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Gender, Law and Policy: Japan's National Action Plan on Women, Peace and Security

*Jody M. Prescott**, *Eiko Iwata***, & *Becca H. Pincus****

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I. INTRODUCTION

Japan currently faces a number of challenges to its economic and national security posture, not the least of which is a long-term declining birth rate that has reduced the number of Japanese of working age available in the national labor pool.¹ One of the leading causes of this challenge is a lack of policies enabling Japanese women to raise children

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¹ *Fighting Population Decline, Japan Aims to Stay at 100 Million*, NIPPON.COM (Aug. 26, 2014), <http://www.nippon.com/en/features/h00057/>.

without sacrificing their professional careers.² To address this issue in part, and consistent with Japan's domestic³ and international⁴ legal undertakings regarding the equality of women, Prime Minister Abe has instituted a program, "Toward A Society in which Women Shine," to increase the participation of Japanese women in Japan's economy and government.⁵ Japanese women face significant challenges in the workforce; for example, although they comprised 77% of part-time and temporary workforce in 2012, in 2011 only 1% were senior, executive-committee-level managers.⁶ This program also includes efforts by the Japan Self-Defense Forces (JSDF) to recruit more Japanese women into their ranks, to bolster the responsibilities of their occupational positions in the military,⁷ and to provide conditions of service which are more accommodating to family needs.⁸

² *Id.*

³ NIHONKOKU KENPŌ [KENPŌ] [Constitution], art. 14 (Japan) [hereinafter KENPŌ]; DANJOKYŌDŌSANKAKUSHAKAIKIHONHŌ [BASIC ACT FOR GENDER EQUAL SOCIETY], Act No. 78 of 1999, translated by the Gender Equality Bureau Cabinet Office, http://www.gender.go.jp/english_contents/about_danjo/lbp/index.html.

⁴ Convention for the Elimination of All Forms of Discrimination Against Women, Jul. 17 1980, U.N.T.S. 1249.

⁵ Masami Ito, *Can women really 'shine' under Abe?*, JAPAN TIMES (Nov. 22, 2014), <http://www.japantimes.co.jp/life/2014/11/22/lifestyle/can-women-really-shine-abe/>; *Can "Womenomics" Save the Japanese Economy?*, NIPPON.COM (Oct. 31, 2014), <http://www.nippon.com/en/features/h00066/>; MINISTRY OF FOREIGN AFFAIRS, JAPAN'S INITIATIVE REGARDING WOMEN'S EMPOWERMENT AND GENDER EQUALITY (TOWARD A SOCIETY IN WHICH ALL WOMEN SHINE) (2013), http://www.mofa.go.jp/tp/pc/page23e_000181.html; *But see* Hisako Motoyama, *Gender Policy under Far-Right Abe Administration: A Reality Check on "A Society in Which Women Shine"*, VOICES FROM JAPAN, 4-6 (Mar. 2014), (Japanese feminist writers argue this policy will in fact work a deterioration in women's rights).

⁶ *Japanese women and work: Holding back half the nation*, THE ECONOMIST (Mar. 29, 2014), <http://www.economist.com/news/briefing/21599763-womens-lowly-status-japanese-workplace-has-barely-improved-decades-and-country>. Beyond just increased employment opportunities for women, the Abe Administration is working towards changes in governmental and corporate culture that would redress work-life imbalances and therefore make such increased employment opportunities meaningful. PRIME MINISTER OF JAPAN AND HIS CABINET, THE PRIME MINISTER IN ACTION, HEADQUARTERS FOR CREATING A SOCIETY IN WHICH ALL WOMEN SHINE (2015), http://japan.kantci.go.jp/97_abe/actions/201509/25article1.html.

⁷ Kirk Spitzer, *Japanese Women Take Command, Finally*, TIME, Mar. 22, 2013, <http://nation.time.com/2013/03/22/japanese-women-take-command-finally/>. *See also* notes 176-179, *infra* (women constitute only 5.6% of military personnel, and tend to be clumped in combat service support positions).

⁸ *See* MINISTRY OF DEFENSE, DEFENSE OF JAPAN 2014, 351-53 (2014), http://www.mod.go.jp/e/publ/vw_paper/2014.html [hereinafter DEFENSE OF JAPAN].

Meanwhile, Japan has been increasing its collaboration in military training and other military activities with its Western partners, especially the United States,⁹ Australia,¹⁰ and NATO.¹¹ In what some see as an evolution in established constitutional interpretations,¹² but others see as a sharp break,¹³ the Abe Administration is also seeking to expand the JSDF's role beyond their traditional operational activities.¹⁴ An example of this is the recent establishment of a Japanese base in Djibouti to support anti-piracy operations in the Western Indian Ocean.¹⁵ This policy has

⁹ E.g. Martin Fackler, *Japan and South Korea Vow to Share Intelligence About North Korea via the U.S.*, N.Y. TIMES (Dec. 29, 2014), <http://www.nytimes.com/2014/12/30/world/asia/japan-south-korea-north-intelligence.html>; Karen Parrish, *U.S., Japan Agree to Expand Security, Defense Cooperation*, AMERICAN FORCES PRESS SERVICE (Oct. 3, 2013), <http://archive.defense.gov/news/newsarticle.aspx?id=120902>; DEFENSE OF JAPAN, *supra* note 8, at 224-238.

¹⁰ Jamie Smyth, *US, Japan and Australia to deepen alliance*, FINANCIAL TIMES (Nov. 16, 2014), <http://www.ft.com/cms/s/0/3a34e028-6cb3-11e4-b125-00144feabdc0.html>; *Japan, the United States and Australia Conduct Joint Training in Australia – Southern Jackaroo 2014*, JAPAN DEFENSE FOCUS, No. 53 (June 2014), JAPAN MINISTRY OF DEFENSE, <http://www.mod.go.jp/e/jdl/no53/activities.html>.

¹¹ Adrian Croft, *Japan, worried about China, strengthens ties with NATO*, REUTERS (May 6, 2014, 3:07 PM), <http://www.reuters.com/article/2014/05/06/us-nato-japan-idUSBREA450RT20140506>.

¹² See Sheila Smith, *Reinterpreting Japan's Constitution, Asia Unbound*, COUNCIL ON FOREIGN RELATIONS (July 2, 2014), <http://blogs.cfr.org/asia/2014/07/02/reinterpreting-japans-constitution/> (political discussions within the Japanese government on the scope and nature of reinterpretation); see also KENPŌ, *supra* note 3, at art. 2, paras. 1, 2 (use of armed force by Japan).

¹³ See Craig Martin, *'Reinterpreting' Article 9 endangers Japan's rule of law*, JAPAN TIMES (Jun. 27, 2014), <http://www.japantimes.co.jp/opinion/2014/06/27/commentary/japan-commentary/reinterpreting-article-9-endangers-japans-rule-of-law/#.VcSmi3GivGPE>.

¹⁴ See JAPAN MINISTRY OF DEFENSE, FUNDAMENTAL CONCEPTS OF NATIONAL DEFENSE (last visited Oct. 3, 2015), http://www.mod.go.jp/e/d_act/d_policy/dp01.html [hereinafter FUNDAMENTAL CONCEPTS]; see *Legislation eyed to let SDF help non-U.S. forces in global conflicts*, JAPAN TIMES (Jan. 11, 2015), <http://www.japantimes.co.jp/news/2015/01/10/national/politics-diplomacy/japan-eyes-new-law-to-aid-non-u-s-forces-in-international-conflicts/>; Sean Mirski, *Japan's Constitutional Reinterpretation: A Tug of War between Strategy and Memory*, THE NATIONAL INTEREST (Nov. 21, 2014), <http://nationalinterest.org/feature/japan%E2%80%99s-constitutional-reinterpretation-tug-war-between-11713>; see Elaine Lies & Tetsushi Kajimoto, *Japanese PM unveils new government, defense pick may rile China*, REUTERS (Dec. 24, 2014, 9:41 AM), <http://www.reuters.com/article/us-japan-politics-idUSKBN0K205520141224> (“Nakatani’s appointment could draw fire from China, especially given Abe’s stated goal of a stronger security profile for Japan that includes passing a law in 2015 to reinterpret its pacifist constitution.”).

¹⁵ *Japan to post intelligence officer at SDF base in Djibouti*, JAPAN TIMES (July

recently led the Japanese Diet to approve more robust military assistance to partner nations as a matter of self-defense.¹⁶ These efforts by the Abe Administration are in part a response to the significant challenge posed by China's increasingly assertive positions regarding territorial claims to the islands and to the waters between Japan and China.¹⁷

These two objectives—increasing opportunities for women and expanding the role of the JSDF—intersect in Japan's newly issued National Action Plan (NAP)¹⁸ to implement U.N. Security Council Resolution 1325 on Women, Peace and Security (WPS)¹⁹ and related subsequent resolutions geared towards increased protections for women and girls in armed conflict and greater inclusion of women in conflict prevention and resolution.²⁰ Japan's NAP, officially announced on

26, 2014), <http://www.japantimes.co.jp/news/2014/07/26/national/japan-to-post-intelligence-officer-at-sdf-base-in-djibouti/>.

¹⁶ Michael Auslin, *Japan's Responsibility to Uphold Global Order*, WALL ST. J. (Sept. 29, 2015, 12:43 PM), <http://www.wsj.com/articles/japans-responsibility-to-uphold-global-order-1443545015>.

¹⁷ Kirk Spitzer, *For Better Or Worse, Japan To Ease Reins On Its Military*, TIME (Jan. 17, 2013), <http://nation.time.com/2013/01/17/for-better-or-worse-japan-to-ease-reins-on-its-military/>; *Japan's About-Face*, PUBLIC BROADCASTING SYSTEM (Jul. 11, 2011), <http://www.pbs.org/wnct/wideangle/episodes/japans-about-face/introduction/746/>.

¹⁸ *Women's Empowerment and Gender Equality*, MINISTRY OF FOREIGN AFFAIRS OF JAPAN: WOMEN'S ISSUES (Sep. 29, 2015), http://www.mofa.go.jp/tp/pc/page23e_000181.html [hereinafter NAP]; There is some concern among different government agencies and civil society organizations that although the word "gender" is used plainly and explicitly in the English version of the NAP, the Japanese version tends to paraphrase "gender" rather than use the word specifically. There is disagreement as to the rationale for this approach to translation. Some suggest it is an appropriate way to explain a Westernized concept to Japanese society; others suggest that it shows that the Abe Administration has not fully embraced the concept of gender as it is used in UN S.C. Res. 1325, Women, Peace and Security (Oct. 31, 2000) [hereinafter UNSCR 1325].

¹⁹ UNSCR 1325, *supra* note 18.

²⁰ S.C. Res. 1820, (June 19, 2008) (addressing the need to more fully address sexual and gender based violence (SGBV) in armed conflict against civilians and calling for further efforts to protect women and girls); S.C. Res. 1888, (Sept. 30, 2009) (mandating protection of women and children during peacekeeping operations and greater systemic monitoring and reporting on SGBV); S.C. Res. 1889, (Oct. 5, 2009) (calling for improved reporting mechanisms and greater participation by women in all stages of peace processes, and developing global indicators to track UNSCR 1325's implementation); S.C. Res. 1960, (Dec. 16, 2010) (defining institutional tools for combating impunity, and setting out steps to prevent SGBV); S.C. Res. 2106, (June 24, 2013) (emphasizing the need to further combat sexual violence against women in armed conflict); and S.C. Res. 2122, (Oct. 18, 2013) (calling for continued work to more fully include women in conflict resolution and peacebuilding efforts, and increased reporting on instances of SGBV in armed conflict).

September 29, 2015, seeks to increase participation and opportunities for women in the JSDF, and formalize aspects of gender-considerations in the JSDF's mission set. Importantly, this mission set includes operations with non-JSDF units and personnel in peacekeeping and disaster relief operations.²¹

Recognizing the gender-differentiated impact of armed conflict upon women and girls, the United States²² and Australia²³ have NAPs in effect. Each of these NAPs assigns specific responsibilities to the respective defense departments of the two countries to further the NAPs' implementation. Even though NATO is a collective self-defense organization²⁴ rather than a nation-state, it too has developed and begun implementing the equivalent of a NAP.²⁵ These plans generally utilize "gender mainstreaming" – the incorporation of a gender perspective – in their governmental activities as the means to further gender equity and reduce the negative effects of armed conflict on women and girls.²⁶

This article first points to the strategic and operational importance of considering gender-differentiated dynamics of the international security environment from legal, policy and operational perspectives. It is to this end that domestic laws and policies prohibiting sex and gender

²¹ See, e.g., *Japan's contribution to United Nations peacekeeping operations (as of March 2014)*, MINISTRY OF FOREIGN AFFAIRS OF JAPAN (Mar. 2014), <http://www.mofa.go.jp/policy/un/pko/pdfs/contribution.pdf> (687 individual police and 351 police in formed police units had worked in the UN Mission in the Republic of South Sudan between July 2011 and March 2014).

²² EXECUTIVE OFFICE OF THE PRESIDENT, UNITED STATES NATIONAL ACTION PLAN ON WOMEN, PEACE, AND SECURITY (2011), https://www.whitehouse.gov/sites/default/files/email-files/US_National_Action_Plan_on_Women_Peace_and_Security.pdf [hereinafter U.S. NAP].

²³ DEPARTMENT OF SOCIAL SERVICES, AUSTRALIAN NATIONAL ACTION PLAN ON WOMEN, PEACE AND SECURITY 2012-2018 (2012), https://www.dss.gov.au/sites/default/files/documents/05_2012/aus_nap_on_women_2012_2018.pdf [hereinafter AUSTRALIAN NAP].

²⁴ NATO allies' duties of collective self-defense under Article 5 of the North Atlantic Treaty are both more robust and perhaps more easily triggered than the Abe Administration's proposed undertakings of defensive response to assist closely-connected countries. Compare North Atlantic Treaty art. 5, Apr. 4, 1949, 63 Stat. 2241, 34 U.N.T.S. 243; with FUNDAMENTAL CONCEPTS, *supra* note 14.

²⁵ NATO: CIVIL-MILITARY COOPERATION CENTRE, COMMAND DIRECTIVE (BI-SCD) 40-1, INTEGRATING UNSCR 1325 AND GENDER PERSPECTIVE INTO THE NATO COMMAND STRUCTURE (Aug. 8, 2012), <http://www.cimic-coe.org/products/conceptual-design/cimic-innovation/advanced-cultural-competence-aac/gender/> [hereinafter BI-SCD 40-1].

