

# **Beyond Gender Advice: NATO's Implementation of the Women Peace and Security Agenda**

**Brook Morrison**

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## **Abstract**

Following the end of the Cold War, the North Atlantic Treaty Organization (NATO) was forced to reinvent itself from a defence organisation with a regional Euro-Atlantic focus to a security organisation with a global focus. The core task of crisis management and a changing strategic concept are the backdrop against which NATO implemented the Women, Peace, and Security (WPS) agenda through the Bi-Strategic Command Directive (Bi-SCD 40-001) Integrating United Nations Security Council Resolution (UNSCR) 1325 and Gender Perspectives into the NATO Command Structure. The sustained process for operationalising UNSCR 1325 and gender mainstreaming involved the creation of gender advisor positions as part of a commander's advisory staff. At the strategic level, NATO's most senior military officers were quick to recognise the potential of gender mainstreaming to positively influence the perception of civil society and other international security organisations. At the operational and tactical levels, the implementation of the WPS agenda and the acceptance of gender advisors continues to experience resistance. Using an analytical research method, this article critically examines the three versions of Bi-SCD 40-001, the progression of gender advisors from advisory staff to a military capability, and the potential for a human rights-based approach, common in the development sector, to be implemented across the NATO command structure.

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# 1 Introduction

Bosnia (1992–2004), Kosovo (2001–2003), Afghanistan (2003–2021), and Iraq (2004–2011) are examples of post-Cold War conflicts highlighting the changing role of the North Atlantic Treaty Organization (NATO) and the shift from a regional Euro-Atlantic focus to a global focus.<sup>1</sup> The absence of a persistent existential threat, posed by the Soviet Union, the changing nature of conflict, and the emergence of new security risks, such as terrorism, have required NATO to reinvent itself.<sup>2</sup> No longer focused on collective defence, NATO evolved into a global security actor engaged across the spectrum of crisis management.<sup>3</sup> This article examines NATO's implementation of the United Nations Security Council Resolution (UNSCR) 1325 in the context of NATO's continuous process to reinvent itself.

The necessity to involve women in the peacebuilding process, and the need to address the fulfilment of rights during the stabilisation and peacebuilding process, are two principles the United Nations (UN) has identified as essential to achieving a sustainable peace agreement.<sup>4</sup> There is a growing body of literature on NATO's gender mainstreaming process and efforts to implement the WPS agenda. However, there is limited research available on NATO's efforts to mainstream human rights. Using an analytical research method, this article explores the relationships between NATO's core crisis management task, the WPS

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<sup>1</sup> NATO, 'Operations and Missions: past and present' (14 June 2022) <[https://www.nato.int/cps/en/natolive/topics\\_52060.htm](https://www.nato.int/cps/en/natolive/topics_52060.htm)> accessed 25 May 2023.

<sup>2</sup> Timo Noetzel and Benjamin Schreer, 'More Flexible, Less Coherent: NATO after Lisbon' (2012) 66 *Aust J Int Aff* 20.

<sup>3</sup> David Chandler, *From Kosovo to Kabul and Beyond Human Rights and International Intervention* (2nd edn, Pluto Press 2006).

<sup>4</sup> Mohammed Abu-Nimer and Edy Kaufman, 'Bridging Conflict Transformation and Human Rights: Lessons from the Israeli-Palestinian Peace Process' in Julie Mertus and Jeffrey Helsing (eds), *Human Rights and Conflict Exploring the Links between Rights, Law and Peacebuilding* (1st edn, United States Institute of Peace 2006).

agenda's implementation, and the human rights-based approach (HRBA) to development. By considering the nexus between NATO's place in modern conflicts, the implementation of the WPS agenda, and the use of HRBA in development, the desired operational effect of Gender Advisors (GENADs) in NATO and the possibility of creating HRBA Advisors (HRBA AD) are discussed.

The remainder of this article proceeds as follows. Section 2 provides an overview of the evolution of NATO, the operationalisation of the WPS agenda, and HRBA to development. The following section provides a thorough analysis of gender mainstreaming in NATO, whilst section 3 examines NATO's operationalisation of the WPS agenda. Section 4 delves into the human rights-based approach to development and considers the possibility of mainstreaming HRBA in NATO.

I have 30 years of military experience as an Army Officer in the Canadian Armed Forces (CAF) until 2021. My military career gives me a unique perspective on the changing nature of conflict and how the CAF, as a member of NATO, restructured its forces and training to fit NATO's evolving strategic concept and core task of crisis management. During my career, I worked in multinational military headquarters in various positions and deployed on numerous operations across the spectrum of crisis including the Stabilisation Force (SFOR) in Bosnia and Herzegovina, and the International Security Assistance Force (ISAF) in Afghanistan. In my final position in the army, I was tasked with establishing GENAD and gender focal point (GFP) positions across my unit. During this time, I personally experienced the resistance to implementing GENADs identified by Bastick and Duncanson in their research. My personal experience of resistance to gender mainstreaming within the CAF led me to consider whether there is another way to address the multitude of elements gender mainstreaming is attempting to cover within the armed forces. A human rights-based approach offers the potential to address the principles of the WPS agenda through a human rights framework. I think it is possible for NATO to use a HRBA during its operational planning process and that

doing so will produce plans that further WPS agenda principles and address rights violations. In the article's final section, I draw on my military experience working within a NATO force structure to discuss the potential to implement a HRBA AD in NATO.

## 2 NATO and Collective Defence vs Crisis Management

This section examines the evolving role of NATO and considers three changes to the security sector following the end of the Cold War. For forty years, NATO had a single task of defending Europe and North America from a defined known adversary. To remain relevant after the collapse of the Soviet Union, NATO adapted to the changing security environment, redefined the engagement strategy, and developed a new *raison d'être*.<sup>5</sup> Since 1989, NATO has transformed to remain relevant in the post-Cold War conflict environment. NATO calls this '...successfully adapting to changes in the strategic environment.'<sup>6</sup> In brief, NATO has evolved from a defence organisation into a security organisation.<sup>7</sup> As a defence organisation, NATO was concerned with direct threats at or near the borders of member states. As an International Security Organisation (ISO), NATO has an interest in global security concerns and has taken a lead role in crisis management.<sup>8</sup> NATO identifies crisis management as a fundamental security task, which involves military and non-military measures to address the full spectrum of crisis. Three relevant changes in the strategic environment are: first, the development of crisis management

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<sup>5</sup> Jamie Shea, 'Keeping NATO Relevant' (*Carnegie Endowment for International Peace*, 2012) <<https://www.jstor.org/stable/pdf/resrep26708.pdf>> accessed 25 May 2022.

<sup>6</sup>John Tamnan, 'Anticipating the Changing Nature of War' (*NATO Review*, 2021) <<https://www.nato.int/docu/review/articles/2021/07/09/natos-warfighting-capstone-concept-anticipating-the-changing-character-of-war/index.html>> accessed 25 May 2023.

<sup>7</sup> Shea (n 5).

<sup>8</sup> Chandler (n 3) 1.

as a security concept; second, the increased complexity of the operating environment; and third, the Security Council's adoption of UNSCR 1325 and subsequent resolutions. Contemporary crisis management seeks to achieve sustainable conflict resolution through social, political, or economic transformation.<sup>9</sup>

Crisis management, one of NATO's core tasks, can involve military and non-military means to address an emerging military threat, civil and political unrest, or humanitarian concerns in each region or state.<sup>10</sup> Second, the operating environment has become highly complex with numerous non-military actors involved in crisis management. Non-military actors include international NGOs (INGOs), UN agencies, the European Union, development agencies such as the Foreign, Commonwealth and Development Office (FCDO) in the UK, the US Agency for International Development (USAID), and other humanitarian aid agencies such as Medicine Sans Frontier (MSF).<sup>11</sup> The operating environment is also made more complex because of the various humanitarian or development programmes each actor performs. For example, the FCDO builds shelters, and provides food, water, and sanitation services for those affected by natural disasters and conflict.<sup>12</sup> USAID provides assistance to internally displaced people forced to flee their homes and provides food assistance to refugees crossing the national border.<sup>13</sup>

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<sup>9</sup> Claudia Major and Christian Mölling, 'More Than Wishful Thinking? The EU, UN, NATO and the Comprehensive Approach to Military Crisis Management' (2009) 62 *Studia Diplomatica* 21.

