its longstanding relationship with the ADF regarding the civil-military aspects of responding to natural disasters,⁹¹ this broadened perspective appears quite suitable

83 Email from Captain Jennifer Wittwer, Director, National Action Plan for Women, Peace and Security, to Jody M Prescott (20 January 2015) ('Wittwer email').

84 *Progress Report*, above n 5.

85 *Ibid* 72-3.

86 *Ibid* 73.

87 *NAP*, above n 4, 24.

88 *Ibid*.

89 *Ibid*.

90 *Ibid* 25.

91 Australian Civil-Military Centre, 'Disaster Management and Humanitarian' <<http://acmc.gov.au/our-work-and-focus/disaster-management-and-humanitarian/>>.

for incorporation into the ADF's *NAP* implementation efforts. In this context, consideration of an example of a specialised US civil-military interface unit might be useful to increase the effectiveness of ADF missions in operational environments afflicted by armed conflict and climate change — the Agriculture Development Team (ADT). Since 2007, the US military has deployed ADTs to Afghanistan to assist Afghans in revitalising their agricultural practice and commerce.⁹² These teams are composed of National Guard (state reserve) personnel experienced in agriculture, animal husbandry and associated scientific fields, and the latest deployments have focused on promoting techniques and practices that will be sustainable within the Afghan economy after the withdrawal of ISAF forces.⁹³ Importantly, they have also taken a gendered approach in using Female Engagement Teams (FETs) — that is, detachments of soldiers composed solely of women soldiers, to connect with Afghan women and girls and help train them in sustainable practices that help them improve their local environments and earn hard cash at the same time.⁹⁴ Such an approach is a useful example of moving beyond engagement with host-nation women as potential victims, and instead working with them as agents of positive and enduring change. The potential significance of FETs as drivers of institutional change rather than just additional capabilities becomes clearer when the ADF's implementation efforts regarding doctrine are explored.

The *NAP* recognises the importance of embedding gender-perspective considerations in doctrine in order to accomplish their incorporation across the spectrum of ADF activities and operations. Accordingly, the *NAP* identifies as an implementation metric 'the number, title and description of relevant policy and guidance documents that contain reference to the Women, Peace and Security Agenda or Resolutions 1325, 1820, 1888, 1889 and 1960'.⁹⁵ The *Progress Report* notes that these references are being included 'in key strategic guidance documents', including the 2014 version of the 'Defence Corporate Plan, the 2014 Defence Annual Plan, the Defence International Engagement Strategy and the Defence Regional Engagement Strategy'.⁹⁶ Furthermore, '[o]perational guidance on Women, Peace and Security

92 Rachel Knight, 'Missouri National Guard served as starting point for Afghanistan agribusiness teams, *National Guard* homepage <<http://www.nationalguard.mil/News/ArticleView/tabid/5563/Article/576019/missouri-national-guard-served-as-starting-point-for-afghanistan-agribusiness-t.aspx>>.

93 Telephone interview of Lieutenant Colonel Jeffrey Farrell, deputy commander, Georgia (GA) ADT II, by Jody M Prescott (16 August 2013).

94 Ibid; telephone interview of Colonel Eric Ahlness, commander, Minnesota (MN) ADT III, by Jody M Prescott (2 August 2013).

95 *NAP*, above n 21, 28.

96 *Progress Report*, above n 5, 15.

will be included in the Chief of the Defence Force Planning Directives which inform strategic direction and planning for operations'.⁹⁷

These actions by themselves would be significant, but importantly the ADF is undertaking an even wider doctrinal assessment than that described in the *Progress Report*. In tandem with the comprehensive inclusion of gender considerations in the Joint Doctrine Development Guide,⁹⁸ this should lay the groundwork for truly embedding UNSCR 1325-related concepts in doctrine. Complementing the coverage of gender-perspective issues in doctrine, in March 2014 the Secretary of Defence and Chief of Defence Forces directed that all current and future operations planning include gender considerations, and a Women, Peace and Security advisor has been appointed to the Commander Joint Task Force 633 for Middle East operation.⁹⁹ Over time, these changes should have a very positive effect on the ADF as an operational institution — by demanding the creation of requirements to consider gender perspectives in operations, the ADF will create the demand among planners and operators for gender- and sex-disaggregated information and analysis to support their mission activities.¹⁰⁰ What, then, is the best way to collect the basic data so that they can be rendered into actionable intelligence for commanders? I suggest that FETs, properly resourced and integrated into the intelligence development process, might be the most efficient and cost-effective way to accomplish this task.