²⁶ DONNA WINSLOW, GENDER AND MILITARY SOCIOLOGY 20-32 (2009).

discrimination (NAPs in particular), and UNSCR 1325 contribute. Next, the three NAP implementation models that Japan might consider in implementing its NAP – U.S., Australian, and NATO – are analyzed. After assessing these NAP implementation models, the article turns to Japan and its efforts to develop its NAP, and then to the role of women in the JSDF and the impact of this role on operational gender considerations. Finally, the Japanese NAP will be described and analyzed in the context of the Western NAPs analyzed earlier. An analysis of the three Western NAP implementation models indicates that although the Australian Defence Force's (ADF's) implementation program is a model of best practices for militaries to consider in general, none of these three models is a suitable model for the JSDF at this point in time.

II. WAR AMONGST THE PEOPLE

General Sir Rupert Smith has described the modern operational environment as one that is increasingly civilian-centric, in which contending military and paramilitary forces wrestle more for influence over populations rather than seeking relative advantage over each other in force-on-force engagements oriented on key geographical terrain.²⁷ This idea of “war amongst the people” is not completely new – it had already been operationalized in the irregular/regular warfare models used successfully by Mao and Giap in 20th century conflicts.²⁸ While these models relied on rural insurgencies, however, several modern-day differences have increased the likelihood of armed conflict occurring in heavily populated areas. Among these factors are mass urbanization, the flowering of the megacity, and the ever-increasing size of the global human population.²⁹

Further, populations are increasingly connected and dependent upon the Internet, and the accessibility and leverage it offers to both governments and dissident movements means that those populations will increasingly experience conflict in an informatized way.³⁰ Particularly in the developing world, military operations will be impacted by the conditions enumerated above, further complicating efforts to achieve political, economic and social results that would foster greater stability in civilian-centric operations. Campaigns to resolve conflicts under these

²⁷ See Toni Pfanner, *Interview with General Sir Rupert Smith*, 88 INTL. RED CROSS 719, 719-20, 722-26 (2006).

²⁸ LAWRENCE FREEDMAN, *STRATEGY: A HISTORY* 183-87 (2013).

²⁹ Jody M. Prescott, *Climate Change, Gender, and Rethinking Military Operations*, 15 VT J. ENVTL. L. 766, 767-68 (2014) [hereinafter *Rethinking Military Operations*].

³⁰ *Id.*

conditions are unlikely to succeed if they fail to understand that the military effects of particular actions, whether kinetic or non-kinetic, may cause greater harm to the female half of the population than the male half.

Generally speaking, armed conflict in the last 25 years has tended to occur in those areas of the world that are less economically developed.³¹ Women in these areas often have a relatively inferior social and economic status as compared to men, and this gender discrimination and its effects make women less resilient to the impacts of armed conflict.³² These negative and disproportionate effects occur regardless of whether women are civilians, refugees or even combatants.³³

Similarly, it has long been recognized in the international development community that the negative effects of climate change experienced by women and girls are both different and greater than those ordinarily experienced by men.³⁴ As the climate continues to change, extreme weather events are likely to increase in frequency and severity, leading to deeper droughts, greater flooding, and the spread of disease.³⁵ In addition, altered patterns of precipitation may disrupt rain-fed agriculture.³⁶ Particularly in the developing world, the generally inferior social and economic status of women and girls, and their usual roles as their families' primary caregivers, means that these sorts of environmental changes will affect them more severely.³⁷

³¹ See Namsuk Kim & Pedro Conceição, *The Economic Crisis, Violent Conflict, and Human Development*, 15 INT'L J. PEACE STUDIES 29, 31-38 (2010) (for example, between 1990 and 2005 it is estimated that over 3,000,000 people died in armed conflicts occurring in developing countries).

³² JUDITH G. GARDAM & MICHELLE J. JARVIS, *WOMEN, ARMED CONFLICT AND INTERNATIONAL LAW* 8-9 (2001).

³³ Jody M. Prescott, *NATO Gender Mainstreaming and the Feminist Critique of the Law of Armed Conflict*, GEO. J. GENDER & LAW 83, 87-90 (2013) [hereinafter *Feminist Critique*].

³⁴ Fatma Denton, *Climate change vulnerability, impacts, and adaptation: Why does gender matter?*, 10 GENDER & DEVELOPMENT 10, 11-12 (2002).

³⁵ Ida Arabshahi & Chase Raines, *Defense, National Security & Climate Change: Building Resilience and Identifying Opportunities Related to Water, Energy and Extreme Events*, ASSOC. OF CLIMATE CHANGE OFFICERS, 9 (Jun. 2012), <http://www.accoonline.org/downloads/ACCO-CCIS-June2012-Report.pdf>.

³⁶ *Id.* at 8-9.

³⁷ Gotelind Alber, *Gender, Cities and Climate Change*, CITIES AND CLIMATE CHANGE GLOBAL REPORT ON HUMAN SETTLEMENTS 2011, 81-82 (2011), <http://unhabitat.org/books/cities-and-climate-change-global-report-on-human-settlements-2011/>.

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.³⁸ For example, since women are often responsible for gathering firewood and water, two resources which climate change might render in scarcer supply, the longer distances women will travel on these chores would expose them to greater violence in war zones.³⁹ The dynamic intersection of armed conflict and climate change, however, and the gender-differentiated effects of this relationship upon women remain underappreciated in military doctrine. If it is not addressed in doctrine, it is unlikely that it will be meaningfully addressed in military education or training, and therefore will not likely be taken into account during planning and operations – national or multinational.

While women's career opportunities in modern militaries have generally increased with ever-greater gender-neutral standards,⁴⁰ and as many countries have increased the opportunities for women to serve in military positions that were once exclusively reserved to men, it is now not uncommon to find women in these armed forces serving as both leaders⁴¹ and ordinary combatants.⁴² Further, there are many examples of women in the military and the police finding themselves in roles in peacekeeping missions because of the skill sets they bring to these post-conflict situations.⁴³ For instance, as of July 2015, there were 1,315 policewomen from different countries deployed on 13 different UN

³⁸ U.S. DEPARTMENT OF DEFENSE (DOD), QUADRENNIAL DEFENSE REVIEW REPORT (February 2010) iv.

³⁹ *Rethinking Military Operations*, *supra* note 29, at 775.

⁴⁰ See, e.g., KRISTY KAMARCK, Cong. Research Serve., R42075, WOMEN IN COMBAT: ISSUES FOR CONGRESS 3-15 (2015) (history of gender integration in U.S. armed forces).

⁴¹ See Dean Davis, *Female Engagement Team commander speaks about mission in Afghanistan*, DEFENSE VIDEO & IMAGERY DISTRIBUTION SYSTEM (Oct. 16, 2010), <http://www.dvidshub.net/video/97875/female-engagement-team-commander-speaks-about-mission-afghanistan> (ILT Quincy Washa discussed her team's operations in Afghanistan).

⁴² See, e.g., SGT Warren Wright, *Two members of Cultural Support Team receive Combat Action Badges*, U.S. SPECIAL OPERATIONS COMMAND (Sept. 12, 2011), <https://www.dvidshub.net/news/76916/two-members-cultural-support-team-receive-combat-action-badges#.Vg729RNViko> (SGT Shelly Amborn and SPC Sonja Prentiss awarded badges for actions during combat with insurgents in Afghanistan).

⁴³ Ryan Lenore Brown, *Would more female soldiers improve UN peacekeeping missions?* THE CHRISTIAN SCIENCE MONITOR (Sept. 21, 2015), <http://www.csmonitor.com/World/Africa/2015/0921/Would-more-female-soldiers-improve-UN-peacekeeping-missions>.

missions.⁴⁴ While women in the military and police forces of these countries might now look forward to greater leadership and career opportunities, the socio-economic situation of women combatants in less developed countries, particularly those involved in non-international armed conflicts,⁴⁵ is not positive.⁴⁶ For example, the needs and roles of women fighters in post-conflict environments have often not been addressed in demobilization, disarmament, and reintegration programs.⁴⁷

With the exception of incorporating gender perspectives into the kinetic⁴⁸ parts of kinetic operations,⁴⁹ signs of progress in this area in Western military organizations, activities, and operations are both real and widespread. Given the movement towards greater cooperation and coordination between the United States, Australia, Japan, and NATO in security matters and recent Japanese efforts to boost the role of women in the JSDF, one might suppose that both trends would be furthered through

⁴⁴ *Gender Statistics by Mission*, U.N. (Jul. 8, 2015), <http://www.un.org/en/peacekeeping/contributors/gender/2015gender/jun15.pdf>.

⁴⁵ Sahana Dharmapuri, *Just Add Women and Stir?*, 41 *PARAMETERS* 56, 62 (2011).

⁴⁶ *Id.*; Johanna Valenius, *Gender Mainstreaming in ESDP Missions*, CHAILLOT PAPER NO. 101, 23 (2007).

⁴⁷ See, e.g., *Analysis: Girl child soldiers face new battles in civilian life*, IRIN (Feb. 12, 2013), <http://www.irinnews.org/report/97463/analysis-girl-child-soldiers-face-new-battles-in-civilian-life> (reintegration programs often try to fit girl child soldiers into vocational training that emphasizes traditional gender roles, and therefore fails to accommodate the very non-traditional experiences the girls had as combatants).

⁴⁸ There is no official U.S. military doctrinal definition for “kinetic” or “non-kinetic.” In common usage, however, “kinetic” usually connotes the use of armed force such that enemy combatants might be injured or enemy property destroyed. “Non-kinetic” operations do not involve the application of lethal or destructive force, and include information, cyber, and civil affairs operations. See, e.g., Mickey Batson & Matthew Labert, *Expanding the Non-Kinetic Warfare Arsenal*, 138 *PROCEEDINGS*, no. 1, Jan. 2012, at 40, <http://www.usni.org/magazines/proceedings/2012-01/expanding-non-kinetic-warfare-arsenal> (cyber operations, psychological operations, electronic warfare, and deception operations are all examples of non-kinetic operations). Stuxnet, the program that apparently caused Iranian uranium enrichment centrifuges to damage themselves, is an example of an ordinarily non-kinetic means (cyber) having a destructive effect in the geophysical world. See Ralph Langner, *Cracking Stuxnet, a 21st-century cyber weapon*, TED TALKS (Mar. 2011), http://www.ted.com/talks/ralph_langner_cracking_stuxnet_a_21st_century_cyberweapon (Cybersecurity expert describes the methodology of the Stuxnet worm in damaging Iranian centrifuges from a weapons perspective).

⁴⁹ See *Feminist Critique*, *supra* note 33, at 93-104. For example, there are no targeting methodologies used in the delivery of air-dropped munitions that utilized sex-disaggregated data and analysis as part of the assessment of proportionality under the law of armed conflict as currently applied, even though it is widely recognized that women and girls suffer the effects of armed conflict disproportionately.

congruence between the Western NAPs and the Japanese NAP in the operational treatment of gender.⁵⁰ This article examines the three separate Western models of NAP implementation and finds important differences that could frustrate international coordination amongst these partners on the issues identified above.

III. WESTERN NAPs

A. *United States*

1. Implementation

Using a model often described as “gender mainstreaming,”⁵¹ the U.S. NAP assigns the Department of Defense (DoD) particular tasks to execute in furtherance of the NAP’s five overarching goals, both internally and in its activities with other U.S. government departments, international organizations, and international military partners. These goals are: 1. achieving national integration and institutionalization of UNSCR 1325 in U.S. government activities “through interagency coordination, policy development, enhanced professional training and education, and evaluation;” 2. increasing women’s participation and decision-making; 3. protecting women and children from abuse and sex and gender based violence (SGBV) “in conflict-affected environments;” 4. conflict prevention; and 5. access to relief and recovery.⁵² For purposes of this article, the first three goals are the most important to examine.

To implement the first goal, for example, DoD will incorporate the NAP objectives “into appropriate DoD strategic guidance and planning documents,”⁵³ and provide gender training to deploying and deployed military and civilian personnel.⁵⁴ It will also provide this training in “Professional Military Education, including Commander’s courses, and intermediate and senior service schools.”⁵⁵ DoD is also tasked with including training modules on “the specific needs of women in conflict” in

⁵⁰ See ROBERT EGNELL ET AL., GENDER, MILITARY EFFECTIVENESS, AND ORGANIZATIONAL CHANGE: THE SWEDISH MODEL 23-27 (2014) (“marrying a gender perspective with military effectiveness” – the functional considerations relevant to this linkage).

⁵¹ Although widely used in different variations, gender mainstreaming has been cogently criticized for a number of reasons by feminist writers. Hilary Charlesworth, *Not Waving, but Drowning: Gender Mainstreaming and Human Rights in the United Nations*, 18 HARV. HUM. RTS J. 1, 11-13 (2005).

⁵² U.S. NAP, *supra* note 22, at 12.

⁵³ *Id.* at 12.

⁵⁴ *Id.* at 13.

⁵⁵ *Id.* at 13.

its engagement with international military partners and supporting the “education and awareness initiatives for U.S. government civilian contractors and aid workers.”⁵⁶ In addition to a “zero tolerance” policy for involvement in human trafficking by DoD personnel, such as using the services of sex workers forced to engage in the illegal sex trade,⁵⁷ DoD is required to support the development of accountability mechanisms to hold SGBV perpetrators responsible, and assist other organizations “in developing appropriate mechanisms for sexual assault prevention, response, and accountability[.]”⁵⁸ Finally, DoD will establish standard operating procedures for the [U.S. government] to follow up on cases of [sexual abuse and exploitation] by international personnel to ensure accountability.”⁵⁹

2. Assessment

Since the U.S. NAP’s publication, DoD has announced its plans to open all military positions to personnel irrespective of sex,⁶⁰ and the services have begun to formulate standards anyone would need to meet to be qualified for combat assignments, and provide training opportunities to assess the practicalities of having women serve in these roles.⁶¹ These positive changes should work to increase women’s access to career-enhancing assignments in branches of service for which they are physically qualified. They should also assist DoD in executing its tasks to accomplish the NAP’s second goal of increasing women’s participation in peace processes and decision-making by effectively engaging women in security operations through the “participation of female U.S. military personnel to encourage and model gender integration, and reach out to female and male populations in partner nations.”⁶² Similarly, with regard to the third goal of protecting women and children from SGBV in areas affected by conflict, the creation and establishment of tracking and reporting systems to monitor instances of alleged SGBV and their perpetrators would not seem to pose any serious problems. Not only are

⁵⁶ *Id.* at 16.

⁵⁷ *Id.* at 19.

⁵⁸ *Id.* at 18.