<sup>10</sup> NATO, 'Crisis Management' (7 July 2022) <[https://www.nato.int/cps/en/natohq/topics\\_49192.htm](https://www.nato.int/cps/en/natohq/topics_49192.htm)> accessed 25 May 2023.

<sup>11</sup> M Williams, '(Un)Sustainable Peacebuilding: NATO's Suitability for Post conflict Reconstruction in Multiactor Environments' (2011) 17 *Global Governance* 115.

<sup>12</sup> DevTracker, <<https://devtracker.fcdo.gov.uk/>> accessed 29 March 2023.

<sup>13</sup> USAID, <<https://www.usaid.gov/humanitarian-assistance/what-we-do>> accessed 29 March 2023.

The third change to the strategic operating environment is the Security Council's adoption of UNSCR 1325 and the creation of the Women, Peace, and Security agenda. In 2007 NATO began to implement the WPS agenda. According to Hardt and Von Hlatky, a principal reason NATO operationalised UNSCR 1325 and instituted a gender mainstreaming process, was the desire to be perceived by other ISOs as following best practices.<sup>14</sup> Hardt and Von Hlatky's findings support those made by Gheciu who determined that NATO began its mainstreaming process because it needed to be seen as taking steps toward gender mainstreaming to improve the perception ISOs, INGOs, and other actors in the crisis area have of NATO.<sup>15</sup> Aid workers and UN staff tend to view NATO as a hyper-masculine, militaristic organisation whose involvement should be restricted to high-intensity conflict or combat operations, while the domain of peacebuilding and post-conflict reconstruction should be left to others.<sup>16</sup> The strategic advantage to NATO for implementing UNSCR 1325 was credibility with other key actors in crisis management.

## **2.1 Operationalising the Women, Peace, and Security Agenda**

UNSCR 1325, unanimously adopted in October 2000, is the landmark "No Women, No Peace" resolution, associating the inclusion of women in conflict resolution with sustainable peace.<sup>17</sup> UNSCR 1325, and the subsequent nine security council resolutions, form the foundation of the Women, Peace, and Security (WPS) agenda. The WPS agenda draws attention to the disproportionate impacts of conflict on women and girls, calls for greater measures to protect women from the effects of conflict, whilst simultaneously acknowledging the important role of women

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<sup>14</sup> Heidi Hardt and Stefanie Von Hlatky, 'NATO's About-Face: Adaptation to Gender Mainstreaming in an Alliance Setting' (2020) 5 J Glob Secur Stud 136.

<sup>15</sup> Alexandra Checiu, 'Divided Partners: The Challenges of NATO-NGO Cooperation in Peacebuilding Operations' (2011) 17 Global Governance 94.

<sup>16</sup> *ibid* 95.

<sup>17</sup> Marriet Schuurman, 'Time to Bring It Home' (2015) 14 Connections 1.

across the spectrum of crisis, and calls for the empowerment of all women in conflict prevention, peace talks and in post-conflict reconstruction.<sup>18</sup> The WPS agenda framework recognises the imperative for women's active involvement in all efforts to achieve international peace and security. The passing of UNSCR 1325 was a triumphant and historic moment for feminist antimilitarists.<sup>19</sup> The WPS agenda represents years of work by INGOs, UN departments and agencies, local NGOs, and an ad hoc transnational network of women's organisations and civil society groups to have the Security Council formally recognise the connection between the treatment of women and international peace and security.<sup>20</sup>

The resolutions comprising the WPS agenda are brief, however, the intentions are clear. The three themes of the WPS agenda are: protection, participation, and representation—protection of women's rights and bodies in conflict and post-conflict situations, including an end to impunity for crimes, particularly crimes of a sexual nature committed during conflict; the obligation to ensure the participation of women in peace and security governance; and the representation of women in decision-making at all levels of peace and security governance including in UN peacekeeping operations and in post-conflict reconstruction efforts such as disarmament, demobilisation and reintegration (DDR).<sup>21</sup> Importantly, UNSCR 1325 calls for more

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<sup>18</sup> Nicola Pratt and Sophie Richter-Devroe, 'Critically Examining UNSCR 1325 on Women, Peace and Security' (2011) 13 IFJP 492.

<sup>19</sup> Elizabeth Griffiths, Sara Jarman and Eric Jensen, 'World Peace and Gender Equality: Addressing UN Security Council Resolution 1325's Weaknesses' (2021) 27 MJGL 269.

<sup>20</sup> Cynthia Cockburn, 'Snagged on the Contradiction: NATO, UNSC Resolution 1325, and Feminist Responses' (No to War—No to NATO, Annual Meeting 2011) <[http://wloe.org/fileadmin/Files-EN/PDF/no\\_to\\_nato/women\\_nato\\_2011/NATO1325.pdf](http://wloe.org/fileadmin/Files-EN/PDF/no_to_nato/women_nato_2011/NATO1325.pdf)> accessed 25 May 2023.

<sup>21</sup> Laura Shepherd, 'Advancing the Women, Peace and Security Agenda: 2015 and beyond' (NOREF, 2014)

women in peacekeeping operations, not for UN member states to increase the number of women in armed forces, combat positions, or for war to become safer for women. NATO's operationalisation of UNSCR 1325 has focused on these three areas. In her recent book *Deploying Feminism: The Role of Gender in NATO Military Operations*, Von Hlatky identifies this as norm distortion and explains it as

a process by which institutionalized norms adopted by a principle (like NATO) are redefined by one of its agents (the military) in a way that is in tension with its original purpose or more forcefully changes the original purpose of the introduced norm.<sup>22</sup>

UNSCR 1325, as a Security Council resolution, is legally binding on UN member states and UN entities. However, resolutions are considered soft law with no legal force or legally enforceable claims.<sup>23</sup> As such there was no legal imperative for NATO to implement UNSCR 1325 or any of the subsequent resolutions. However, in 2007, NATO began to engage with the WPS agenda. NATO's initial attempts to operationalise the WPS agenda through a process of gender mainstreaming were ineffectual in the early years. The first Bi-SCD 40-001 was complicated and confusing, often using terms like gender dimension, gender awareness, gender perspective, female perspective, and gender equality interchangeably.<sup>24</sup> Bi-SCD 40-001 (2009) formalised the vast array of roles and responsibilities of GENADs and GFPs positions. Initially, the direction of GENADs and GFPs was unclear, the positions had both inward and outward-looking

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<[http://www.peacewomen.org/system/files/global\\_study\\_submissions/Laura%20Shepherd\\_NOREF%20policy%20brief.pdf](http://www.peacewomen.org/system/files/global_study_submissions/Laura%20Shepherd_NOREF%20policy%20brief.pdf)> accessed 25 May 2022.

<sup>22</sup> Stefanie Von Hlatky, *Deploying Feminism: The Role of Gender in NATO Military Operations*, (OUP 2023) 8.

<sup>23</sup> Griffiths, Jarman and Jensen (n 19) 299.

<sup>24</sup> Megan Bastick and Claire Duncanson, 'Agents of Change? Gender Advisors in NATO Militaries' (2018) 25 *Int'l Peacekeeping* 570.



responsibilities, the tasks were too broad for one position and led to confusion and organisational resistance.<sup>25</sup>

Despite these early growing pains to NATO's adoption of the WPS agenda, the highest levels of the military command structure in NATO grasped the strategic potential of gender mainstreaming. Since 2009, military officers at the highest levels have actively engaged in a sustained, systematic, and increasingly complex process of gender mainstreaming within NATO.<sup>26</sup> NATO's implementation strategy is one of positive progression.<sup>27</sup> First, use the military structure to implement the WPS agenda; second, link gender mainstreaming with operational success; then demonstrate how gender mainstreaming has improved human intelligence gathering capabilities, thus increasing situational awareness, improving force protection, and increasing mission success. Next, interpret the language of UNSCR 1325 to focus on all genders rather than women, and over time reframe GENADs from an advisory to an enabling capability, focusing only on successes and not on failures. Finally, link promotion and appointments to key positions to the successful incorporation of gender mainstreaming.<sup>28</sup>

## 2.2 Human Rights-Based Approach in Development

In the 1970s debates concerning a right to development saw rights language begin to seep into development work.<sup>29</sup> The development sector, including INGOs, NGOs, and the UN, recognised the significance of a human rights-based approach using international

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<sup>25</sup> *ibid* 572.