FETs, first used informally in Iraq by US Marine Corps infantry units,¹⁰¹ and then by Australian, British and US Army and Marine Corps forces¹⁰² in Afghanistan, are composed ordinarily of women officers and soldiers. The FETs' purpose has primarily been to interact with Afghan women, who, given their status in that generally conservative Muslim country, are not permitted to meet with men outside their families.¹⁰³ FETs have served important roles in searching Afghan women at

97 Ibid.

98 Wittwer email, above n 83.

99 Ibid.

100 Jody M Prescott, 'NATO Gender Mainstreaming: A New Approach to War amongst the People?' (October-November 2013) 158 *Royal United Services Institute Journal* 56, 59.

101 Dharmapuri, above n 24, 60.

102 Remarks by Air Marshal Mark Binskin, Annual Civil Society Dialogue on Women, Peace and Security 2013 <<http://www.defence.gov.au/vcdf/Demo2/media/Annual%20Civil%20Society%20Dialogue%20on%20Women,%20Peace%20and%20Security%202013.pdf>> ('Binskin Remarks'); see Ministry of Defence, 'Female team prepares to engage with Afghanistan's women' (6 April 2011) <<http://www.gov.uk/government/news/female-team-prepares-to-engage-with-afghanistans-women>> Twenty-two women troops receive FET training from the Military Stabilisation Support Group and the stabilisation unit prior to Afghan deployment.

103 Elisabeth Bumiller, 'In Camouflage or Veil, a Fragile Bond', *NYTimes.com*, 29 May 2010 <<http://www.nytimes.com/2010/05/30/world/asia/30marines.html>>. Certain nations have experimented with

checkpoints and during kinetic operations, and in gathering information from both Afghan women and men about the operational environment.¹⁰⁴

The Australian experience with FETs in Afghanistan has been recognised as a positive one,¹⁰⁵ and the *NAP* recognises FETs as capabilities that are useful in fulfilling implementation tasks, as they 'meet with local women and discuss their security needs'.¹⁰⁶ The *Progress Report* favourably notes the role played by Australian FETs in the engagement with and protection of Afghan women in Uruzgan Province.¹⁰⁷ The perspective on the role of the FETs appears to be primarily a peacekeeping perspective, however, noting that Australian FETs 'also support education programmes, economic development, and the provision of health services, medicine and school supplies to the local population'.¹⁰⁸ This emphasis could marginalise any efforts to find an enduring role in the kinetic aspects of combat operations for the FETs.¹⁰⁹

The mere discussion of women's physical security needs, without an information collection and analysis process to buttress it, and without a better understanding of women's food, water and energy security needs, is likely to be of modest help in a campaign. This suggests that civil-military operations doctrine and practice should move beyond just reference of the UNSCR 1325 agenda and consider devoting greater training resources to institutionalising the FETs and making them more capable.¹¹⁰ I suggest this enhanced capability should include greater utilisation of the FETs as collectors of sex- and gender-disaggregated data in order to provide analysis that would support the full spectrum of ADF operations. This level of capability would allow the ADF to operationalise gender in the context of the use of armed

mixed sex FETS. Robert Egnell, 'Women in Battle: Gender Perspectives and Fighting' (2013) 43 *Parameters* 33, 40.

104 *Ibid.*

105 Binskin Remarks, above n 102.

106 *Progress Report*, above n 5, 34, 42.

107 *Ibid.* 48.

108 *Ibid.*

109 In this vein, the *Progress Report* states: 'Australia promotes Women, Peace and Security internationally by specifically supporting initiatives related to the implementation of UNSCR 1325 and the Women, Peace and Security agenda more broadly. The Government's efforts include supporting women's participation in formal peace negotiations, working to prevent and respond to sexual violence in conflict, and supporting women's roles in conflict prevention and peace-building', *ibid.* 74. Although kinetic applications are not excluded *per se*, they are not mentioned.