⁵⁹ *Id.*

⁶⁰ Claudette Roulo, *Defense Department Expands Women’s Combat Role*, AMERICAN FORCES PRESS SERVICE (Jan. 24, 2013), <http://www.defense.gov/news/newsarticle.aspx?id=119098>.

⁶¹ Bill Briggs, *Women in combat: Three female Marines march I to history by completing infantry training*, NBC NEWS (Nov. 20, 2013, 9:08 PM), <http://usnews.nbcnews.com/news/2013/11/20/21553229-women-in-combat-three-female-marines-march-into-history-by-completing-infantry-training?lite>.

⁶² U.S. NAP, *supra* note 22, at 15.

such systems commonly used on a daily basis at all levels of the U.S. military, but the different services are already specifically tracking the many instances of sexual violence in their ranks.⁶³ In fact, the U.S. military's continuing struggle to confront and reduce the high number of sexual assaults must necessarily be seen as part of the context within which the U.S. NAP is implemented.

These important positive aspects, however, are outweighed by troubling implementation gaps. First, the Joint Chiefs of Staff's (JCS's) J-3 section, responsible for current operations and plans,⁶⁴ does not appear to have received implementation tasks that would require a thorough reassessment of the use of kinetic force in the context of UNSCR 1325 and the law of armed conflict.⁶⁵ Such a reassessment is necessary because, as noted earlier in this article, the use of armed force in conflict generally has a different and more severe impact on women and girls. For example, until the law of armed conflict principle of proportionality⁶⁶ is interpreted as requiring consideration of this operational factor, any assessment by a commander of potential collateral damage will be incomplete.⁶⁷

Second, the training on women's needs in conflict situations that appears to have been developed for deploying U.S. personnel seems specifically geared toward avoiding "recreational" opportunities that could involve trafficking in women, such as hiring prostitutes.⁶⁸ This is certainly

⁶³ See DOD ANNUAL REPORT ON SEXUAL ASSAULT IN THE MILITARY, FISCAL YEAR 2013, DEPARTMENT OF DEFENSE, 62-66 <http://www.sapr.mil/index.php/annual-reports> (explanation of DoD data collection and reporting systems and methodology); see also David Alexander, *U.S. military sex assault reports up 8 percent: officials*, REUTERS (Dec. 3, 2014, 8:54 PM), <http://www.reuters.com/article/2014/12/04/us-usa-defense-sexassault-idUSKCN0J104J20141204> (it is important to note that in 2014, more than half the victims were men).

⁶⁴ *Operations*, JOINT CHIEFS OF STAFF, <http://www.jcs.mil/Directorates/J3%7COperations.aspx>.

⁶⁵ See generally *Feminist Critique*, *supra* note 33.

⁶⁶ The standard U.S. formulation of this principle is that the "loss of life and damage to property incidental to attacks must not be excessive in relation to the concrete and direct military advantage expected to be gained." U.S. DEP'T OF ARMY, FIELD MANUAL 27-10, THE LAW OF LAND WARFARE, 41 (updated July 15, 1976).

⁶⁷ See generally *Feminist Critique*, *supra* note 33, at 101-102, 107.

⁶⁸ See, e.g., *Requirements and information for Civilian Deployees*, CIVILIAN EXPEDITIONARY WORKFORCE PROGRAM OFFICE (Dec. 6, 2013), <http://www.atsc.army.mil/crc/Trafficking/>; It is important to not ignore in this regard the use made by U.S. soldiers of official brothels in Occupation Japan for several months after the end of World War II. Eric Talmadge, *GI's Frequented Japan's 'Comfort Women'*, WASH. POST (Apr. 25, 2007, 9:45 PM), http://www.washingtonpost.com/wp-dyn/content/article/2007/04/25/AR2007042501801_pf.html.

important, but it is really only a subset of the differentiated impact of armed conflict on women recognized by UNSCR 1325.

Third, even though DoD's *Implementation Guide* repeats the U.S. NAP's requirement to incorporate gender considerations in appropriate strategic level documents, the examples that it gives include documents such as the *National Military Strategy* and the *Quadrennial Defense Review*.⁶⁹ These documents are at such a high policy level they are likely to be divorced from the types of guidance documents that would be consulted by military planners and operators at the operational level. Although one of the designated JCS implementing offices, the J-7 (Joint Force Development), which is responsible for the development of joint doctrine,⁷⁰ has begun to include operational gender considerations in certain revisions of joint doctrine,⁷¹ at the time of this writing publically available versions of joint doctrine are largely silent in regards to implementation.

There are four types of U.S. military operations where the U.S. doctrinal treatment of gender at the strategic level could be particularly well lodged. They include the following: Counterinsurgency, Stability,⁷² Peace,⁷³ and Civil-Military Operations. These types of operations are ideal due to their significant interfaces with civilian populations. Despite the separation between these types of operation that distinct doctrinal documents might suggest, from a functional perspective in a theater of operations they are likely to be happening simultaneously and often in close proximity to each other.⁷⁴ Inexplicably, even though the most recent versions of many of the joint level doctrinal publications relevant to these operations postdate the U.S. NAP, gender barely registers in any of them at either the joint level or the service level. For example, the recently revised joint counterinsurgency doctrine mentions women just once and

⁶⁹ DEPARTMENT OF DEFENSE, IMPLEMENTATION GUIDE FOR THE U.S. NATIONAL ACTION PLAN ON WOMEN, PEACE AND SECURITY, 8 (Sept. 2013) (copy on file with authors) [hereinafter IMPLEMENTATION GUIDE].

⁷⁰ *Joint Force Development*, JOINT CHIEFS OF STAFF, <http://www.jcs.mil/Directorates/J7%7C.JointForceDevelopment.aspx>.

⁷¹ E-mail from Elizabeth O. Lape, Deputy, Individual Training and Learning Branch, Joint Staff, J7, to Jody M. Prescott, Lecturer, University of Vermont (Jan. 22, 2015, 16:43 EST) (on file with authors).

⁷² CHAIRMAN OF THE JOINT CHIEF OF STAFF, JOINT PUBLICATION 3-07, STABILITY OPERATIONS (Sept. 29, 2011), http://www.dtic.mil/doctrine/new_pubs/jp3_07.pdf.

⁷³ CHAIRMAN OF THE JOINT CHIEF OF STAFF, JOINT PUBLICATION 3-07.3, PEACE OPERATIONS I-1 (Aug. 1, 2012), <https://fas.org/irp/doddir/dod/jp3-07-3.pdf>.

⁷⁴ See Max Boot, *Beyond the 3-block war*, COUNCIL ON FOREIGN RELATIONS (Mar. 2006), <http://www.cfr.org/united-states/beyond-3-block-war/p10204>.

gender just once.⁷⁵ However, the scope of this general doctrinal deficiency is perhaps best highlighted by a review of U.S. Civil-Military Operations doctrine.

Civil-Military operations are defined as activities “that establish, maintain, influence, or exploit relations between military forces, governmental and non-governmental civilian organizations and authorities, and the civilian populace” “to facilitate military operations, to consolidate and achieve operational US objectives.”⁷⁶ Civil-Military Operations support the entire spectrum of U.S. military operations, from kinetic offensive operations to relatively tame post-conflict peace building actions. Because of Civil-Military Operations’ ubiquity and their obvious focus on civilian populations, it would be reasonable to assume that if a meaningful discussion of operational gender issues is to be found anywhere in U.S. military doctrine, it would be here – reasonable, but sadly, not accurate.

In terms of logistics planning as part of Civil-Military Operations, joint doctrine (JP 3-57) notes that planning “should include logistic support that normally is outside military logistics, such as support to the civilian populace (e.g., women, children, and the elderly),”⁷⁷ and that “medical planners may have to adjust typical personnel and logistics packages to care for women and children effected in operations not originally of a humanitarian nature.”⁷⁸ JP 3-57 mentions women once more, noting that in considering how to make arrangements for meetings with local nationals, planners should ask themselves, “[f]or example, what role do women play in the society?”⁷⁹ Gender as a concept is not mentioned at all. This absence is replicated in subsidiary doctrine used by the U.S. Army and U.S. Marine Corps to implement JP 3-57. For example, Field Manual 3-57, Civil Affairs Operations (FM 3-57), notes only that planning should assess the capabilities and effectiveness of public welfare systems regarding vulnerable populations such as women

⁷⁵ CHAIRMAN OF THE JOINT CHIEF OF STAFF, JP 3-24, COUNTERINSURGENCY, III-8, VIII-13 (Nov. 22, 2013), http://www.dtic.mil/doctrine/new_pubs/jp3_24.pdf.

⁷⁶ CHAIRMAN OF THE JOINT CHIEF OF STAFF, JP 1-02, DEPARTMENT OF DEFENSE DICTIONARY OF MILITARY AND ASSOCIATED TERMS 40 (July 16, 2013), http://www.dtic.mil/doctrine/new_pubs/jp1_02.pdf.

⁷⁷ CHAIRMAN OF THE JOINT CHIEF OF STAFF, JP 3-57, CIVIL-MILITARY OPERATIONS III-10 (Sep. 11, 2013), http://www.dtic.mil/doctrine/new_pubs/jp3_57.pdf [hereinafter JP 3-57].

⁷⁸ *Id.* at Annex C, Appendix A, A-C-2.

⁷⁹ *Id.* at Annex B, B-14.

and children and the impact of these systems upon Civil-Military Operations.⁸⁰

The deficiency in the operational treatment of gender in this doctrine is glaring, particularly when it is contrasted with the often-frustrated efforts of the Western allies to build capacity in the Afghan military and police forces through the employment of women in these units,⁸¹ and to further the development of the rule of law through their inclusion. For example, policewomen play an essential role in Afghanistan as points of contact to whom Afghan women can report crimes. They are also able to search women and women's quarters for illegal weapons that men in their families may have cached there.⁸² Even if it is small, these capabilities should allow Afghan policewomen to have a positive impact on the development of rule of law.

The *Implementation Guide* specifically notes the use of Female Engagement Teams (FETs) and U.S. Special Forces' Cultural Support Teams as examples of activities to "develop and improve data collection mechanisms," and the tracking of gender-disaggregated data as a best practice, and tasks a number of military agencies including the J-7 with these requirements.⁸³ Joint doctrine, however, does not meaningfully address the lessons learned from the use of gendered civilian interface units in Iraq and Afghanistan.⁸⁴ FETs were first used by the U.S. Marine Corps in Iraq,⁸⁵ and were used extensively in Afghanistan by U.S. and allied forces to interface with Afghan women because of cultural norms that restrict them from meeting with men not of their families.⁸⁶

⁸⁰ HEADQUARTERS, DEP'T OF THE ARMY, FM 3-57 (FM 3-05.40), CIVIL AFFAIRS OPERATIONS 2-25 (2011), http://armypubs.army.mil/doctrine/DR_pubs/dr_a/pdf/lm3_57.pdf [hereinafter FM 3-57].

⁸¹ See, e.g., Alissa J. Rubin, *Afghan Policewomen Struggle Against Culture*, N.Y. TIMES (Mar. 1, 2015), http://www.nytimes.com/2015/03/02/world/asia/afghan-policewomen-struggle-against-culture.html?_r=0.

⁸² See *Afghan Female police officers are working hard despite challenges*, EUPOL-AFGHANISTAN (Sept. 2014), <http://www.eupol-afg.eu/node/191>.

⁸³ IMPLEMENTATION GUIDE, *supra* note 69, at 8.

⁸⁴ See LisaRe Brooks Babin, *Fact Sheet – U.S. Army Female Engagement Teams: Overview*, U.S. ARMY RESEARCH INSTITUTE FOR THE BEHAVIORAL & SOCIAL SCIENCES, Mar. 2014 (U.S. Army does not appear to be taking the doctrinal and personnel management steps necessary to retain this skill set in the force) [hereinafter *ARI Fact Sheet, Mar. 2014*]; LTC Janet R. Holliday, *Female Engagement Teams – The Need to Standardize Training and Employment*, 92 MILITARY REVIEW 90, 94 (Mar./Apr. 2012) (describing the steps necessary to institutionalize FET training and operational use of them).

⁸⁵ Dharmapuri, *supra* note 45, at 60.

⁸⁶ Elisabeth Bumiller, *For Female Marines, Tea Comes With Bullets*, N.Y. TIMES

Although relevant questions have been raised as to the proper role of FETs and the scope of any enduring part they might play in future operations,⁸⁷ FETs appear to have been successful in completing their different tasks. For example, FETs have been used in information gathering and providing assistance during search operations, despite some confusion in the field at times as to how they were to be best utilized.⁸⁸ If there were a doctrinal requirement to consider gender in human-centric analyses of operational areas, however, and operational systems were engineered to allow the immediate delivery of this information when needed by commanders, then the FETs might prove to be the best collectors of data disaggregated on a sex and gender basis. FETs could thereby secure for themselves an important operational niche regardless of the gender norms of the local cultures in which they might be operating. Importantly, from a law of armed conflict perspective, this would allow commanders to make decisions on the use of kinetic force while considering the possible and operationally relevant sex and gender differentiated impacts of a strike as they conduct their proportionality analyses.

The continuing omission of gender from U.S. joint doctrine in general, and the omission of FETs in particular, are both puzzling and troubling. Puzzling, because certain writers have perceived that “U.S. policymakers and thought leaders seem to be increasingly shifting from a ‘traditional’ national security framework, which focuses on traditional instruments of national power such as diplomatic, informational, military and economic means, to a ‘human security’ approach, which includes energy, natural resource and environmental components.”⁸⁹ These omissions are troubling, because the strong linkages between climate change, gender and armed conflict, discussed *supra*, make it imperative that U.S. forces understand the dynamic relationships between the three so that commanders can develop a more complete operational picture of the

(Oct. 2, 2010), http://www.nytimes.com/2010/10/03/world/asia/03marines.html?pagewanted=all&_r=0; Not surprisingly, a survey of U.S. FET members established that they also engaged with Afghan men very frequently, with one of the results being the collection of intelligence from them. *ARI Fact Sheet, Mar. 2014*, *supra* note 84.

⁸⁷ *ARI Fact Sheet, Mar. 2014*, *supra* note 84; Bumiller, *supra* note 86.

⁸⁸ LisaRe Brooks Babin, *Fact Sheet – U.S. Army Female Engagement Teams: Integration & Employment*, U.S. ARMY RESEARCH INSTITUTE FOR THE BEHAVIORAL & SOCIAL SCIENCES (Apr. 2014) (copy on file with authors).