<sup>26</sup> Matthew Hurley, 'The "Gendeman": (re)negotiating Militarized Masculinities When "Doing Gender" at NATO' (2018) 4 *Crit Mil Stud* 72.

<sup>27</sup> Matthew Hurley, 'Watermelons and Weddings: Making Women, Peace and Security "Relevant" at NATO Through (Re)Telling Stories of Success' (2018) 32 *Glob Soc* 436.

<sup>28</sup> Hardt and Von Hlatky (n 14) 141.

<sup>29</sup> Peter Uvin, 'From the Right to Development to the Rights-Based Approach: How "Human Rights" Entered Development' (2007) 17 *Dev Pract* 598.

human rights law (IHRL) as a framework through which to plan and deliver development projects. The UN and development agencies were not alone in adopting HRBA for development assistance; international government aid agencies also employed HRBA for their development work.<sup>30</sup>

By 2003 many development agencies were using some form of a rights-based approach. To standardise a HRBA to development, the UN produced a document entitled ‘Common Understanding of Human Rights-Based Approaches to Development Cooperation and Programming’.<sup>31</sup> This document had two objectives; to clearly outline the UN’s desire to mainstream HR throughout the entire UN, including specialised agencies; and to ensure improved consistency in the application of HRBA across all UN agencies.<sup>32</sup> Although HRBA is now widely used, definitions vary. The UN development group defines HRBA as

...a broader conceptual framework for the process of human development that is normatively based on international human rights standards and operationally directed to promoting and protecting HR. It seeks to analyse the inequalities which lie at the heart of development problems and redress discriminatory practices and unjust distributions of power that impede development progress.<sup>33</sup>

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<sup>30</sup> Morten Broberg and Hans-Otto Sano, ‘Strengths and Weaknesses in a Human Rights-Based Approach to International Development – An Analysis of a Rights-Based Approach to Development Assistance Based on Practical Experiences’ (2018) 22 *Int J Hum Rights* 667.

<sup>31</sup> Uvin (n 29) 598.

<sup>32</sup> Hans P Schmitz, ‘A Human Rights-Based Approach (HRBA) in Practice: Evaluating NGO Development Efforts’ (2012) 44 *Polity* 524.

<sup>33</sup> Danish Institute for Human Rights, <<https://unsdg.un.org/2030-agenda/universal-values/human-rights-based-approach#:~:text=Universal%20Values,->

The definition includes two components common to most definitions. First, rights are part of a framework based in international law. Second, an acknowledgement of the unequal distribution of power or wealth which must be redistributed. Gauri and Gloppen define HRBA as ‘principles that justify demands against privileged actors made by the poor or those speaking on their behalf, for using national and international resources and rules to protect the crucial human interests of the globally or locally disadvantaged.’<sup>34</sup> They further construct four modalities through which HRBA can be approached. These are: (i) a global compliance approach which relies on international and regional treaties to pressure states to fulfil their human rights obligations; (ii) a programming approach which relies on donor-related activities; (iii) rights-talk approach focused on awareness raising and changing normative beliefs; and (iv) legal mobilisation approach which centres on litigation and other forms of legal mobilisation.<sup>35</sup> For NATO, the first three approaches offer ways to engage with HRBA using existing operating structures. NATO can engage strategically using a global compliance strategy, operationally at the programming level, and tactically using a rights-talk approach.

The human rights framework ensures a systematic approach which is more transparent, orderly, and consistent. Good HRBA practice generally requires human rights to be considered during every phase of planning and implementation. Proponents of HRBA emphasise the universality and interdependence of the approach making it widely applicable. Additionally, the indivisible nature of human rights requires a mutually supportive approach to development which seeks to advance all rights and will not advance one right at the expense of another.<sup>36</sup>

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Principle%20One%3A%20Human&text=The%20human%20rights%2Dbase  
d%20approach,promoting%20and%20protecting%20human%20rights>  
accessed 14 June 2023.

<sup>34</sup> Varun Gauri and Siri Gloppen, ‘Human Rights-Based Approaches to Development: Concepts, Evidence, and Policy’ (2012) 44 *Polity* 486.

<sup>35</sup> *ibid.*

<sup>36</sup> Robert Archer, ‘Linking Rights and Development: Some Critical

This aspect of HRBA also draws criticism, calling the approach too structured and constricting. However, what some consider a weakness, could become a strength when applied in NATO because the NATO planning process is highly structured and systematic. HRBA uses language such as mutually supportive, which military planners are comfortable and familiar with, as in a military context, mutual support is a firepower concept where units and weapons are positioned and employed to render assistance to each other.

HRBA is increasingly being used in health care, environmental protection, policy making, and disaster management. Hesselman and Lane examine the roles and responsibilities of non-state actors (NSAs) in disaster governance from the perspective of IHRL. They argue there is value in exploring the ‘wider application of programmatic “Human Rights-Based Approaches” to disaster governance, and the engagement of NSAs.’<sup>37</sup> Historically NATO’s operations occurred in the context of armed conflict, governed by the Law of Armed Conflict (LOAC); however, NATO’s involvement across the spectrum of crisis, particularly in conflict prevention and post-conflict reconstruction when hostilities are not taking place, is causing interoperability challenges for NATO as some states operate under an international humanitarian law (IHL) framework and others work within the IHRL framework.<sup>38</sup> Using HRBA in planning NATO can, in the same way that NSAs in disaster governance have done, directly link tasks and activities to IHRL standards, whilst adhering to the principles of HRBA.

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Challenges’ in Sam Hickey and Diana Mitlin (eds), *Rights-Base Approaches to Development: Exploring the Potential and Pitfalls* (1st edn, Kumarian Press 2009) 23.

<sup>37</sup> Marlies Hesselman and Lottie Lane, ‘Disasters and Non-State Actors – Human Rights-Based Approaches’ (2017) 26 *Disaster Prev Management* 527.

<sup>38</sup> Kirby Abbott, ‘A Brief Overview of Legal Interoperability Challenges for NATO Arising from the Interrelationship between IHL and IHRL in Light of the European Convention on Human Rights’ (2014) 96 *Int Rev Red Cross* 109.

### 2.2.1 HRBA use by NATO

NATO's 2022 strategic concept emphasises the cross-cutting importance of the WPS agenda, ensuring the principles of human security are integrated into NATO's core tasks. This commitment lends well to adopting a human rights-based approach as part of the delivery of NATO's core tasks of crisis management and cooperative security. NATO, as part of its activities in an area of operations, may establish a task to eradicate poverty, linked to the International Covenant on Economic, Social, and Cultural Rights (ICESCR). Using a HRBA to poverty eradication requires NATO to first acknowledge poverty as a denial or violation of the ICESCR right to a decent standard of living, food, clothing, medical care, and social care.

HRBA requires NATO to engage with the local population and the state. To do this, NATO must undertake its activities as part of the poverty eradication initiative using the principles of universality and non-discrimination, indivisibility, accountability, and participation. NATO could not simply deliver food, build wells, schools, or accommodations for the local population. HRBA requires NATO to engage in a consciousness raising and consultative process to ensure people understand their needs as rights they can claim and to ensure the local population is not made to feel like passive recipients of aid.