110 Lieutenant Colonel Janet R Holliday, 'Female Engagement Teams — The Need to Standardize Training and Employment' (March/April 2012) 92 *Military Review* 90, 94 (describing the steps necessary to institutionalise FET training and operational use of them); Master Sergeant Julia L Watson, 'Female Engagement Teams: The Case for More Female Civil Affairs Marines' *The Marine Corps Gazette* (July 2011) 20, 23 <<http://www.mca-marines.org/gazette/article/female-engagement-teams-case-more-female-civil-affairs-marines>>.

force, because it would provide commanders with useful information that they could reasonably include in their analyses of engagement situations as they decide whether to use armed force and how much.

CONCLUSION

Over the course of the last decade, important advances have taken place to implement UNSCR 1325 on Women, Peace and Security across the world, including the recognition of sexual violence in armed conflict as a crime within the jurisdiction of international criminal tribunals,¹¹¹ and the promulgation of national action plans such as Australia's. Hopefully, given the high degree of military collaboration between the US and Australia, the speed and thoroughness of the ADF's efforts could inform the US's rather laggard implementation of the defence aspects of the US NAP.¹¹² Although work in some areas of doctrine applicable to operations in which the ADF and US forces might work together has begun, such as stability operations, US military doctrine currently is almost silent on the operational relevance of gender. For example, the most recent iteration of US counterinsurgency doctrine, the focus of which is the civilian population, mentions women just once and gender just once.¹¹³ Given the security relationship between Australia and the US,¹¹⁴ this absence of discussion regarding the relevance of gender in operations is concerning.

Much of this work, however, appears to have happened largely in a human rights context, particularly in a context of preventing, investigating and prosecuting SGBV. Consequently, the fostering of an understanding of the operational relevance of gender in a LOAC context appears to have lagged behind. In order for scarce resources to be devoted to the task of addressing the kinetic aspects of gender perspectives in ADF operations, rather than just having gender perspectives as a general consideration in all operations, intelligence-gathering priorities, methodologies and end-uses would likely need to change in very significant ways. First, intelligence doctrine would need to be written which established the requirement to gather and analyse this

111 See Kelly Askin, 'Bemba Trial: The International Criminal Court Takes on Gender Crimes', *The Guardian* (online), 24 November 2010 <<http://www.theguardian.com/law/2010/nov/24/international-criminal-court-international-criminal-justice>> (command responsibility trial of civilian leader for rapes constituting war crimes and crimes against humanity).

112 Jody M Prescott et al, 'Gender, Law and Policy: Japan's National Action Plan on Women, Peace and Security' (2016) 17 *Asian-Pacific Law and Policy Journal* 1, 5-7.

113 Chairman, Joint Chiefs of Staff, *JP 3-24, Counterinsurgency*, (22 November 2013) III-8, VIII-13 <http://www.dtic.mil/doctrine/new_pubs/jp3_24.pdf>.

114 See, for example, 'Outcomes from Exercise TALISMAN SABER 13', *Australian Civil-Military Centre Newsletter* (November 2013) 8 <<http://acmc.gov.au/wp-content/uploads/2013/12/ACMC-November-Newsletter.pdf>> (bilateral military exercise involving ADF and US personnel).

type of information. Second, training would need to be developed on the basis of the improved doctrine to allow soldiers to learn how to work with and understand this type of information. Third, changes would likely be required in the means and methods of gathering and analysing this information, in terms of hardware, software and, most importantly, personnel. Fourth, changes would need to occur in supporting ADF doctrine which is crucial to the informed application of armed force, such as targeting and LOAC doctrine. Only then could reliable information, both data and analysis, be made reasonably available to the commanders who would be expected to consider it in the course of their proportionality analyses.

War, despite its horrors, is likely with us for the foreseeable future, and therefore LOAC will continue to be a relevant and distinct body of law for some time to come. From a feminist perspective, we cannot ignore that women commanders will be making assessments under LOAC in which they might very well determine that the loss of civilian women's and girls' lives is not excessive in relation to the direct and concrete military advantage to be gained through the use of armed force. This is the essence and the reality of proportionality — and these decisions cannot be compliant with UNSCR 1325's requirements unless they are informed as to the significance of gender in the engagement. Appreciating Professor Gardam's work when addressing gender from a LOAC perspective is crucial to seeking progress in this area, for it sets a baseline for the critical reassessment of the normative principles governing armed conflict, the gender impartiality of which have perhaps largely been taken for granted. Further, and perhaps more importantly, her work suggests practical paths forward in seeking a fuller understanding of the operational reality of women in an international security environment marked by armed conflict and climate change.