⁸⁹ ARMY ENVIRONMENTAL POLICY INSTITUTE, ENVIRONMENTAL CHANGE AND FRAGILE STATES: EARLY WARNING NEEDS, OPPORTUNITIES, & INTERVENTION, 1-5 (2011), http://www.acpi.army.mil/docs/whatsnew/MAN0BC2_report_combined_compressed.pdf.

areas of operations in which they are likely to be working. Failure to establish meaningful linkages between gender concepts in higher strategic level policy documents such as the *Quadrennial Defense Review* and lower strategic level doctrine such as joint doctrine means that these concepts could potentially become doctrinal orphans, largely unread outside the Pentagon. Were doctrine to establish the requirement for gender and sex-disaggregated information, an enduring role for FETs in regular military operations could possibly be validated.⁹⁰

Many of the specific activities assigned to DoD by the *Implementation Guide* to accomplish the two less significant objectives of the U.S. NAP (conflict prevention and access to recovery and relief) tend to be more consistent with the sorts of overseas missions the JSDF conducts at this point in time, and therefore might warrant consideration by the JSDF as it implements the Japanese NAP and increases its collaboration with U.S. forces. However, the significant implementation gaps that exist in terms of the first and third objectives (national integration and institutionalization, and protection), strongly suggest that the DoD implementation of the U.S. NAP risks undermining effective incorporation of gender perspectives at the planning and executing levels, and therefore the U.S. approach on the whole is not a strong example of an implementation model for the JSDF. Given the outsized role that the U.S. plays in NATO operations, however, it is important to next explore the ways in which NATO's gender action plan seeks to operationalize gender and how it differs from the U.S. approach.

B. NATO

1. Implementation

NATO's current gender action plan identifies a number of overarching goals that must be met, including the use of a strategy referred to as the Comprehensive Approach⁹¹ to handle risks to civilian populations in the area of operations; the establishment of effective liaison with populations, international organizations (IOs) and non-governmental organizations (NGOs) at all operational levels; consistent pre-deployment training for NATO forces on gender perspectives; and the development of

⁹⁰ Jody M. Prescott, *NATO Gender Mainstreaming: A New Approach to War Amongst the People?* 158 RUSI J. 56, 59-60 (2013) [hereinafter *New Approach*].

⁹¹ NATO doctrine notes that "[t]oday's challenges demand a comprehensive approach by the international community, including the coordinated action from an appropriate range of civil and military actors, enabled by the orchestration, coordination and de-confliction of NATO's military and political instruments with the other instruments of power." ALLIED JOINT DOCTRINE PUBLICATION 01(D), ALLIED JOINT DOCTRINE, 2-11 Dec. 2010).

effective reporting mechanisms and SGBV prevention measures.⁹² Gender advisors are the primary means by which these measures are to be accomplished operationally at different levels of command.⁹³ The Nordic nations are in many respects leading this effort, both by example domestically in terms of gender equality⁹⁴ and in their international military engagement. In fact, the Comprehensive Approach appears to have been inspired by Denmark's work during its mission in the Former Yugoslavia, as it implemented a statutory requirement for cooperation between its military personnel and civil servants.⁹⁵

NATO's gender action plan as set out in BI-SCD 40-1 envisions a three-tiered gender advisory hierarchy.⁹⁶ In static headquarters,⁹⁷ such as Supreme Headquarters Allied Powers Europe (SHAPE) in Mons, Belgium,

⁹² BI-SCD 40-1, *supra* note 25, at 1-7.

⁹³ Although Sweden is a Partnership for Peace country, not a NATO partner, it is important to note the pioneering work done by the Swedish armed forces in the incorporation of a gender perspective and in the use of gender advisors. EGNELL, *supra* note 48, at 50-75. Significantly, Sweden has seen an increasing number of female recruits applying for basic military training – in 2013, they amounted to 20% of all applicants – since the introduction of gender advisors and incorporation of a gender perspective in operations. *More women sign up for Sweden's military*, THE LOCAL, (Aug. 20, 2013, 11:11 GMT), <http://www.thelocal.se/20130820/49738>.

⁹⁴ In 2014, the top five countries for domestic gender equality were, in order, Iceland, Finland, Norway, Sweden, and Denmark. George Arnett, *Gender equality report: not one country has fully closed the gap yet*, THE GUARDIAN (Oct. 28, 2014, 3:49 EDT), <http://www.theguardian.com/news/datablog/2014/oct/28/not-one-country-has-fully-closed-gender-gap-yet-report-shows>.

⁹⁵ Jody M. Prescott, *The Development of NATO EBAO Doctrine: Clausewitz's Theories and the Role of Law in an Evolving Approach to Operations*, 27 PENN. ST. INT'L REV. 125, 126-27 (2008).

⁹⁶ BI-SCD 40-1, *supra* note 25, at A-1 to A-3.

⁹⁷ Static headquarters generally remain in place, and provide high-level direction and guidance to missions in the field, but do not conduct operations themselves. One is likely to find many support and analysis functions staffed by large numbers of civilian personnel in static headquarters. In deployed headquarters, the focus of the work is on operations, there are generally fewer civilians, and many support and analysis functions are staffed almost completely by military personnel. For example, in 2007, the Supreme Headquarters Allied Powers Europe, the static headquarters for the strategic NATO operational command Allied Command Operations, located in Mons, Belgium, was staffed by 2,995 military personnel and 1,021 civilian personnel. *SHAPE Factsheet*, U.S. AIR FORCE BASE SPANGDAHLEM, www.spangdahlem.af.mil/library/factsheets/factsheet.asp?id=7951. In contrast, in 2008, the ISAF Headquarters CJ-4 Logistics Branch located in Kabul, Afghanistan was staffed by 22 military personnel and only 3 civilians. Sheila J-McClaney et al., *Innovative Insights Into ISAF Logistical Operations in Afghanistan: The August 2008 to February 2009 Rotation*, 1, www.libertyjumpcam.org/levien/ISAFLogArticleJan091.doc (last visited Nov. 28, 2015).

Gender Advisors provide advice on gender issues to the commander and the staff.⁹⁸ At deployed higher-level headquarters, Gender Field Advisors provide this service.⁹⁹ In subordinate tactical units, this expertise is provided by individuals performing the additional duty of a Gender Focal Point.¹⁰⁰ As a matter of practice, it would appear that the International Security Assistance Force (ISAF) headquarters in Kabul, Afghanistan, also uses Gender Focal Points within certain staff elements.¹⁰¹ Importantly, NATO has designated the Nordic Centre for Gender in Military Operations (NCGM) in Sweden as the executive agent responsible for training Gender Advisors and Gender Field Advisors.¹⁰² Given the part-time nature of their work, however, it is not clear that individuals serving as Gender Focal Points would ordinarily receive this training.¹⁰³

In addition to the normal duties expected of any staff officer, BI-SCD 40-1 places tremendous responsibility upon gender advisors to provide input on staff products and to attend various staff meetings and working group sessions. Gender advisors are also expected to work with IO and NGOs on gender-related activities; support local activities related to UNSCR 1325; assist the commander, the chief of personnel (J1), and the legal advisor (LEGAD) in inquiries involving alleged sexual misconduct on the part of NATO personnel; and “to conduct frequent and flexible engagement with the male [and] . . . female part of the local population.”¹⁰⁴ Further, they are to support the J1 with relevant policies and the chief of intelligence (J2) with gender-based information collection and intelligence analysis, and to support the chief of operations (J3) with the planning of “[i]nformation operations, [p]sychological operations, patrols and search operations.”¹⁰⁵ This range of duties would be staggering for a staff officer who was working in an area that was already

⁹⁸ BI-SCD 40-1, *supra* note 25, at A-1 to A-3.

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ REVIEW OF THE PRACTICAL IMPLICATIONS OF UNSCR 1325 FOR THE CONDUCT OF NATO-LED OPERATIONS AND MISSIONS, SWEDISH DEFENCE RESEARCH AGENCY (FOI) 35 (H. Lackenbauer & R. Langlais eds., 2013) [hereinafter LACKENBAUER].

¹⁰² BI-SCD 40-1, *supra* note 25, at 8; The Nordic Centre for Gender in Military Operations certified to provide training on gender and operations to NATO personnel. *Nordic Centre for Gender in Military Operations*, FÖRSVARSMAKTEN, <http://www.forsvarsmakten.se/en/swedint/nordic-centre-for-gender-in-military-operations/>.

¹⁰³ BI-SCD 40-1, *supra* note 25, at 9.

¹⁰⁴ *Id.* at A-2.

¹⁰⁵ *Id.*

embedded in the organizational structure and had functions that were both well-understood and accepted by commanders and other staff elements – for a NATO gender advisor it appears to require little short of transformative heroism.

2. Assessment

Consistent with the development of an overarching NATO and Euro-Atlantic Partnership Council policy for the implementation of UNSCR 1325-related concepts into military activities and operations,¹⁰⁶ NATO's work to incorporate a gender perspective in operations has had some positive results. For example, the role of the Gender Field Advisor has registered a higher operational profile in Afghanistan over the last two years,¹⁰⁷ and a recent headquarters military Gender Field Advisor in Afghanistan was a female Croatian brigadier general.¹⁰⁸ This level of rank and visibility is very important in terms of professional relationships among senior staff, and in dealing with local national officials and NGOs. Further, different NATO and Partnership for Peace troop contingents in Afghanistan worked diligently to include a gender perspective in their operations over time.¹⁰⁹ Importantly, in keeping with the Comprehensive Approach, NATO also began placing gender advisors with different Afghan ministries to help them build gender awareness and capacity.¹¹⁰

¹⁰⁶ NATO/EAPC POLICY FOR THE IMPLEMENTATION OF UNSCR 1325 ON WOMEN, PEACE AND SECURITY AND RELATED RESOLUTIONS (Apr. 1, 2014), http://www.nato.int/cps/eu/natohq/official_texts_109830.htm.

¹⁰⁷ The 2013 deployment of a senior Royal Australian Navy officer to the Gender Field Advisor post in the International Joint Command in Kabul is a very positive step, both because of her rank and her long experience working on gender equality issues in a military context. See CAPT Jennifer Wittwer, *The Gender Agenda: women, peace and security in the conduct of NATO-led operations and missions*, 191 AUSTRALIAN DEFENCE J. 57, 59-65 (2013) (CAPT Wittwer was posted to ISAF for the better part of 2013).

¹⁰⁸ LCDR Jennifer Craig, *ISAF's Gender Advisor Mentors Afghan Female Counterparts*, DEPARTMENT OF DEFENSE NEWS (June 27, 2014), <http://www.defense.gov/news/newsarticle.aspx?id=122563>.

¹⁰⁹ See, e.g., SSG John Etheridge, *FET Training teaches Soldiers how to work with Afghan women*, INTERNATIONAL SECURITY ASSISTANCE FORCE NEWS (Aug. 29, 2014), <http://www.isaf.nato.int/article/isaf-news/fet-training-teaches-soldiers-how-to-work-with-afghan-women> (eight female soldiers successfully graduate from a two-day FET class held at Kandahar Airfield); *Female Engagement Team Supports International Women's Day*, INTERNATIONAL SECURITY ASSISTANCE FORCE NEWS (Mar. 13, 2011), <http://www.isaf.nato.int/article/isaf-releases/female-engagement-team-supports-international-women> (German, Swedish and U.S. FET members participated in Department of Women's Affairs event marking International Women's Day in Baghlan Province).

¹¹⁰ See Melissa Charbonneau, *Women, Peace, and Security Take Center Stage for U.S. Global Women's Ambassador Visit*, INTERNATIONAL SECURITY ASSISTANCE FORCE NEWS (Nov. 14, 2013), <http://www.isaf.nato.int/article/isaf-news-list/women-peace-and->

BI-SCD 40-1 also requires measures to combat the occurrence of sexual violence in NATO operations, such as adherence to its Standards of Behavior by troop-contributing-nation (TCN) servicemembers in their interactions with local nationals.¹¹¹

Although the measures are certainly useful in the overall scheme of implementing UNSCR 1325's requirements, they perhaps reveal a solution to a particular problem (SGBV) that has rarely occurred in the NATO military experience, while not being correlated closely enough with a real problem that must be addressed. For example, substantiated reports of SGBV against Afghan women and girls at the hands of ISAF troops, after a decade of international forces conducting operations there, approach zero. There have been two reports alleging rapes that can be found on the Internet.¹¹² As to the first alleged incident, a U.S. general court-martial determined that a single U.S. soldier murdered Afghan civilians, but there was no evidence produced as to rape.¹¹³ As to the second, ISAF could not confirm the reports, and even though the news item was widely republished on different sites on the Internet, there does not appear to have been any other information related to this report that was developed. The absence of such crimes is likely due in significant part to the operationally-required segregation of troops from Afghan civilians, who are themselves gender-segregated in a conservative, religious society, and the general level of professionalism among the Western forces. Although NATO's historical record in this regard is not perfect,¹¹⁴ this trend is consistent with the experiences of NATO

security-take-center-stage-for-u.s. (Civilian ISAF Headquarters Gender Advisor and ISAF Gender Advisors to Afghan Ministries of Defense and Interior meet with U.S. ambassador).

¹¹¹ BI-SCD 40-1, *supra* note 25, Annex B.

¹¹² *But see US forces raped two women in Kandahar carnage: Parliamentary Commission*, COUNTERCURRENTS (Mar. 18, 2012), <http://www.countercurrents.org/ptv180312.htm> (Afghan fact-finding mission informs Parliament that 15-20 U.S. soldiers raped and massacred 16 Afghan civilians); *Afghan girl raped, killed by US forces*, PRESSTV (Jan. 2011), <http://edition.presstv.ir/detail/fa/159958.html> (anonymous sources describe to an Iranian news organization five vans of U.S. forces transferring women and girls to an ISAF camp and sexually assaulting them).

¹¹³ Rick Rojas, *Afghan witnesses describe horror of Staff Sgt. Robert Bales' attack*, L.A. TIMES (Aug. 20, 2013), <http://articles.latimes.com/2013/aug/20/nation/la-na-bales-sentencing-20130821>.

¹¹⁴ *See, e.g., Austrian KFOR Soldier Accused of Rape*, NEWS KOSOVO (May 6, 2011), <https://kosnews.wordpress.com/2011/06/05/> (Austrian soldier charged with rape of several women); Ian Traynor, *Nato force 'feeds Kosovo sex trade'*, THE GUARDIAN (May 6, 2004, 22.05 EDT), <http://www.theguardian.com/world/2004/may/07/balkans> (Amnesty International reports complicity of NATO soldiers, policemen, and civilians in Kosovo sex trade); Kim Sengupta, *The forgotten story of rape and murder in Kosovo*, *American-*

operations since the deployment of the Implementation Force into Bosnia-Herzegovina and Croatia in 1996 in less operationally constrained environments, where NATO forces enjoyed greater freedom of movement and were able to mix more readily with local civilians. Based on recent statistics from the U.S. military, what is ironically far more worrisome from an SGBV perspective vis-à-vis NATO gender mainstreaming is the unacceptable number of sexual assaults against female soldiers by their male comrades among U.S. forces.¹¹⁵ It is not clear that the adoption of the NATO Standards of Behavior is properly correlated with efforts to address this violence.