A NATO HRBA strategy to eradicate poverty must include working with state structures and public bodies to ensure platforms are developed to support the rights holder and the duty bearer. By paying attention to, and addressing power relationships, NATO would use its influence with those who hold the power to advocate for changes to the structures, social policies, legal instruments, and attitudes at the root of poverty. NATO could use its influence to ensure the state recognises its responsibilities as a primary duty-bearer responsible for respecting, protecting, promoting, and fulfilling human rights and strengthening the capacity of the state. Importantly, for NATO, a human-rights based approach must accept how the 'task to eradicate poverty' is achieved is as important as achieving it.

### 2.3 NATO: Remaining Relevant by Adapting

NATO's current strategic concept and crisis management as a core task legitimises NATO intervention across the spectrum of crisis. NATO's 2022 strategic concept was adopted at the Madrid Summit in June 2022. The document reaffirms the organisation's purpose, expresses the shared values, outlines strategic adaptations, and provides the framework for future operations.<sup>39</sup> The 2022 strategic concept replaced the previous strategic concept adopted at the Lisbon Summit in 2010. The 2010 strategic concept set out NATO's three essential core tasks as collective defence, crisis management, and cooperation, a departure from the 1999 strategic concept in which collective defence dominated NATO's fundamental tasks.<sup>40</sup> Crisis management, as a core task, establishes the imperative and sets the conditions for NATO to evolve from a regional organisation focused on territorial defence to an ISO with a mandate to engage before, during, and after the crisis.<sup>41</sup>

Under the rubric of crisis management, 'NATO announces a willingness to engage where possible and when necessary, to prevent crisis, manage crisis, stabilise post conflict situations and support reconstruction.'<sup>42</sup> To operate across the spectrum of crisis, NATO evolved by transforming into an ISO capable of conducting complex security operations with a multinational force trained and equipped to engage in low-intensity fighting, conduct humanitarian operations, train and equip host nation military and police forces, and provide support to government institutions all within the same mission environment.

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<sup>39</sup> NATO, 'Strategic Concept' (2022) <<https://www.nato.int/strategic-concept/>> accessed 25 May 2023.

<sup>40</sup> Sten Rynning, 'The Geography of the Atlantic Peace: NATO 25 Years after the Fall of the Berlin Wall' (2014) 90 *Int Aff* 1383.

<sup>41</sup> Shea (n 5).

<sup>42</sup> Noetzel and Schreer (n 2) 26.

### 2.3.1 Security Meets Development

Provincial reconstruction teams (PRTs) were developed in the early 2000s, to span the divide between NATO's traditional role in defence and the emerging role in crisis management. Responsible for the conduct of security tasks and development work,

... PRTs are involved in a wide range of activities, many of which have traditionally been the responsibility of development and humanitarian organisations, including humanitarian relief; the identification and implementation of quick impact projects (QIP); the construction of large infrastructure projects such as roads and schools; the training of police; and the coordination of state donor funds for projects in the communities where PRTs operate.<sup>43</sup>

PRTs, developed for use in the International Security Force Assistance (ISAF) mission in Afghanistan, were NATO's response to the requirement for forces to be 'all singing, all dancing'.<sup>44</sup> Despite NATO's claims about the success of PRTs in Afghanistan, there is little empirical evidence of their effectiveness. PRTs faced strong criticism from NGOs for not following the tenets of traditional humanitarian or development efforts. A common criticism is that they were a public relations tool providing good news stories for the public back home with photos of soldiers doing humanitarian projects. PRTs were also criticised for conducting projects and activities, based on winning the 'hearts and minds' of the local population, to improve intelligence gathering rather than meeting community needs.<sup>45</sup> Feminists criticised

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<sup>43</sup> Ryerson Christie, 'The Pacification of Soldiering, and the Militarization of Development: Contradictions Inherent in Provincial Reconstruction in Afghanistan' (2012) 9 *Globalizations* 56.

<sup>44</sup> A term commonly used in NATO to mean having the ability and capability to do everything.

<sup>45</sup> Christie (n 43) 57.

PRTs for using a militarised masculine approach which cast locals as either helpless, passive victims who needed to be saved or as brutal cowardly insurgents. Through PRTs, NATO effectively weaponised development and humanitarian aid to achieve military objectives.<sup>46</sup>

## **2.4 NATO, an International Security Organisation Newcomer**

NATO's adoption of the Women, Peace, and Security agenda and action plan to operationalise UNSCR 1325 is relatively absent in non-feminist literature. My assessment of why is that NATO's engagement with the WPS agenda, implementation of GENADs, and gender mainstreaming is relatively recent and has existed mainly in the policy rather than capability domain. The third revision of Bi-SCD-040-001 (2021) is the first time a direct link is made between integrating a gender perspective and the application of fighting power.<sup>47</sup> With gender perspectives clearly identified as a capability, with an enabling function, it is more likely to attract the interest of military and defence strategists. A link could be made between NATO's current core tasks, global engagement strategy, and re-categorisation of conflict and war into crisis management and NATO's WPS agenda implementation strategy. Whilst NATO is arguably the largest political-military alliance, it is a relative newcomer to the ISO world and has struggled to prove legitimacy and effectiveness in this relatively new operating space.<sup>48</sup>

Gender mainstreaming efforts permit NATO to change the narrative that it is a hyper-masculine organisation. By operationalising UNSCR 1325, NATO can be portrayed as a progressive organisation, capable,

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<sup>46</sup> *ibid.*

<sup>47</sup> NATO Bi-Strategic Command Directive 40-001 (2021) 11 <[https://www.act.nato.int/application/files/3916/3842/6627/Bi-SCD\\_040-001.pdf](https://www.act.nato.int/application/files/3916/3842/6627/Bi-SCD_040-001.pdf)> accessed 26 May 2023.

<sup>48</sup> Williams (n 11) 115.



willing, and able to change.<sup>49</sup> Hardt and Von Hlatky assert in their article ‘... that NATO has adapted to gender mainstreaming to emulate other ISOs...’.<sup>50</sup> Across the spectrum of crisis, NATO is seeking ways to increase legitimacy and acceptance as a useful partner to other ISOs working in the same operating environment. Adopting UNSCR 1325 is a strategic way for NATO to demonstrate a ‘softer’ side. Portraying itself as a modern organisation supporting equal opportunity and acknowledging the important contribution of women in peace negotiations gives NATO representation and influence with other ISOs, namely the European Union’s Informal Task Force on Women, Peace and Security, UN Women, and the Organization for Security and Co-operation in Europe (OSCE).

### 3 Women, Peace, and Security Agenda

The Security Council’s adoption of UNSCR 1325 is the first time gender is recognised in the domain of international security.<sup>51</sup> The WPS agenda ‘...recognises women as bearers of a particular gendered burdens in conflict and as participants with valuable roles to play as conflict mediators and peacebuilders.’<sup>52</sup> Articles directly related to the WPS agenda are now commonly found in other security council resolutions, which is significant because security council resolutions create obligations on the part of member states. Two important aspects for understanding the significance of WPS language in a security council resolution are location and focus. WPS language located within

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<sup>49</sup> Hardt and Von Hlatky (n 14) 136.

<sup>50</sup> *ibid* 137.

<sup>51</sup> Mathew Hurley, ‘Gendering NATO: Analysing the Construction and Implementation of the North Atlantic Treaty Organisation’s Gender Perspective’ (DPhil thesis, Oxford Brookes University 2014) <<https://radar.brookes.ac.uk/radar/file/9bf895af-5aa6-472c-90e7-3055183c3de3/1/hurley2014gendering.pdf>> accessed 26 May 2023.

<sup>52</sup> Nicole George and Laura Shepherd, ‘Women, Peace and Security: Exploring the Implementation and Integration of UNSCR 1325’ (2016) 37 *Int Political Sci Rev* 297.

the preamble carries limited force. However, WPS language in the operative paragraphs will become mission tasks. When the language is focused on the impact of conflict-related sexual violence, mission tasks will relate to the protection of women and girls. A resolution with language focused on protection in the operative section will result in protective measures but not the inclusion of women in peace negotiations. A resolution with empowerment and participation language in the operative section should produce mission tasks to create mechanisms for the inclusion of women in peace talks. UNSCRs establishing UN missions must therefore include both the language of protection and participation in the operative paragraphs to achieve the full intent of the WPS agenda.

UNSCR 1325 and the subsequent WPS agenda security council resolutions create a legal framework. Cumulatively, the resolutions provide the international legislative framework to reinforce existing global commitments, treaties, and resolutions on women's rights.<sup>53</sup> Though sometimes criticised for not containing stronger language, the resolutions provide clear guidance to reduce the disproportionate burden of conflict borne by women and girls. NATO's operationalisation of the WPS agenda was influenced by the following four themes: increased participation of women; incorporation of a gender perspective; increase gender training; and protection from conflict-related sexual violence (CRSV).

Articles 1, 2, and 8(b) of UNSCR 1325 discuss increased involvement, participation, and representation of women at decision-making levels. Article 3 specifically calls for the UN Secretary General to appoint more women as special representatives and envoys. The creation of the NATO Secretary General's Special Representative for Women, Peace and Security position seems to be in direct response to UNSCR Article 3. The influence of the remaining articles is notable on p 4 of Bi-SCD 40-001 (2009); NATO encourages member states to increase the

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<sup>53</sup> Griffiths, Jarman and Jensen (n 19) 271.

number of women in their armed forces by identifying the ‘positive effect that including both men and women in appropriate proportions within the organisation.’<sup>54</sup> NATO’s engagement with the participation element of the WPS agenda is predominantly through increasing the number of women in the military rather than participation and representation in peace negotiations. During the ISAF Afghanistan mission, NATO created female training battalions to recruit women into the Afghan National Army; however, Afghan women were almost completely excluded from peace negotiations with the Taliban.<sup>55</sup>

Articles 4, 6, 8(a), and 15 of UNSCR 1325 are concerned with including gender perspectives. The NATO Committee on Gender Perspectives (NCGP) was created to promote gender mainstreaming at the strategic level. GENADs and GFPs positions were created at the operational and tactical levels to ensure a gender perspective was incorporated in every aspect of planning. It is worth noting NATO’s website currently describes gender mainstreaming ‘as a strategy for making the concerns and experiences of both women and men an integral dimension of the design...military operations.’<sup>56</sup> This definition belies the intent of UNSCR 1325.

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<sup>54</sup> NATO Bi-Strategic Command Directive 40-001 (2017) 1–4 <[https://www.nato.int/issues/women\\_nato/2017/bi-scd\\_40-1\\_2rev.pdf](https://www.nato.int/issues/women_nato/2017/bi-scd_40-1_2rev.pdf)> accessed 26 May 2023.

<sup>55</sup> Tanya Henderson, ‘21 Years of 1325: What if the Landmark Resolution on Women, Peace and Security had been implemented in Afghanistan?’ (*Mina’s List*, 2021) <<https://www.minaslist.org/blog/21-years-of-1325-what-if-the-landmark-resolution-on-women-peace-and-security-had-been-implemented-in-afghanistan-#:~:text=It%20would%20have%20made%20them,of%20the%20Afghan%20peace%20agreement>> accessed 26 May 2023.

<sup>56</sup> NATO, ‘IMS Office of the Gender Advisor’ (20 April 2022) <[https://www.nato.int/cps/en/natohq/topics\\_101372.htm](https://www.nato.int/cps/en/natohq/topics_101372.htm)> accessed 26 May 2023.

Articles 6 and 7 of UNSCR 1325 relate to the need to provide gender sensitivity training and increase training on the protection and rights of women for UN peacekeepers. NATO has directly transferred this requirement to all NATO forces prior to deployment. Since 2009 the amount of gender-related training has increased significantly. The Swedish Armed Forces International Centre (SWEDINT) has created the Nordic Centre for Gender in Military Operations (NCGM) which developed and delivers a suite of NATO-approved, gender-related training. Reference to gender training increased in NATO's 2009 version of the Bi-SCD 40-001 from a few lines dispersed throughout the directive to a full chapter in the 2017 version. Chapter 4 of the Bi-SCD 40-001(2017) makes gender sensitivity training mandatory as part of pre-deployment training mandatory for all NATO forces.

Article 11 of UNSCR 1325 and UNSCR 1820 focus on protection. NATO's operationalisation of the protection element of the WPS agenda is visible in its training guidance and pre-deployment training packages. Training related to protection tends to focus on CRSV, on how to recognise the signs and how to respond. Currently, the objective of the training seems to be to make war safer for women in the host nation rather than to demilitarise society in line with the objectives of the WPS agenda. Instead of exclusively focussing the training on CRSV, the directives could have addressed the hegemonic masculinity of NATO as an institution and broadened the scope beyond the notion of men as protectors and women needing protection.

The Bi-SCD 40-001 (2017) included an expanded chapter on standard of behaviour (ch 3) which explicitly states: 'Sexual relationships when based on inherently unequal power dynamics are strongly discouraged.'<sup>57</sup> Notably, neither the 2009 nor the 2017 version of the Bi-SCD 40-001 explicitly forbids sexual relations between NATO forces and members of the local population. The directive says only that it is strongly discouraged and may be illegal according to local or

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<sup>57</sup> NATO Bi-Strategic Command Directive 40-001 (2017) 14.

national laws. This is a significant distinction, as disciplinary measures through NATO structures are not attracted if this discouraged act occurs. The 2021 version of Bi-SCD 40-001 does, however, forbid sexual relationships ‘based on inherently unequal power dynamics’.<sup>58</sup> It will be interesting to see how this change in stance translates into reality.

### **3.1 Subsequent Security Council Resolutions**

UNSCR 1325 was a starting point in acknowledging the connection between gender inequality and peace and security. The additional nine resolutions demonstrated the Security Council’s ongoing commitment and continued belief in the direct link between the treatment of women and international peace and security.<sup>59</sup> Resolutions 1820, 1888, 1960, 2106, and 2467 focus primarily on sexual violence in conflict; recognising sexualised violence as a tactic of war; establishing a Special Representative of the Secretary General to strengthen efforts to end sexual violence in conflict; monitoring and reporting mechanism for CRSV; calling for GENADs and women protection advisors; and addressing the concerns related to children born of conflict-related rape. Resolutions 1889 and 2122 focus on women’s empowerment and the importance of including women in all stages of the peace process. Resolutions 2242 and 2493 reaffirm the Security Council’s commitment to the WPS agenda by calling for obstacles to its implementation to be removed and urging states to implement all previous WPS agenda resolutions.

The ten resolutions of the WPS agenda form the international normative framework addressing the gender-specific impact of conflict, including CRSV. Whilst the resolutions are recognised as forming international law (soft law) it was the 2004 request by the UN Secretary General to member states and international organisations (IO) to develop national

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<sup>58</sup> NATO Bi-Strategic Command Directive 40-001 (2021) 21.

<sup>59</sup> Griffiths, Jarman and Jensen (n 19) 277.

action plans (NAPs) to implement the WPS agenda which was the driving force behind its proliferation.<sup>60</sup>

### **3.2 National and Regional Action Plans**

National and regional action plans are strategic documents outlining an overall approach to implementing the WPS agenda. NAPs set out the domestic and international policy commitments to addressing the gender dimensions of peace and security.<sup>61</sup> The global proliferation of the WPS agenda has relied primarily on the UN member states' development and implementation of NAPs. This decentralised approach combined with the requirement for member states to form individual action plans results in a lack of normative alignment across states.<sup>62</sup>

True's study of the diffusion of WPS NAPs concluded there are similarities amongst the NAPs developed by member states of the global North. These NAPs are outward facing with a tendency to focus on protecting women, increasing the number of women soldiers or police in conflict areas. These same states have NAPs focused on extra-territorial peace and security whilst positioning themselves as expert providers of security and gender mainstreaming.<sup>63</sup> This approach to NAPs is highly militarised, resulting in NAPs which legitimise security (crisis) interventions focused on making war safer for women rather than on creating demilitarisation goals and objectives.<sup>64</sup> The majority of the NAPs True studied belonged to NATO countries. Shepherd's study also found NATO's implementation of the WPS agenda, through Bi

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<sup>60</sup> Jaqui True, 'Explaining the Global Diffusion of the Women, Peace and Security Agenda' (2016) 37 *Int Political Sci Rev* 307.