Further, work has begun to meaningfully include gender considerations in official NATO doctrine, at least from a peace support perspective.¹¹⁶ In this regard, the work of a NATO-accredited center, the Civil-Military Co-operation Centre of Excellence (CCOE) in the Netherlands, is particularly useful to review. CCOE is staffed by NATO personnel from seven different nations. Even though its published work is not official NATO doctrine, it incorporates many of the lessons learned by NATO forces in Afghanistan and the Balkans. Unlike U.S. Civil-Military Operations doctrine, CCOE's field handbook specifically details the importance of gender awareness in conducting civil-military operations,¹¹⁷ and the importance of understanding the physical environment and ecosystems.¹¹⁸ The field handbook is supplemented by two other CCOE publications, one which specifically deals with gender,¹¹⁹ and the other

style, THE INDEPENDENT (Nov. 3, 2000), <http://www.independent.co.uk/news/world/europe/the-forgotten-story-of-rape-and-murder-in-kosovo-american-style-622977.html> (U.S. soldier raped and murdered 11 year old Kosovar girl).

¹¹⁵ Helene Cooper, *Pentagon Finds 50% Increase in Reports of Military Sexual Assaults*, N.Y. TIMES (May 1, 2014), http://www.nytimes.com/2014/05/02/us/military-sex-assault-report.html?_r=0; Lynn Rosenthal, *Combating Sexual Assault in the United States Military*, THE WHITE HOUSE: BLOG (Apr. 23, 2012, 6:22 PM), <http://www.whitehouse.gov/blog/2012/04/23/combating-sexual-assault-united-states-military>.

¹¹⁶ See, e.g., NATO STANDARDIZATION OFFICE, ALLIED JOINT DOCTRINE FOR THE MILITARY CONTRIBUTION TO PEACE SUPPORT, ALLIED JOINT PUBLICATION (AJP) 3.4.1(A), 3-12 – 3-14, Annex E (Dec. 2014) (gender dealt with in text as a thematic operational aspect of peace support operations, and gender considerations dealt with more specifically in annex).

¹¹⁷ CIVIL MILITARY CO-OPERATION CENTRE OF EXCELLENCE, CIMIC FIELD HANDBOOK, III-6-1 – III-6-6 (3rd ed. 2012), <http://www.cimic-coe.org/wp-content/uploads/2014/06/CIMIC-Handbook.pdf>.

¹¹⁸ *Id.* at III-5-3 – III-5-4.

¹¹⁹ CPT Stephanie Groothedde, CIMIC CENTRE OF EXCELLENCE, GENDER MAKES SENSE: A WAY TO IMPROVE YOUR MISSION, 2 (2013), <http://www.cimic-coe.org/wp-content/uploads/2014/06/Gender-Makes-Sense.pdf>.

with ecosystems assessment.¹²⁰ Importantly, the ecosystems assessment guide specifically links women's gender roles in host nations to the issues of resource use and ecosystem restoration, and reminds military planners that women's interests in these matters are often underestimated or overlooked.¹²¹ CCOE's work demonstrates the feasibility of addressing the gender-differentiated impacts of armed conflict upon women in Civil-Military Operations doctrine, as well as gender's linkages to environmental issues, including climate change. These aspects, if included formally into the NATO gender action plan, might be useful to the Japanese NAP, given the importance of civilian-centric peacekeeping and disaster relief missions to the overseas activities of the JSDF.

However, even if a NATO field headquarters were to consistently fill the few Gender Field Advisor posts it is assigned under BI-SCD 40-1 itself, the directive places responsibility for an enormous amount of transformative work upon the Gender Field Advisors and their support staffs.¹²² Further, BI-SCD 40-1's taskings are themselves curious. For example, military discipline is a TCN responsibility, so the contribution of the NATO Gender Field Advisor to this process in instances of alleged SGBV would likely be modest at best.¹²³ The directive states that the Gender Field Advisor could provide the LEGAD with information as to "gender dimensions in the judicial system" and "relevant information where women, girls and boys [sic] legal rights are neglected and/or violated,"¹²⁴ but it is unclear how this information would factor into a TCN disciplinary action. Similarly, it is not obvious that typical Gender Field Advisors would have sufficient expertise in intelligence matters to provide the J2 (intelligence) section meaningful input on how gender-disaggregated data should be collected in a multi-national operation and

¹²⁰ CMDR N. Gallagher & MAJ P. Wit, SOCIETY STABILIZATION BY WINNING THE ENVIRONMENT: ECOSYSTEMS ASSESSMENT MAKES SENSE . . . FULL SITUATIONAL AWARENESS IN CIMIC, 27 (2012), http://www.cimic-coe.org/download/Ecosystems_Assessment.pdf.

¹²¹ *Id.* at 35-36.

¹²² See *New Approach*, *supra* note 90 at 58, synopsisizing the Gender Advisor duties set out in BI-SCD 40-1, Annex A, A-2 to A-3, *supra* note 25. In addition to creating a new gender advisor technical and reporting chain within deployed NATO headquarters, under-staffed gender advisors are also expected to support all other staff sections with pertinent gender advice, and to coordinate with international organizations and non-governmental organizations.

¹²³ *New Approach*, *supra* note 90, at 58.

¹²⁴ BI-SCD 40-1, *supra* note 25, at Appendix A, A-3. This would also appear to require a background in international and comparative law. Although it is beyond the scope of this article, it is important to recognize that sexual violence in armed conflict is often directed against men and boys as well. See Sandesh Sivakumaran, *Sexual Violence Against Men in Armed Conflict*, 18 EUR. J. INT'L L., 253, 255-76 (2007).

analyzed to make it operationally relevant.¹²⁵ Finally, a deployed headquarters J3 (operations) section is unlikely to be involved in such tactical activities as a patrol or a search operation, and would not likely have substantial involvement in information or psychological operations.¹²⁶

There are well-founded concerns that the NATO gender mainstreaming program has not really taken hold in the operational area.¹²⁷ The data collected in a recent and thorough assessment of the directive's implementation by the well-respected Swedish Defence Research Agency (FOI) shows that few members of the ISAF headquarters staff were aware of its requirements, and that even when personnel did know about it, they generally did not know how it might be operationalized.¹²⁸ More telling, the gender advisors had only enjoyed limited access to operational decision-makers, and fellow staff members rarely called upon their expertise in performing their duties.¹²⁹ Unfortunately, although it is well written and well documented, the FOI assessment did not meaningfully revisit the implausibility of the directive's numerous taskings to the different gender advisors, nor did it address UNSCR 1325 in the context of kinetic operations. NATO has developed a holistic implementation plan specifically to address these shortcomings, but by not realistically tying gender advisor responsibilities to more useful operational tasks, BI-SCD 40-1 runs the risk of marginalizing gender mainstreaming in NATO in the operational context.

In sum, whereas the U.S. military seems largely unaware of the operational relevance of gender at the present time, NATO is quite aware, but not yet able to devise an effective mechanism for implementing UNSCR 1325 across the full range of operational activities. Although Japan was involved in the drafting of the NATO/EAPC policy,¹³⁰ BI-SCD 40-1's implementation plan is therefore likely of only modest value as a model to consider with regard to the implementation of the Japanese NAP.

¹²⁵ See *New Approach*, *supra* note 90, at 58 (Further, "the information NATO expects to collect to support gender mainstreaming in operations includes whether there are security issues for women's rights activists and gender-disaggregated data on political participation and education.").

¹²⁶ *Id.* at 59.

¹²⁷ See LACKENBAUER, *supra* note 101, at 67-68.

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ NATO, NATO/EAPC POLICY FOR THE IMPLEMENTATION OF UNSCR 1325 ON WOMEN, PEACE AND SECURITY AND RELATED RESOLUTIONS (2014), http://www.nato.int/cps/en/natohq/official_texts_109830.htm?selectedLocale=en.

C. Australia

1. Implementation

Promulgated in 2012, the Australian NAP 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 through the promotion of normative measures.¹³¹ The Australian NAP sets out strategies to improve outcomes, and lists numerous actions that benchmark how these strategies will be implemented.¹³²

The Australian NAP moves from these broad themes to identifying strategies to accomplish them. For purposes of this article, three of these five strategies are of greatest interest to the analysis of the ADF's implementation efforts: 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."¹³³ As to the use of a gender perspective, the ADF is required to "develop guidelines for the protection of civilians, including women and girls."¹³⁴ To promote international implementation in conflict affected areas, the ADF will foster "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 to "promote women's involvement in the development of institutions, including national judiciary, security and governance structures."¹³⁵

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 dynamic matrix that will allow the inclusion of new tasks as they arise in the course of ADF implementation, and it is reviewed on a quarterly basis by an implementation working group.¹³⁶ The ADF must ensure that policy

¹³¹ AUSTRALIAN NAP, *supra* note 22, at 17.

¹³² *Id.* at 19-25.

¹³³ *Id.* at 19.

¹³⁴ *Id.*

¹³⁵ *Id.* at 23.

¹³⁶ AUSTRALIAN GOVERNMENT, DEPARTMENT OF DEFENCE, DEFENCE IMPLEMENTATION PLAN, <http://www.uat.defence.gov.au/Women/NAP/ImplementationPlan.asp> . Unfortunately, the DIP is not available to the public at this point, so detailed assessment of the

frameworks are consistent with the objectives and intent of UNSCR 1325, and this approach informed the DIP, in particular policy and planning guidance, planning directives for operations, joint and single-service doctrine, and training.¹³⁷ Importantly, the Department of Defence assesses that it is responsible for contributing to 17 of the 24 actions required for NAP implementation.¹³⁸

2. Assessment

Australia recently published a progress report on its NAP implementation.¹³⁹ As a benchmark for the strategy of integrating of a gender perspective in the ADF, the Australian NAP identifies a 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.”¹⁴⁰ The *Progress Report* notes that the Australian NAP is being implemented “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.”¹⁴¹ Further, “[o]perational guidance on Women, Peace and Security will be included in the Chief of the Defence Force Planning Directives which inform strategic direction and planning for operations.”¹⁴² In addition, in March 2014 the Secretary of Defence and Chief of Defense 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.¹⁴³

mechanics of implementation is not possible.

¹³⁷ E-mail from CAPT Jennifer Wittwer, Director, National Action Plan for Women, Peace and Security, Office of Chief of Defense Force, ADF, to Jody M. Prescott, Lecturer, University of Vermont (Jan. 20, 2015, 13:20 EST) (copy on file with authors).

¹³⁸ AUSTRALIAN GOVERNMENT, DEPARTMENT OF DEFENCE, DEFENCE COMMITMENT TO THE UNITED NATIONS WOMEN, PEACE AND SECURITY AGENDA, <http://www.uat.defence.gov.au/Women/NAP/>.

¹³⁹ DEPARTMENT OF THE PRIME MINISTER AND CABINET, 2014 PROGRESS REPORT, AUSTRALIAN NATIONAL ACTION PLAN ON WOMEN, PEACE AND SECURITY 2012-2018, <https://www.dpmc.gov.au/office-women/publication/2014-progress-report-australian-national-action-plan-women-peace-and-security-2012-2018> (2014) [hereinafter PROGRESS REPORT].

¹⁴⁰ AUSTRALIAN NAP, *supra* note 23, at 28.

¹⁴¹ PROGRESS REPORT, *supra* note 139, at 15.

¹⁴² *Id.*

¹⁴³ Wittwer e-mail, *supra* note 137.

Importantly, the ADF's intent is to address the operational aspects of gender in strategic-level doctrine as well. As set out specifically in the *Progress Report*, the ADF planned to revise Australian Defence Doctrine Publication (ADDP) 3.11, *Civil Military Cooperation* (to address gender awareness);¹⁴⁴ ADDP 3.20, *The Military Contribution to Humanitarian Operations* (which already covers operational environment, culture, gender, religion, and disabilities); ADDP 3.8, *Peace Operations* (two chapters relating to planning and training were to be revised); ADDP 5.0, *Joint Planning* (to be updated to reflect UNSCR 1325 issues); and Australian Defence Force Publication (ADFP) 5.0.1, *Joint Military Appreciation Process* ("the broad framework for military planning").¹⁴⁵ Importantly, the ADF is undertaking an even wider doctrinal assessment than that set out in the *Progress Report*, and coupled with the comprehensive inclusion of gender considerations in the *Joint Doctrine Development Guide*,¹⁴⁶ this should lay the groundwork for institutional change in embedding UNSCR 1325-related concepts.

The inclusion of a gender perspective in strategic level ADF policies and plans is a profoundly positive step. These revisions were to have been completed by 2014, and even though the timeline for completion has slipped to a degree, the ADF's Joint Doctrine Center "has incorporated WPS inclusive of gender perspective, protection of civilians and protection of children, within the Joint Doctrine Development Guide," and "all new doctrine is informed by the JDDG."¹⁴⁷ Importantly, gender concepts in the women, peace and security context "have already been incorporated in ADFP 5.1.1, Joint Military Appreciation Process, ADDP 3.8, Peace Operations, and ADDP 3.20, The Military Contribution to Humanitarian Operations."¹⁴⁸ A review of these doctrinal publications prior to their revisions provides an idea of the scope of this change – for example, peace operations doctrine noted only that Australia was party to the *UN Convention against Transnational Organised Crime's People Trafficking Protocol*.¹⁴⁹ In a similar vein, at the time of this writing, ADF multinational doctrine mentions women only twice, both times in the

¹⁴⁴ PROGRESS REPORT, *supra* note 139, at 83.

¹⁴⁵ *Id.* at 84.

¹⁴⁶ Wittwer e-mail, *supra* note 137.

¹⁴⁷ E-mail from CAPT Jennifer Wittwer, Director, National Action Plan for Women, Peace and Security, Office of Chief of Defense Force, ADF, to Jody M. Prescott, Lecturer, University of Vermont (Oct. 26, 2015, 18:01 EDT) (copy on file with authors).

¹⁴⁸ *Id.*

¹⁴⁹ CHIEF OF JOINT OPERATIONS, ADDP 3.8, PEACE OPERATIONS 2-14 (Dec. 14, 2009), <http://www.defence.gov.au/adfvc/Documents/DoctrineLibrary/ADDP/ADDP3.8-PeaceOperations.pdf>.

context of the composition of different armed forces.¹⁵⁰ There is no mention of gender or UNSCR 1325 in the above doctrines prior to their recent revisions.

One might logically assume that ADF civil-military operations, with their civilian-centric focus, would already have meaningfully dealt with the operational relevance of gender. 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.”¹⁵¹ Although the version of ADDP 3.11 current at the time of this writing 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.”¹⁵² Gender is mentioned once, in that humanitarian assistance is to be rendered impartially irrespective of gender,¹⁵³ and climate change is not mentioned at all.

As to the strategy of using a co-ordinated and holistic approach (“Whole-of-Government”), one benchmark activity shows great promise for implementing this strategy – the fostering of continuing “civil-military cooperation and information sharing in operations.”¹⁵⁴ Given the capability of the Australian Civil-Military Centre (ACMC), and the work ACMC continues to do on the civil-military aspects of responding to natural disasters,¹⁵⁵ this use of a broadened perspective, with its attendant requirements of effective interagency coordination and cooperation with IOs and NGOs, would appear feasible for incorporation into the ADF’s NAP implementation efforts. Importantly, however, if implementation of the NAP is seen primarily as a peacekeeping or humanitarian disaster matter, this risks losing balance with the efforts to include gender

¹⁵⁰ CHIEF OF JOINT OPERATIONS, ADDP 00.3, MULTINATIONAL OPERATIONS 1-5, 3-18 (June 3, 2011), <http://www.defence.gov.au/adfvc/doctrine.html>.

¹⁵¹ CHIEF OF JOINT OPERATIONS, ADDP 3.8, PEACE OPERATIONS 2-14 (Dec. 14, 2009), <http://www.defence.gov.au/adfvc/Documents/DoctrineLibrary/ADDP/ADDP3.11-Civil-MilitaryOperations.pdf>.

¹⁵² *Id.* at 1-11, 2B-2.

¹⁵³ *Id.* at 1-11.

¹⁵⁴ AUSTRALIAN NAP, *supra* note 23, at 25.

¹⁵⁵ *Learning & Development*, AUSTRALIAN CIVIL-MILITARY CENTRE, <https://www.acmc.gov.au/learning-development/>; *Preparedness*, AUSTRALIAN CIVIL-MILITARY CENTRE, <https://www.acmc.gov.au/preparedness/>; *Lessons Learned*, AUSTRALIAN CIVIL-MILITARY CENTRE, <https://www.acmc.gov.au/lessons-learned/>; *Research*, AUSTRALIAN CIVIL-MILITARY CENTRE, <https://www.acmc.gov.au/research/>.

perspective efforts in kinetic operations. Seeing gender as primarily a non-kinetic issue could forestall an understanding of gender as a kinetic operational issue. This would do a disservice to women and girls who find themselves caught up in armed conflict. It is not clear yet whether the ADF's appetite for doctrinal revision will include supporting doctrine relevant to kinetic operations, such as targeting methodologies for air-dropped munitions,¹⁵⁶ and to a large extent, law of armed conflict doctrine as it applies to the use of armed force.¹⁵⁷

The Australian NAP includes many benchmarks for the international implementation strategy that are pertinent to the ADF. Some of them are intended to protect women through concrete actions to prevent, investigate and support prosecution of instances of gender-based violence.¹⁵⁸ 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,¹⁵⁹ are likely to be the easiest to accomplish and continue. Formalizing complaint mechanisms to foster the safe reporting of allegations of gender-based violence¹⁶⁰ are likely quite practicable to implement within ADF units. As with U.S. efforts in this regard, however, they may become more complex depending on the status of ADF units in host nations, the multilateral nature of the military organisation with which ADF units might be deployed, and the nationality of the actors involved. As with NATO forces noted *supra*, Australian armed forces are generally very well disciplined in

¹⁵⁶ CHIEF OF JOINT OPERATIONS, ADDP 3.14, TARGETING (Feb. 2, 2009), http://www.defence.gov.au/foi/docs/disclosures/021_1112_Document_ADDP_3_14_Targeting.pdf.

¹⁵⁷ CHIEF OF JOINT OPERATIONS, ADDP 06.4, LAW OF ARMED CONFLICT (May 11, 2006), <http://www.defence.gov.au/adfivc/documents/doctrinelibrary/addp/addp06.4-lawofarmedconflict.pdf>. In general, although ADF LOAC doctrine does meaningfully mention women and the "special" protections they receive under LOAC, this occurs predominately in the context of safeguarding women from "rape, forced prostitution and any other form of indecent assault." *Id.* at 9-7, 9-14. ADDP 06.4 also notes that the importance of providing subsistence articles to civilian women and children in particular, and that women are to receive medical treatment with all consideration due to their sex, although medical treatment priority is of course based on need. *Id.* at 6-15 – 6-16, 9-24. These protections are of course 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. AUSTRALIAN NAP, *supra* note 23, at 14. Unfortunately, they also reflect the Geneva Conventions' dated premise of female modesty and status based on relationships with others, or as ADDP 06.4 phrases it, "attacks on their honour," as the basis for protection of women. ADDP 06.4, *supra* note 157, at 12-8.

¹⁵⁸ AUSTRALIAN NAP, *supra* note 23, at 24.

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

their relations with host nation populations, and the depredations upon local women and girls one associates with certain UN peacekeeping missions¹⁶¹ are not part of the Australian military experience.¹⁶² Further, by defining protection of women in armed conflict as essentially protection from SGBV, this benchmark could channel the development of guidelines for protection into a much more narrow context than would seem necessary for fully implementation of UNSCR 1325's requirements. Finally, an emphasis on SGBV training not connected to the experiences of the personnel being trained risks them misunderstanding the significance of the issue in general, and in the worst case, potentially alienating them.¹⁶³

Other international implementation strategy benchmarks include the "description of international assistance provided for activities pertaining to women, peace and security," and the "description of strategies employed by the ADF . . . to facilitate the engagement and protection of local women in peace and security efforts."¹⁶⁴ The Australian NAP recognises the FETs as helping to fulfil these tasks, as they "meet with local women and discuss their security needs."¹⁶⁵ The *Progress Report* favorably notes the role played by Australian FETs in the engagement with and protection of Afghan women in Uruzgan Province.¹⁶⁶ Hopefully, since the Australian experience with FETs in

¹⁶¹ See Special Comm. on Peacekeeping Operations, Rep. of the Comprehensive Strategy to Eliminate future Sexual Exploitation and Abuse in United Nations Peacekeeping Operations, U.N. Doc. A/59/710 (2005), at 7-9, http://www.un.org/en/ga/search/view_doc.asp?symbol=A/59/710. See also Stewart M. Patrick, *The Dark Side of U.N. Peacekeepers*, NEWSWEEK (Aug. 8, 2015, 3:51 PM), <http://www.newsweek.com/why-are-un-peacekeepers-still-sexually-abusing-children-361065> (abuses continue despite certain UN efforts to prevent them).

¹⁶² See DEPARTMENT OF DEFENCE, BEYOND COMPLIANCE: PROFESSIONALISM, TRUST AND CAPABILITY IN THE AUSTRALIAN PROFESSION OF ARMS 11 (2011), http://www.defence.gov.au/pathwaytochange/docs/personalconductpersonnel/Review%20of%20Personal%20Conduct%20of%20ADF%20Personnel_full%20report.pdf.

¹⁶³ See, e.g., GENDERFORCE, GOOD AND BAD EXAMPLES, LESSONS LEARNED FROM WORKING WITH UNITED NATIONS RESOLUTION 1325 IN INTERNATIONAL MISSIONS 39 (2009) (Swedish male officer relates that "the UN headquarters in Beirut arranged a course on gender equality and resolution 1325 . . . before deployment. But there was too much 'moralizing' about codes of conduct and how UN soldiers had been responsible for human rights violations . . . Many of us felt accused and could not see how this related to our assignment. It would have been better to inform us about the situation for women in the mission area and what we could actually do about it.").

¹⁶⁴ AUSTRALIAN NAP. *supra* note 23, at 29.

¹⁶⁵ *Id.* at 34, 42.

¹⁶⁶ *Id.* at 48.

Afghanistan has been recognized as a positive one,¹⁶⁷ any doctrinal revisions will carve out space for their continued employment in the ADF. The perspective on the role of the FETs appears to be primarily from 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.”¹⁶⁸ This emphasis could marginalize any efforts to find an enduring role in kinetic operations for the FETs, and any marginalization might actually be accentuated through the inclusion of women, peace and security considerations in exercises conducted by the ADF Peace Operations Centre with regional partners such as Indonesia and Thailand.¹⁶⁹ The ADF is also looking to include these themes in other exercises, such as the *Talisman Sabre/Saber* series of exercises it conducts with U.S. forces,¹⁷⁰ so there is opportunity for balance in the development of exercise themes and scenarios.¹⁷¹

More broadly, the ADF appears to be addressing institutional change by developing a coordinated and holistic strategy regarding women, peace, and security both nationally and internationally.¹⁷² In comparison, this institutional-level approach is not apparent in U.S. efforts, and is probably not replicable near-term in the consensus-driven decision-making environment of NATO. An example of this institutional change is the use of a Gender Equality Advisory Board (GEAB), a direction-setting advisory body that drives and shapes the direction of the “Secretary of Defense’s and Chief of Defence Force’s gender equality

¹⁶⁷ Mark Binskin, Air Marshal, Australian Air Force, Presentation at the Annual Civil Society Dialogue on Women, Peace and Security 2013 (2013), <http://www.defence.gov.au/VCDF/docs/speeches/130816%20-%20AIR%20MARSHAL%20MARK%20BINSKIN%20SPEECH%20TO%20PAKISTAN%20COMMAND%20AND%20STAFF%20COLLEGE.pdf>.

¹⁶⁸ See AUSTRALIAN NAP, *supra* note 23.

¹⁶⁹ *Id.* at 47.

¹⁷⁰ PROGRESS REPORT, *supra* note 139, at 78.

¹⁷¹ TALISMAN SABRE 15, a bilateral Australian-U.S. annual training exercise, included exercise scenario play that included gender considerations, and deployed gender advisors supporting commanders and senior staff. *Integrating Women, Peace and Security into TALISMAN SABRE 15*, 15 AUSTRALIAN CIVIL-MILITARY CENTRE NEWSLETTER 5 (Aug.-Sept. 2015), <https://www.acmc.gov.au/wp-content/uploads/2015/10/ACMC-Aug-Sep-Newsletter.pdf>.

¹⁷² See, e.g., AUSTRALIAN GOVERNMENT, DEPARTMENT OF DEFENSE, TREATMENT OF WOMEN IN THE AUSTRALIAN DEFENCE FORCE, <http://www.defence.gov.au/pathwaytochange/docs/twadfa/> (Australia’s two phased approach to review the treatment of women at the Australian Defence Academy specifically, and the larger review of the treatment of women in the ADF and pathways for women to become ADF leaders).

priorities within the broader Defence cultural reform agenda.”¹⁷³ The GEAB is jointly chaired by the Secretary of Defence and the Chief of Defence Forces, indicating institutional championing of this effort.¹⁷⁴ 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).”¹⁷⁵ 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.¹⁷⁶ The activities of the GEAB are complemented by the Defence National Action Plan Implementation Plan Working Group, which is comprised of representatives from the Services and Groups within Defence, and is tasked with facilitating progress on the NAP.¹⁷⁷

In sum, the ADF’s implementation of the Australian NAP at this point in time appears to lean towards inclusion of gender perspectives in operations from more of a non-kinetic perspective (consistent with the precepts of Peacekeeping and Stability Operations), rather than a broader perspective that would be more inclusive of UNSCR 1325’s requirements regarding kinetic operations.¹⁷⁸ However, the ADF’s efforts represent in many ways nothing short of fundamental change in the way it conducts its business with respect to gender considerations. Any assessment of the ADF’s incorporation of a gender perspective in its activities and operations must recognize that it is occurring alongside very significant government actions to ensure equal treatment of women ADF servicemembers and to improve gender diversity in the ADF from a capability perspective.¹⁷⁹ Accordingly, even though Australia’s significant

¹⁷³ PROGRESS REPORT, *supra* note 139, at 72.

¹⁷⁴ Wittwer e-mail, *supra* note 137.

¹⁷⁵ See PROGRESS REPORT, *supra* note 139.

¹⁷⁶ *Id.* at 72-73.

¹⁷⁷ *Id.* at 73.

¹⁷⁸ The PROGRESS REPORT, *supra* note 139, 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.” *Id.* at 74.

¹⁷⁹ In describing the impact of the continuing government review of the ADF and its treatment of women servicemembers, set out in the 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, AUSTRALIAN HUMAN RIGHTS COMMISSION (2011) and REVIEW INTO THE TREATMENT OF WOMEN IN THE AUSTRALIAN DEFENCE FORCE, PHASE 2 REPORT (2012), The PROGRESS REPORT notes these reviews specifically describe “how the National Action Plan

experience in peacekeeping and humanitarian missions might suggest at one level that the ADF's implementation of the Australian NAP might be particularly worthy of the JSDF's consideration in its implementation of the Japanese NAP, there are internal social and legal drivers behind the efforts to increase the number of women in the ADF and their roles and responsibilities that are not likely present in Japanese NAP implementation efforts.

IV. WOMEN IN THE JSDF

Formally part of the JSDF since 1952 when 57 female nurses were given regular service status in the ground forces of the then-National Safety Forces,¹⁸⁰ women's numbers in the JSDF are up slightly since 2004, when only 4.6% of JSDF servicemembers were women.¹⁸¹ Currently, women constitute approximately 5.6% of JSDF servicemembers (12,599 out of 225,712). Legally, women in the JSDF are eligible to serve in a fairly large number of military positions. As described in the annual Japan Ministry of Defense (JMoD) white paper, *Defense of Japan 2014*,

While there are still limitations to certain assignments, due to the requirement for protecting motherhood and securing privacy (excluded from assignment to tanks, submarines, fighters, etc.), female SDF engage in boarding escort vessels and piloting antisubmarine patrol aircraft and transport aircraft, and their roles are expanding even at the nucleus of the SDF such as the staff offices and headquarters.¹⁸²

In reality, however, significant restrictions are applied because of maternity and privacy concerns, avoiding risks of close combat, and

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." *Id.* at 16.

¹⁸⁰ See Fumika Sato, *A Camouflaged Military: Japan's Self-Defense Forces and Globalized Gender Mainstreaming*, 10 ASIA-PACIFIC JOURNAL: JAPAN FOCUS 1, 2 (Sept. 2012) http://www.japanfocus.org/site/make_pdf/3820.