<sup>61</sup> *ibid.*

<sup>62</sup> *ibid* 319.

<sup>63</sup> *ibid* 320.

<sup>64</sup> Laura Shepherd, 'Making War Safe for Women? National Action Plans and the Militarisation of the Women, Peace, and Security Agenda' (2016) 37 *Int Political Sci Rev* 327.

SCD 40-001, was predominantly outwardly focused and hyper militarised.

### **3.3 NATO Bi-Strategic Command Directive 040-001**

NATO began engaging with the WPS agenda in 2007 by releasing a joint policy document with the Euro-Atlantic Partnership Council (EAPC) setting out the framework for the implementation of UNSCR 1325.<sup>65</sup> In 2009, NATO Strategic Command produced the first of three Bi-SCD Integrating UNSCR 1325 and Gender Perspectives into the NATO Command Structure. The documents direct NATO's commands to implement a gender mainstreaming process and to integrate the WPS agenda into doctrine. 'Gender mainstreaming in this context represents the process to recognise and incorporate the role gender plays in relation to NATO's various operational missions.'<sup>66</sup> To support the implementation of UNSCR 1325 and related resolutions, the NATO Committee on Gender Perspectives (NCGP) and the NATO Office on Gender Perspectives (NOGP) were created.<sup>67</sup>

Bi-SCD 40-001 (2009) links the inclusion of gender perspectives in NATO-led missions and operations with a competitive advantage. Throughout the directive, there are numerous references to the potential for gender mainstreaming to increase operational effectiveness and mission success. The directive acknowledges the disproportionate impact conflict has on women and girls and creates the requirement to include gender perspectives in the planning process. The directive further outlines the framework, role, and responsibilities of NATO GENADs. Bi-SCD 40-001 (2009) assigns a vast array of inward and outward-facing tasks to GENADs and GFPs. Tasks range from supporting commanders in planning, to supporting the commander's legal advisor in any inquiry or investigation related to breaches of NATO standards of behaviour, allegations of rape or other forms of

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<sup>65</sup> Hurley (n 51).

<sup>66</sup> NATO Bi-Strategic Command Directive 40-001 (2009) 1.

<sup>67</sup> Hurley (n 51).

sexual abuse. Responsibilities include establishing and maintaining contact with the UN, (OSCE), EU, ICRC, NGOs, and other local and international women's organisations to facilitate sharing information during peacetime and crisis operations.<sup>68</sup> Establishing relationships for the purpose of information sharing is one of the principal strategic advantages of implementing the WPS agenda.

To combat resistance to gender mainstreaming, NATO revised Bi-SCD 40-001 (2017) to include a substantial section on the rationale for the directive. The first sentence of the paragraph states: 'The active participation of men and women is critical to the security and the success of the Alliance and its partners'.<sup>69</sup> Bi-SCD 40-001 (2017) mentions 'men' 50 times and 'women' 81 times. In the revised directive, the following has been added to the definitions of gender: 'Notably, gender does not equate to an exclusive focus on women.' And this addition was made to the definition of gender mainstreaming: 'Gender mainstreaming does not focus solely on women, but mainstreaming recognises women's disadvantaged position in various communities.'<sup>70</sup> The increase in the inclusion of men and boys in gender discussion within the directive is important as it demonstrates how NATO's implementation of UNSCR 1325 gradually shifted from women and girls to gender which is inclusive of men and boys. This shift was needed to improve the acceptance of gender mainstreaming and gender perspectives at the operational and tactical levels.

In 2021, NATO issued a third Bi-SCD 40-001, and NATO's language surrounding gender mainstreaming across the three Bi-SCDs became increasingly militaristic. The introduction, aim of gender mainstreaming, and the role of GENADs and GFPs are similar between the 2017 and 2021 versions; however, a new chapter, entitled 'Implementation in Warfare Development' was added in 2021. This

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<sup>68</sup> NATO Bi-Strategic Command Directive 40-001 (2009) 1–3.

<sup>69</sup> NATO Bi-Strategic Command Directive 40-001 (2017) 3.

<sup>70</sup> *ibid* 5.



chapter clearly states the rationale for ‘applying a gender perspective and ensuring gender mainstreaming will be critical to delivering today’s MIoP (Military Instrument of Power) and sustaining the vision of the 2040 MIoP.’<sup>71</sup> With respect to gender perspectives, Bi-SCD 40-001 (2021) states that ‘integrating a gender perspective contributes to the understanding and application of fighting power, as an integral part of both a human-centric and a comprehensive approach.’<sup>72</sup> This sentence militarises gender mainstreaming and two important approaches to international development, human-centric and comprehensive approach. Bi-SCD 40-001 (2021) has co-opted the WPS agenda and weaponised UNSCR 1325 and the subsequent resolution to further NATO objectives, just as feminists feared it would.<sup>73</sup>

### **3.4 Military Branch of NATO Leads the Way**

The full support and engagement of senior military leadership is critical for an initiative such as gender mainstreaming to become part of military culture. Hardt and Von Hlatky’s study demonstrates how senior military officers understood the political necessity of implementing the WPS agenda and grasped the strategic, operational, and tactical potential of gender mainstreaming for the Alliance.<sup>74</sup> At a strategic level, the creation of the NCGP and NOGP enabled NATO’s engagement with other ISOs, NGOs, EU, and women’s groups. The engagements legitimised NATO’s presence across the spectrum of crisis, particularly in crisis prevention and post-conflict reconstruction which were previously the domain of other ISOs, humanitarian actors, and regional organisations.

Institutional resistance to gender mainstreaming and GENADs at the operational and tactical level has been discussed earlier in this article. To overcome this resistance, NATO created a narrative that GENADs

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<sup>71</sup> NATO Bi-Strategic Command Directive 40-001 (2021) 11.

<sup>72</sup> *ibid* 11.

<sup>73</sup> Bastick and Duncanson (n 24) 556.

<sup>74</sup> Hardt and Von Hlatky (n 14) 141.

improve operational effectiveness, situational awareness, mission success, increase human intelligence gathering, and enhance force protection.<sup>75</sup> The latest version of Bi-SCD 40-001 considered integrating gender perspectives as an operational requirement and identifies GENADs and GFPs as a military capability to deploy.<sup>76</sup>

### 3.5 GENADs and GFPs

The NATO Gender Functional Planning Guide (FPG) issued in 2015 provides clarification on the gender advisory structure, and the role responsibilities of GENADs and GFPs.<sup>77</sup> This clarification was required as the number of GENADs and GFPs within NATO and NATO member states grew from 10 in 2010 to over 668 by the end of 2016.<sup>78</sup> The gender structure is relatively straightforward to those familiar with military staff structure and planning levels. At the political-strategic level is the NATO Special Representative for Women, Peace and Security,<sup>79</sup> also at the political-strategic level is the International Military Staff GENAD who provides information and advice on gender perspectives and on the implementation of the WPS agenda. At the operational level, GENAD positions form part of the Commander's specialist advisory staff,<sup>80</sup> providing support, advice, and expertise on gender perspectives. GFPs work at the tactical level as part of the HQ

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<sup>75</sup> Hurley (n 27) 446.

<sup>76</sup> NATO Bi-Strategic Command Directive 40-001 (2021) 12.

<sup>77</sup> NATO Gender Functional Planning Guide (2021) <[https://www.act.nato.int/wp-content/uploads/2023/05/ACO\\_Gender\\_Functional\\_Planning\\_Guide\\_2015.pdf](https://www.act.nato.int/wp-content/uploads/2023/05/ACO_Gender_Functional_Planning_Guide_2015.pdf)> accessed 14 June 2023.

<sup>78</sup> Bastick and Duncanson (n 24) 557.

<sup>79</sup> This is a civilian position, and the incumbent representative is Irene Fellin, a visiting lecturer on Gender, Security, and Post Conflict Reconstruction at Durham University in the UK.

<sup>80</sup> Commander's specialist advisory staff includes Legal Advisors, Policy Advisors, Civil Military Cooperation (CIMIC) Advisor.

staff to support and facilitate the integration of gender perspectives in day-to-day operations.<sup>81</sup>

### 3.5.1 Gender Analysis

A core task of the GENAD/GFP is to conduct gender analysis for the planning process. A military GENAD ‘industry’ has been created to train GENADs and GFPs. In 2022, the Nordic Centre for Gender in Military Operations, one of the centres of excellence at SWEDINT conducted 10 gender-related training courses, including a three-day seminar for Commanding Officers, a ten-day NATO Gender Training of the Trainer course, and three 11-day NATO GENAD courses. The learning objectives for gender training at all levels were basic, focused on gender perspectives and did not relate to the protection, participation, and prevention goals of the WPS agenda.

In addition to the formalised gender training offered at NCGM, NATO developed a gender analysis tool. The NATO Gender FPG provides a three-page guide to conducting gender analysis. The guide and analysis tool, which were to be used at all levels of the GENAD structure, are overly simplistic and do not indicate how to incorporate the intent and objectives of the WPS agenda into planning. It is evident from the Gender FPG and the Bi-SCD 40-001 that the intent of including a gender perspective is to enhance and strengthen the operational planning output and to minimise the impact of NATO operations on women. Neither of these documents reference the goals or principles of the WPS agenda nor how to incorporate them into NATO operations.

The gender analysis tool provides further direction on conducting gender analysis which involves ‘the analysis of information on gender differences and social relations in order to identify and understand inequalities based on gender.’<sup>82</sup> The instruction recommends using a

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<sup>81</sup> NATO Bi-Strategic Command Directive 40-001 (2021) (Annex B) 2.

<sup>82</sup> NATO Supreme Headquarters Allied Powers Europe, Allied Command Operations, ‘Gender Functional Planning Guide’ (2015)

PMESII (political, military, economic, social, infrastructure, and information) model to address the goals, strengths, weaknesses, and interdependencies within these critical domains. Given the significance of UNSCR 1325 and the WPS agenda, the learning outcomes for gender training and the gender analysis tool are too basic, overly simplistic, and unlikely to provide the depth of training or analysis required to produce a gender perspective that is usable beyond a NATO context.

## 4 International Human Rights Law

IHRL and LOAC were founded on the common principles of humanity and respect for the dignity of the individual. LOAC is primarily concerned with the treatment of one nation's forces (and civilians) by another nation's forces in the conduct of war. IHRL is traditionally concerned with a government's treatment of citizens during peacetime.<sup>83</sup> Given that NATO now operates outside of the conflict spheres where IHL/LOAC govern, there is a growing need to understand IHRL. Moreover, the separation between the IHRL and IHL is less clear in the early and later phases of the spectrums of crisis, particularly in failed or failing states with weak or no recognised government. There is a growing convergence between the two bodies of law as the concept of humanising LOAC gains momentum with the growing knowledge, understanding, and acceptance of human rights norms.<sup>84</sup> Currently, expertise and familiarity with IHRL is not required at NATO's operational level. Legal advisors advise on IHL while HRBA Advisors offer the potential to bring IHRL knowledge to the

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<[https://www.act.nato.int/application/files/7316/7474/8543/ACO\\_Gender\\_Functional\\_Planning\\_Guide\\_2015.pdf](https://www.act.nato.int/application/files/7316/7474/8543/ACO_Gender_Functional_Planning_Guide_2015.pdf)> accessed 26 May 2023.

<sup>83</sup> Robert Delahunty and John Yoo, 'International Human Rights Law and the War on Terror' in Thomas Cushman (ed), *Handbook of Human Rights* (1st edn, Routledge 2012) 636.

<sup>84</sup> Rob McLaughlin, 'The Law of Armed Conflict and International Human Rights Law: Some Paradigmatic Differences and Operational Implications' in M Schmitt, L Arimatsu and T McCormack (eds), *Yearbook of International Humanitarian Law* (Asser Press 2011) 213.

planning process. Given NATO's core task of crisis management and the convergence of IHRL and IHL, NATO should be looking for ways to mainstream human rights thinking at all levels of command. Applying an HRBA to crisis management and creating HRBA advisors are two ways for NATO to mainstream human rights thinking.

#### 4.1 HRBA Framework

The critical element of the HRBA framework, distinguishing it from other development frameworks, is the incorporation of legal tools and institutions. HRBA incorporates laws, the judiciary, and the rule of law principle into every phase of development planning.<sup>85</sup> Human rights theory and IHRL are based on four fundamental principles:<sup>86</sup> universality,<sup>87</sup> indivisibility,<sup>88</sup> accountability,<sup>89</sup> and participation.<sup>90</sup> As HRBA is founded on human rights theory and IHRL, the four principles form the foundation of the approach. HRBA provides a set of tools based on human rights standards and principles from the Universal Declaration of Human Rights (UN Charter), and all subsequent legally binding human rights conventions and treaties. The reliance of HRBA on these legally binding human rights conventions and treaties converts people's needs into rights, by recognising the human being as a right holder with the right to claim their rights.<sup>91</sup> Whilst HRBA generally

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<sup>85</sup> Lauchlan Munro, 'The "Human Rights-Based Approach to Programming": A Contradiction in Terms?' in Sam Hickey and Diana Mitlin (eds), *Rights Based-Approaches to Development: Exploring the Potential and Pitfalls* (1st edn, Kumarian Press 2009) 190.

<sup>86</sup> *ibid.*

<sup>87</sup> Also referred to as non-discrimination or equality, which asserts all human beings have rights simply by virtue of being human.

<sup>88</sup> Also called interdependence, affirms there is no hierarchy of rights, and one right must not be realised at the expense of another right.

<sup>89</sup> Which asserts that to have a right is to have a claim against others (usually the state).

<sup>90</sup> Which implies those affected must have a role and a voice in decisions affecting them and their communities.

<sup>91</sup> UN Development Programme, 'A Human Rights-based Approach to

focuses on the most vulnerable segments of a population, it also recognises the need to strengthen the capabilities of the duty bearer (the state). Development agencies using a HRBA should develop programmes to address the state's capacity to fulfil obligations and responsibilities to rights holders, including the requirement to offer a means of remedy for failure to fulfil rights or for violating the rights of its citizens.<sup>92</sup> The strengths and weaknesses of the HRBA approach are discussed under the headings of consistency, systematic, levers of influence, and gender inequality.

#### 4.1.1 Consistency

Broberg and Sano, as well as Nelson and Dorsey, have criticised HRBA for not having a coherent and consistent approach.<sup>93</sup> The development agency can claim to be using a rights-based approach provided the development projects conform to some extent with the principles of a HRBA. First, some applications of HRBA are particularly rights focused, leaning heavily on the legal instruments of human rights and therefore focusing development efforts on the duty bearer. Second, agencies will focus exclusively on the most marginalised elements of the population, thereby ignoring the importance of also strengthening the capacity of the duty bearer. Third, some approaches may favour a participatory approach focused on consultation and inclusion. And lastly, a development agency may choose to focus on indivisibility and interdependence, an approach that has drawn criticism for causing organisational paralysis as development organisations struggle with how to advance all rights.<sup>94</sup>

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Development Programming in UNDP—Adding the Missing Link' (2001) <[https://www.undp.org/sites/g/files/zskgke326/files/publications/HR\\_Pub\\_M\\_issinglink.pdf](https://www.undp.org/sites/g/files/zskgke326/files/publications/HR_Pub_M_issinglink.pdf)> accessed 26 May 2023.

<sup>92</sup> Broberg and Sano (n 30) 669.

<sup>93</sup> Paul Nelson and Ellen Dorsey, *New Rights Advocacy: Changing Strategies of Development and Human Rights NGOs* (Georgetown University Press 2008) 92.