¹⁸¹ Defense of Japan, *supra* note 8. U.S. armed forces have the greatest absolute number of women servicemembers, and one of the highest percentages of any NATO TCN (15%). CNN Staff, *By the numbers: Women in the U.S. Military*, CNN (Jan. 24, 2013, 5:27 PM EST), <http://www.cnn.com/2013/01/24/us/military-women-glance/>. The number of women serving in the military is approximately 200,000, and there are approximately 70 female flag officers. *Id.* ADF female servicemembers constituted approximately 13.7% of ADF personnel in 2011, PROGRESS REPORT, *supra* note 138, at Table 3, but that portion has increased to 15.1% in 2014. Wittwer email, *supra* note 136.

¹⁸² DEFENSE OF JAPAN, *supra* note 8, at 351.

economic concerns regarding the accommodation of women.¹⁸³ These *de facto* exclusions significantly limit the roles women can perform in the JSDF – and significantly, there are many JSDF employment areas that have not been traditionally sought by women servicemembers (such as infantry positions).¹⁸⁴

Reflecting at least partial progress towards gender equality¹⁸⁵ rather than gender diversity, that is, a social justice approach rather than a capability approach, JMoD's *Basic Plan for Gender Equality in the Ministry of Defense FY2011-FY2015*, was released in March 2011.¹⁸⁶ The Basic Plan reflects the gender equality principles that underpin the objectives of the government's Cabinet Office *White Paper on Gender Equality*.¹⁸⁷ As such, the expanded recruitment and retention of women in the JSDF is an objective, but the *White Paper* does not make the crucial link between women's participation and improved JSDF capabilities.¹⁸⁸ For example, programs such as childcare, men's paternity leave, and a greater work-life balance are seen as promoting women's participation in the workforce; however, these are not seen as critical to maintaining women in the JSDF workforce. In a commercial enterprise, if female employees' contributions were valued because of their positive impact on

¹⁸³ JAPAN MINISTRY OF DEFENSE, JYOSEI JIEIKAN NO HAICHI SEIGEN (LIMITING ASSIGNMENTS RULE) (2011), <http://www.mod.go.jp/j/approach/others/jinji/gender/2-2.pdf> (Dr. Eiko Iwata trans.). of the services are open to female uniformed personnel, but due to the requirements of protecting motherhood and securing privacy, some assignments are limited. In general, women servicemembers tend to be concentrated in communication, intelligence, medicine and accounting specialties, and in general duties units. SABINE FRÜHSTÜCK, *UNEASY WARRIORS: GENDER, MEMORY AND POPULAR CULTURE IN THE JAPANESE ARMY* 91 (2007).

¹⁸⁴ This is sometimes informally described as “the Japanese way of doing things.” Discussion of what are appropriate roles for women in the Japanese military has often become bogged down in outdated ideas of emasculated warfare, rather than focusing on the capability enhancement female servicemembers could bring to the force. FRÜHSTÜCK, *supra* note 183, at 100.

¹⁸⁵ See Sato, *supra* note 180, at 8 (government motivations to increase the number of women in the JSDF include claiming “societal advancement following the expansion of workplace access for women in civil society”).

¹⁸⁶ DEFENSE OF JAPAN, *supra* note 8, at 351.

¹⁸⁷ GENDER EQUALITY BUREAU CABINET OFFICE, HEISEI 23-NENNBAN DANNJYO KYŌDŌ SANKAKU HAKUSYO (CABINET OFFICE WHITE PAPER ON GENDER EQUALITY 2011) 3 (2011), <http://www.gender.go.jp/about/danjo/whitepaper/>.

¹⁸⁸ Viewing the role of women through a capability lens, rather than through a social justice lens, can be an effective approach to confront and resolve both overt and covert gender diversity resistance in an organization. LAURA SABATTINI & FAYE CROSBY, *DIVERSITY RESISTANCE IN ORGANIZATIONS* 282 (Kecia M. Thomas ed. 2008).

corporate operations, one would expect more pragmatic measures such as those listed above aimed at improving retention of female employees.¹⁸⁹

The JSDF approach acknowledges the social justice argument for increasing opportunities available to women, but does not recognize the improvements in capability that women would bring, particularly in civil-military operations.¹⁹⁰ The focus of the *Basic Plan's* implementation is largely on opening doors to women, without removing barriers that prevent them from entering, leaving it up to the women who “have the desire and capability” to push through. Importantly, these tweaks to a social justice approach are unlikely to yield significant increases in the number of female servicemembers since this same approach has not resulted in noticeable organizational outcomes in the two decades of its use.¹⁹¹

When specific career paths within the JSDF for women are examined, it is worth noting, for example, that the maritime component of the JSDF recently has had two women serving as ship captains of training vessels,¹⁹² and if restrictions were removed, women could command destroyers in a few years.¹⁹³ Further, there is some evidence to suggest that women who join the JSDF do so because it offers a meaningful alternative to non-career employment in mundane service-industry,

¹⁸⁹ Studies and practical business experiences confirm that providing flexibility in career paths, offering family-friendly benefits such as childcare and teleworking, and providing paid maternity and paternity leave are successful in increasing the retention of women in the workplace. See, e.g., Amy Wittmayer, *Retaining Women in the Workplace*, UNIVERSITY OF NORTH CAROLINA KENAN-FLAGLER BUSINESS SCHOOL (2014), <http://www.kenan-flagler.unc.edu/~media/Files/documents/executive-development/retaining-women-in-the-workplace-white-paper.pdf> (report prepared by the Director, MBA Career Management Center, UNC Kenan-Flagler Business School, for an executive development program). Such practical steps are feasible in any organization, whether civilian or military, but successful implementation may require significant changes in “corporate culture.” *Id.* at 9-10.

¹⁹⁰ Bumiller, *supra* note 86.

¹⁹¹ For example, even though the cap on the number of female cadets admitted to the National Defense Academy was lifted in the early 2000's, the number of female graduates has consistently remained around 5% of any given class. DEFENSE OF JAPAN, *supra* note 8, at 457. Women were first admitted as cadets in 1992. Sato, *supra* note 180, at 6.

¹⁹² Fumiaki Motoyama, *Josei Jieikan Michi Hiraku (Broadening Pathways for Female Japan Self-Defense Force Members)*, ASAHI SHINBUN YAKUN (May 14, 2013); Kirk Spitzer, *Japanese Women Take Command, Finally*, TIME (Mar. 22, 2013), <http://nation.time.com/2013/03/22/japanese-women-take-command-finally.html>.

¹⁹³ See text accompanying notes 182-184, *supra* (despite legally being eligible for all military positions, as a matter of implementation women are kept out of possible direct combat roles).

clerical, and retail jobs.¹⁹⁴ On the other hand, there are only a few long-term career paths open to women and little opportunity to gain tactical-level experience. The JMoD has stated that it will seek to increase the numbers of women servicemembers in international peace cooperation activities.¹⁹⁵ Despite recent informative reports in the Japanese military press on women officers serving in such missions,¹⁹⁶ and the visible and significant role played by female JSDF female personnel in the Great East Japan Earthquake recovery efforts,¹⁹⁷ which included dealing with the effects of both a tsunami and a nuclear disaster, anecdotal information suggests that most of the JSDF personnel who have served on such missions have been men.¹⁹⁸ This is not unexpected, given the relatively small number of women in the JSDF and their military occupations. Likewise, there are few opportunities to gain strategic-level planning and decision-making skills for women. It is therefore no real surprise that there are no women generals and few colonels. In fairness to the JSDF, however, this situation is also reflected in civilian Japanese society, for there is a notable lack of women in “career streams” and managerial positions there as well.¹⁹⁹

¹⁹⁴ FRÜHSTÜCK, *supra* note 183, 92-93.

¹⁹⁵ DEFENSE OF JAPAN, *supra* note 8, at 351.

¹⁹⁶ See Japan Ministry of Defense, *Women Making a Difference at the MOD – Interview with a SDF Female Officer*, JAPAN DEFENSE FOCUS, No. 56 (Sept. 2014), <http://www.mod.go.jp/e/jdl/no56/topics.html> (LTC Kurita noted her gender allowed her to gather information from Timorese women that male officers would not have obtained, and that being a woman officer seems to make an impression on government officials and senior officers from other Asian countries); Japan Ministry of Defense, *Interview with LTC Kawasaki*, JAPAN DEFENSE FOCUS, No. 53 (June 2014), <http://www.mod.go.jp/e/jdl/no53/specialfeature.html> (LTC Kawasaki deployed to both Timor and South Sudan on JSDF peacekeeping operations, providing medical assistance. When asked whether she thought “there was any particular area that [she thought she contributed to] as a female officer, she stated, “There was nothing in particular. This is because I found my working environment comfortable as my gender did not matter.”). In November 2014, Lieutenant Colonel Kurita was assigned to NATO headquarters to provide advice on incorporating gender perspectives in military operations. PRESS RELEASE, JAPAN MINISTRY OF DEFENSE, *Dispatch of a female Self-Defense Force personnel to NATO headquarters* (Nov. 4, 2014), http://www.mofa.go.jp/press/release/press4e_000488.html.

¹⁹⁷ James Simpson, *JSW Talks: Prof Sabine Frühstück*, NEW PACIFIC INSTITUTE: JAPAN SECURITY WATCH (July 30, 2011, 10:00 AM), <http://jsw.newpacificinstitute.org/?p=7467>.

¹⁹⁸ Shinzō Abe, Prime Minister of Japan. Address at The Sixty-Ninth Session of the General Assembly of the United Nations (Sept. 25, 2014), http://www.mofa.go.jp/fp/unp_a/page24e_000057.html (Prime Minister Abe says that Japan has sent total of 9,700 personnel on peacekeeping missions).

¹⁹⁹ See *The World Economic Forum ranked Japan at 105th place by its Global Gender Gap Index*, NATIONAL FEDERATION OF BUSINESS AND PROFESSIONAL WOMEN’S CLUBS OF JAPAN: REPORTS (2014), <http://www.bpw-japan.jp/english/wef105.html> (Japan

Ironically, although women constitute 52% of the Japanese population,²⁰⁰ if the policies of the Abe Administration do significantly increase the participation of women in the Japanese workforce, this would likely result in the JSDF facing increasing competition for qualified women to help fill its ranks.²⁰¹ It is also important to note that unlike the situation in Australia and the United States, Japanese women have not campaigned for gender integration in the JSDF. As Fumika Sato has noted, “[b]y contrast, Japanese women activists, deeply concerned about the threat of resurgent militarism in Japan, have not prioritized support for expanded opportunities for women in the SDF.”²⁰² It is in this context that the current draft of the Japanese NAP and its requirements for JMoD implementation must be examined.

V. THE JAPANESE NAP

The Japanese government publicly announced it was undertaking work on the Japanese NAP in April 2013.²⁰³ Concerned that there was a lack of transparency in the drafting process, a number of NGO’s petitioned the Abe Administration to be more inclusive in August 2013.²⁰⁴ As a result, the first consultation between representatives of the Ministry of

was 105 out of 136 countries; in particular, the rate of Japanese women’s political participation and empowerment was only 6% compared to that of men).

²⁰⁰ CIA, *Japan*, CIA WORLD FACT BOOK, https://www.cia.gov/library/publications/the-world-factbook/geos/print/country/countrypdf_ja.pdf.

²⁰¹ The JSDF finds itself in a difficult position in this regard. Operational realities mean the JSDF must focus on recruiting young, healthy personnel – who are very much in demand by civilian employers. Relying on immigration to help replenish this age cohort is not realistic – Japan is a very demographically homogenous society, with 98.5% of its population claiming Japanese descent, *id.*, and immigration initiatives that do exist focus on recruiting temporary manual labor, not skilled labor. See International Organization of Migration, *IOM Tokyo – Country Office with Resource Mobilization Function*, INTERNATIONAL ORGANIZATION OF MIGRATION (2014), <http://www.iom.int/countries/japan/general-information> (limited temporary migration programs being promoted to ease labor shortages).

²⁰² Sato, *supra* note 180, at 8. However, Sato would argue that on the whole, “[t]he SDF’s own goals, and those of the government generally, have centered on camouflaging military expansion through the use of women as poster girls and the creation of an image of the SDF as an advanced domestic and international organization.” *Id.* at 6.

²⁰³ Mavic Cabrera Balleza, *Japan Develops its National Action Plan on Resolution 1325*, GLOBAL NETWORK OF WOMEN PEACEBUILDERS (Apr. 2013), <http://www.gnwp.org/blog/japan-april-2013>.

²⁰⁴ Press Release, ASIA-JAPAN WOMEN’S RESOURCE CENTER, *39 groups call for wider civil society participation for Japanese 1325 NAP* (Aug. 29, 2013), <http://www.ajwrc.org/eng/modules/bulletin/index.php?page=article&storyid=141>.

Foreign Affairs (JMoFA) and NGO's occurred in September 2013, followed by near-monthly consultations thereafter.²⁰⁵

Prime Minister Abe announced the completion of the Japanese NAP at the United Nations on September 29, 2015.²⁰⁶ An English version of the NAP can be found on the JMoFA webpage.²⁰⁷ Because the NAP is so recent, there are as of yet no published reports addressing precisely how the NAP will be implemented by the Japanese government, so any analysis of it at this point must be primarily descriptive. The NAP states that its purpose is to:

Reflect the path Japan has followed as a peace-loving nation based on the principles of respect for fundamental human rights and international cooperation under its Constitution. Taking into consideration that all countries need to cooperate with each other in an increasingly globalized international community, Japan will make further efforts for ensuring the peace, stability, and prosperity of the international community through taking concrete actions, with the intent of achieving a society free not only from war but also poverty, exploitation, discrimination, and violence, inside and outside Japan.²⁰⁸

Importantly for this article's comparative analysis, the Japanese NAP uses a matrix structure similar to the U.S. and Australian NAPs, albeit organized differently. The Japanese NAP is based on five "pillars": "participation; conflict prevention; protection; humanitarian and reconstruction assistance; and the framework to monitor, evaluate, and review."²⁰⁹ The NAP sets out "women's participation in processes of conflict prevention, peacebuilding, and reconstruction" as a cross-cutting, core element of each of the five pillars.²¹⁰ The Japanese NAP focuses particularly on the pillars of conflict prevention, protection, and humanitarian and reconstruction assistance, in the sense of

preventing human rights infringement during conflict and disaster,

²⁰⁵ MINISTRY OF FOREIGN AFFAIRS OF JAPAN, WOMEN'S EMPOWERMENT AND GENDER EQUALITY: DRAFTING PROCESS OF JAPAN'S NATIONAL ACTION PLAN (2013), http://www.mofa.go.jp/fp/pc/page23c_000182.html.

²⁰⁶ Shinzō Abe, Prime Minister of Japan, Address at The Seventieth Session of the General Assembly of the United Nations (Sept. 29, 2015), http://gadebate.un.org/sites/default/files/gastatements/70/70_JP_en.pdf.

²⁰⁷ *Women's Issues*, MINISTRY OF FOREIGN AFFAIRS OF JAPAN, <http://www.mofa.go.jp/files/000101798.pdf>.

²⁰⁸ NAP, *supra* note 18, at 5.

²⁰⁹ *Id.* at 6.

²¹⁰ *Id.*

including violence against women and girls, etc. during and after conflicts and protecting women and girls who have suffered violence or other human rights infringement at the stage of emergency assistance after a conflict or a disaster.²¹¹

In contrast to the U.S. NAP, for example, which appears to emphasize the role of interagency coordination, policy development and education and training in achieving its implementation goals, the Japanese NAP instead emphasizes the role of women's participation across the different pillars as the primary driver of Japan's efforts. These differences in basic implementation strategy, although arguably small when viewed from the national strategic level, could result in very different implementation and actions at the operational and tactical levels in handling gender issues.

The bulk of the NAP consists of the specific measures the Japanese government has established as implementation milestones, set out in a matrix format. Each of the pillars is first described in terms of the major goal of the pillar, and then in terms of its significance and objective. For example, the major goal for the Participation Pillar is to “[e]nsure equal participation of women in all stages in the field of peace and security with the aim of achieving gender mainstreaming in this field.”²¹² The significance and objective of this goal is ensure that gender mainstreaming consistent with UNSCR 1325 and other resolutions is achieved by incorporating women's perspectives through the participation of women in all of Japan's activities and operations.²¹³

Each of the major goals is supported by multiple sub-goals. For example, the first sub-goal of the Participation Pillar is to “[e]nsure women play an active role in decision making concerning the occurrence and recurrence of conflicts and ensure that women's perspectives are reflected in such processes.” Each sub-goal is then supported by multiple actions. For example, the first sub-goal is intended to be achieved in part through the accomplishment of Action 2, “[o]ffer cooperation in UN PKOs and other peacebuilding efforts with due consideration given to women's perspectives.”²¹⁴ Measurement of this action will be accomplished by two different metrics, called “indicators.” Indicator 2, for example, is the “status of dispatched experts in gender issues and personnel in charge of gender issues to UN PKOs, etc.”²¹⁵

²¹¹ *Id.*

²¹² *Id.* at 8.

²¹³ *Id.*

²¹⁴ *Id.*

²¹⁵ *Id.*

The matrix for the first sub-goal assigns responsibility to the different government agencies to complete the actions. For Action 2, for example, the designated agencies are the Secretariat of the International Peace Cooperation Headquarters, the Cabinet Office, JMoFA, and JMoD.²¹⁶ The inclusion of JMoD in this action, however, does not indicate the degree of responsibility given to JMoD throughout the NAP to implement its requirements. In fact, the vast majority of the actions are to be carried out by JMoFA and the Japan International Cooperation Agency (JICA). Of the 85 separate actions set out in the NAP, JMoFA is responsible for 83, and JICA for 65.²¹⁷ JMoD, on the other hand, is only responsible for 11.²¹⁸ This suggests that JMoD is not expected to play a major role in implementing Japan's NAP.

A more detailed review of the actions assigned to JMoD tends to confirm the likely meaning of this gross metric in terms of JMoD's relatively modest role. Under the Participation Pillar, JMoD is responsible primarily for ensuring that properly trained military personnel (mainly officers), including women when they volunteer and are deemed appropriate for the mission, are assigned to operations.²¹⁹ Under the Conflict Prevention Pillar, JMoD is responsible for just one action, "Strengthen the capacity to prevent and respond to gender-based violence, etc. by PKO personnel[.]"²²⁰ The indicators for achieving this capacity are: 1. the implementation of gender-related education in JSDF curricula, and 2. training personnel in these issues prior to deployment.²²¹

JMoD's responsibilities under the Protection Pillar are more operational, and perhaps more tangible, than those under the Conflict Prevention Pillar. The major goal of the Protection Pillar is to "prevent various aid-recipients, including women and girls, etc. from being exposed to gender-based violence, etc. or other human rights infringement in or after a conflict or under humanitarian crisis such as a large-scale disaster."²²² As to its significance and objective, this pillar notes that

Under humanitarian crisis, in particular, there is a heightened risk of

²¹⁶ *Id.*

²¹⁷ *Id.* at 8-30.

²¹⁸ *Id.*

²¹⁹ *Id.* at 8-11.

²²⁰ *Id.* at 16.

²²¹ *Id.*

²²² *Id.* at 17.

gender-based violence, such as rape and other sexual violence, domestic violence, sexual exploitation (such as being forced to provide sexual services in return for access to assistance) and trafficking in persons. Under such circumstances, it is urgently necessary to ensure comprehensive protection of women and girls.”²²³

The first sub-goal of this pillar is to “[p]rovide victims of gender-based violence under humanitarian crisis with comprehensive support, including physical, medical, psychological, legal, and economic assistance.”²²⁴ Under this sub-goal, JMoD is responsible for implementing Action 2, “[t]rain officials and [J]SDF personnel engaging in PKOs and other peacebuilding activities, disaster relief missions, and projects to assist developing countries.”²²⁵ There are two indicators for this sub-goal, both of which would appear to be particularly relevant to this task as well as being very practical metrics. Indicator 1 is the “status of training on responses to gender-based violence including a perspective of sexual and reproductive health and rights” This indicator goes beyond merely tracking the numbers of personnel trained – it also looks to the content of the training as well.²²⁶ Similarly, Indicator 2 is that level of assistance given to “NGOs that support training of medical personnel on responses to gender-based violence and, in particular, on sexual and reproductive health and rights.”²²⁷

The fourth sub-goal of the Protection Pillar addresses the proper investigation and punishment of deployed personnel “and others who perpetrate gender-based violence.”²²⁸ Action 1 of this sub-goal is the prevention of “gender-based violence by personnel dispatched for PKO duties.” Importantly, the indicators for Action 1 go beyond training in dealing with gender-based violence against women and girls and their protection – they also require someone be designated to supervise these situations.²²⁹ In a complementary fashion, Action 3 requires the establishment of “a mechanism of prosecution and punishment in the event of any gender-based violence” on the part of deployed personnel.²³⁰ Action 3’s indicators include the publication of official policy on the

²²³ *Id.*

²²⁴ *Id.*

²²⁵ *Id.*

²²⁶ *Id.*

²²⁷ *Id.*

²²⁸ *Id.* at 20.

²²⁹ *Id.*

²³⁰ *Id.*

punishment of perpetrators of gender-based violence and harassment against those who bring complaints, and the establishment of an office to accept such complaints.²³¹

Although the fourth pillar, Humanitarian and Reconstruction Assistance, is very operationally oriented like the Protection Pillar, the role played by JMoD in this area is quite limited. This pillar's major goal is to "provide humanitarian and reconstruction assistance while reflecting circumstances and needs unique to women and girls, etc., promoting women's empowerment, and ensuring women's participation."²³² In terms of its significance and objective, this pillar notes that

Conflicts and disasters create refugees and displaced persons, as well as persons stranded and seeking rescue. Under such circumstances, existing mechanisms of protection such as family ties and communities are lost while risks and urgency heighten . . . In such cases, it is essential to pay attention to circumstances and needs unique to women and girls, etc. and ensure their rights.²³³

Despite the significant breadth of such responses in conflict and disaster situations, the JMoD's responsibilities appear to be largely limited to the disarmament, demobilization, and reintegration of women and girl soldiers back into society, and more specifically limited to ensuring that personnel engaged in collecting weapons and other disarmament initiatives have either themselves been trained on gender issues or are responsible for handling gender issues.²³⁴

In its fifth and final pillar, Framework for Monitoring, Evaluation and Review, similar to the Australian NAP in this regard, the Japanese NAP sets out a concrete process to move NAP implementation forward towards time-defined milestones. Duties in this pillar are assigned to "all relevant ministries and agencies."²³⁵ To meet its major goal of building "a framework for effectively monitoring, evaluating, and reviewing the NAP at an appropriate time and revise the NAP regularly," according to its significance and objective a Monitoring Working Group and a separate Evaluation Committee are to be established, with complementary tasks assigned to each.²³⁶ Each ministry is expected to establish its own office

²³¹ *Id.*

²³² *Id.* at 22.

²³³ *Id.*

²³⁴ *Id.* at 27.

²³⁵ *Id.* at 29-30.

²³⁶ *Id.* at 29.

to act as a focal point for implementation monitoring, and each focal point is to be made part of the Monitoring Working Group. Serving as the secretariat of the group, JMoFA's Gender Mainstreaming Division will publish annual implementation reports on its website, in both Japanese and English.²³⁷

The Gender Mainstreaming Division will also serve as the central government point of contact for the Evaluation Committee. Whereas the Monitoring Working Group is composed of government representatives alone, the Evaluation Committee will include members of civil society and NGOs with requisite expertise in gender issues. The Evaluation Committee is authorized to request NAP implementation information from government ministries, to opine on a draft of the Monitoring Working Group's annual report, and analyze the progress of NAP implementation and present recommendations for NAP revision.²³⁸ Revision is expected to occur three years after the NAP has been issued, or 2018.²³⁹

VI. CONCLUSION

Since the submission of proposed principles and recommendations for the development of the Japanese NAP by different non-governmental organizations and academics to JMoFA in August 2013, short monthly meetings comprised of these groups and individuals and the relevant government organizations were held to develop the Japanese NAP. Through this process, the government organizations and the NGOs established good working relationships, despite their differing organizational philosophies. As Rui Matsukawa, the Director of the Gender Mainstreaming Division, JMoFA, recently stated, "We will face difficulties with the [NGOs] together – we will review our NAP over time, and may change focus or indicators to respond to feedback – but in that phase too there [will be] partnership between civil societies and [government] agencies."²⁴⁰

To review, this article has analyzed three Western NAP implementation models that are potentially relevant to the JSDF's implementation of the Japanese NAP; but all of the models have

²³⁷ *Id.*

²³⁸ *Id.* These recommendations are expected to be presented to the government in 2017.

²³⁹ *Id.* at 30.

²⁴⁰ Ashley Binetti, *Japan Reaffirms Its Commitment to Women's Participation in Peacebuilding*, GEORGETOWN UNIVERSITY INSTITUTE FOR WOMEN, PEACE AND SECURITY: BLOG (Dec. 8, 2014), <http://blog.givps.georgetown.edu/japan-reaffirms-its-commitment-to-womens-participation-in-peacebuilding/>.

drawbacks that make them of only limited utility to Japan and the JSDF at this point in time. Due to implementation problems with the U.S. NAP from an operational perspective and the unique constitutional status of the JSDF, the U.S. NAP is not likely to serve as a fruitful model. The JSDF is not currently allowed to engage in “kinetic” overseas operations;²⁴¹ indeed, the military operations in which JSDF assets have participated overseas, even in Iraq between 2005 and 2006,²⁴² have been essentially humanitarian.²⁴³ Furthermore, the NAP development process in the U.S. does appear not reflect the collaborative relationship between NGOs and government representatives seen in Japan.²⁴⁴ NATO has taken a more collaborative approach than the U.S., but its gender action plan relies too heavily on too few gender advisors to shoulder the transformative work that must be done within that organization’s deployed headquarters for it to effectively implement UNSCR 1325 in a truly operational sense.²⁴⁵ Therefore, it too warrants only limited consideration by the JSDF at this time as it moves forward with its NAP implementation.

Of the three, the Australian model offers the most robust example of NAP implementation of UNSCR 1325. At one level, the significant experience of the ADF with peacekeeping and its working relationship with respected civil-military organizations such as the ACMC on NAP implementation suggests a potentially useful commonality between the

²⁴¹ FUNDAMENTAL CONCEPTS, *supra* note 14.

²⁴² See Masanori Kuroki, *The Deployment of the Japan Self-Defense Forces in Iraq and Public Trust Among Different Ideological Groups*, 25 DEFENCE AND PEACE ECONOMICS 281, 281-82, 288 (2014).

²⁴³ See *Japan’s About-Face, Map: Japan’s Self-Defense Forces Deployments*, PBS (July 8, 2008), <http://www.pbs.org/wnet/wideangle/episodes/japans-about-face/map-japans-self-defense-forces-deployments/1275/> (overseas deployments other than Iraq conducted as part of peacekeeping operations or international disaster relief operations).

²⁴⁴ The Women’s International League for Peace and Freedom organized five civil society consultations between U.S. Department of State representatives and interested organizations in September and October 2011 in different cities. These three-hour consultations apparently included briefings by the State Department on UNSCR 1325 and the U.S. NAP in general, but a NAP draft was not shared with the participants. Women’s International League for Peace and Freedom – U.S. Section, *Report of the Civil Society Consultations on the Development of the United States National Action Plan on Women, Peace and Security, (UN SCR 1325)*, 9, 12-13, 34 (Dec. 10, 2011), http://www.peacewomen.org/assets/file/Resources/NGO/wilpf_reportwpsconsultations_2_011.pdf. Similarly, the U.S. Civil Society Working Group on Women, Peace, and Security appears to have presented different memoranda to U.S. government agencies regarding its positions on the U.S. NAP, but it is not clear that the group was involved in a collaborative process with the State Department in drafting the NAP. *Events*, U.S. CIVIL SOCIETY WORKING GROUP ON WOMEN, PEACE AND SECURITY, <http://civilsocietywg.org/events/>.

²⁴⁵ See *New Approach*, *supra* note 90, at 58.

ADF and the JSDF in terms of NAP implementation from a humanitarian-mission perspective. At a deeper level, however, the ADF's need to plan for military missions across the spectrum of operations and the policy drivers working to increase the number and role of women in the ADF from a perspective of capability and diversity suggest that the Australian approach too might have only limited usefulness to the JSDF. Further, the Japanese NAP is itself a detailed action plan that likely reflects the scope and the means of Japan's engagement with the world as understood by its government. However, Japan's economic and security situation is moving it in directions that might change the JSDF's role appreciably in the future. At some point, Japan and its Western partners might find that greater harmonization of their respective NAP implementations in the intersection of gender and operations is necessary for the more efficient conduct of their multinational operations in the area of women, peace and security.