<sup>94</sup> Broberg and Sano (n 30) 672.

Whilst the lack of a singular approach to HRBA can be problematic in a development context, it represents an opportunity for NATO to apply HRBA differently across its three core tasks and the various levels of engagement. Whilst working with host nation security institutions and governments, in areas related to rule of law or impunity, NATO can lean heavily on the legal instruments in its approach and can work to strengthen the capabilities of the duty bearer. At the tactical level, NATO can utilise a participatory approach by engaging with the local population, and possibly implement initiatives focused on the most marginalised section of the host nation's population. As for indivisibility and interdependence, NATO can implement a project which seeks to address civil and political rights and social, economic, and cultural rights.

#### **4.1.2 Systematic**

The legal origins of the HRBA framework give the approach a systematic, logical, orderly, and transparent process to plan and conduct international development projects.<sup>95</sup> HRBA is powerful owing to the potential for wide application because a right does not change over time or from one location to another. The systematic nature of HRBA forces a shift in development programming from process and outputs to outcomes and impact.<sup>96</sup> My experience participating in NATO operational planning leads me to believe the systematic nature of HRBA could facilitate integration with NATO's planning process. NATO's planning process is systematic and methodical and is conducted following specific phases. For example, in phase 3 (Operational Estimate) of NATO Crisis Response Planning, the HRBA AD could identify which rights might be negatively affected by a planned activity. The HRBA AD would then identify ways to mitigate the impact of the action. If time and the security situation allowed for it, the HRBA AD could use a participatory approach and consult those

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<sup>95</sup> Archer (n 36) 122; Schmitz (n 32) 534.

<sup>96</sup> *ibid* 534.

who would be impacted by the activity and develop a mitigation strategy together, which would be inserted into the next phase of the planning process.

To further illustrate the benefits of an HRBA AD in operational planning, I will draw on a personal example from my deployment on Operation SCULPTURE, as part of the British lead International Military Training Teams (IMATT) to Sierra Leone in 2001. This was not a NATO operation; however, it is not difficult to imagine for example, a similar task within NATO Mission Iraq (NMI). My task during the tour was to develop a list of people who should receive death benefits for family members killed in action (KIA) during the civil war. To accomplish the task, I travelled around the country with a small team conducting interviews and collecting ‘proof’ of an eligible relationship eg spouse, child, or other dependent, to the KIA soldier. Ultimately, I created a list and death benefit payments were made. The entire operation was planned and conducted without consulting the local population.

In this scenario, it is not difficult to imagine how a HRBA would change how the operation was conducted. During the early stages of planning, the HRBA AD would have identified the need to recognise the prospective claimants as rights holders and the state as the duty bearer; next an assessment of the rights holder’s ability to claim the benefits should have occurred. Through engagement with the affected population the HRBA AD would have quickly learned most people were not able to provide the ‘proof’ (eg marriage certificate, birth certificate, or death certificate, of a relation) IMATT had requested. Through consultation, the HRBA AD could have identified other ways of establishing a basis for a claim. This information would have fed back into the planning cycle and a different set of criteria used to establish the relationship. Taking the example further, IMATT could have engaged with the duty holder to strengthen their ability to fulfil the rights. This is a critical change in perspective, in which (IMATT) empower, rather than disempower, the claimants by including them in



the design and implementation of the KIA benefit payment plan; and we support the duty holder in creating an enabling environment in which rights can be claimed. This approach has the additional benefit of giving legitimacy to and building trust in the government.

### 4.1.3 Levers of Influence

The legal authority from which HRBA derives its principles gives development programmes or projects legitimacy grounding their efforts in shared norms.<sup>97</sup> In relation to development work with the duty bearer, the HRBA framework establishes a range of mechanisms and tests which oblige governments to be more transparent and accountable to citizens, the effect of which is to give the government more legitimacy nationally and internationally. The legal underpinning and fundamental principles of HRBA directly influence how development work is done, putting the focus, even when working with the duty bearer, on the people.<sup>98</sup>

The levers of influence with the duty bearer (the state) which HRBA makes possible when conducting development work with governments, should be particularly attractive to NATO. NATO military personnel work closely with the host nation's national and regional governments, government institutions, security, and police forces. A good example of this is the NATO ISAF mission to Afghanistan. NATO was heavily involved with the Afghan Government, supporting government activities, and government institutions.<sup>99</sup> As discussed previously, through PRTs, NATO forces were also engaged in activities and decision-making at the provincial level.

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<sup>97</sup> *ibid* 525.

<sup>98</sup> Hanna Miller and Robin Redhead, 'Beyond "Rights-Based Approaches"? Employing a Process and Outcomes Framework' (2019) 23 *Int J Hum Rights* 707.

<sup>99</sup> NATO, 'ISAF Mission in Afghanistan (2001–2014)' <[https://www.nato.int/cps/en/natohq/topics\\_69366.htm](https://www.nato.int/cps/en/natohq/topics_69366.htm)> accessed 26 May 2023.

#### 4.1.4 Gender inequality

HRBA offers an opportunity to re-energise work on gender. The HRBA legal framework, particularly by including the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), incorporates a women's rights dimension. Through the principle of empowerment of the most vulnerable members of a population, there are several ways HRBA can be used to address the deep-rooted cultural causes of gender inequality. First, by undertaking a thorough analysis of why gender inequity is so pervasive; second, by challenging the existing power relationships and how they subordinate women; and finally, by challenging men to engage with women and treat women as rights holders rather than as passive recipients of aid.<sup>100</sup>

Given NATO's operationalisation of the WPS agenda and the criticism of its gender mainstreaming process thus far, NATO should welcome HRBA as an opportunity to re-engage with the WPS agenda. Incorporating a HRBA in the operational planning process has the potential to change NATO's perceptions and treatment of women in crisis-affected areas. By shifting the paradigm from a hyper-masculine militarised perspective which situates women as passive victims of crises to a rights-based paradigm focused on women as rights holders and on the principles of non-discrimination, inclusion, indivisibility, and participation, NATO can realign the implementation of the WPS agenda. Through implementing a HRBA to planning, NATO can change the gender mainstreaming narrative from one focused on operational effectiveness and benefit to the forces, to one which prioritises the recommendations and objectives of UNSCR 1325 and subsequent resolutions. HRBA could give NATO a second chance at integrating gender perspectives into planning, as intended in UNSCR 1325, by conducting a rights-based analysis.

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<sup>100</sup> Michael Drinkwater, "'We Are Also Human': Identity and Power in Gender Relations" in Sam Hickey and Diana Mitlin (eds), *Rights-Based Approaches to Development Exploring the Potential and Pitfalls* (1st edn, Kumarian Press 2009) 157.

NATO's approach to gender mainstreaming and operationalisation of UNSCR 1325 and subsequent resolutions has been severely criticised by feminists for being diametrically opposed to the intent of the resolutions and objectives of the WPS agenda.<sup>101</sup> HRBA's legal framework, guiding principles, and the social norms on which HRBA is based should 'protect' the fundamental principles of HRBA from being militarised or weaponised.

## 4.2 Mainstreaming HRBA in NATO

NATO's implementation of the WPS agenda and gender mainstreaming process provides a useful template for implementing a human rights-based approach to NATO's planning process. First and foremost, HRBA mainstreaming in NATO should be led by civilian bodies; the policies, guidance, and implementation directives should originate from International Staff (IS) and/or the North Atlantic Council (NAC), not from military senior executive officers. Hardt's research highlights that many criticisms of NATO's implementation of the WPS agenda stem from it being driven by the military side of NATO's command structure.<sup>102</sup> Second, senior civilians, such as the Secretary General and other senior members of the NATO secretariat, should include rights-based language in speeches, press releases, and planning guidance.<sup>103</sup> The inclusion of rights-based language in official communiqués begins the process of associating human rights language with NATO's strategic core task of crisis management and interventions in areas with gross human rights abuses.<sup>104</sup>

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<sup>101</sup> Bastick and Duncanson (n 24) 554.

<sup>102</sup> Hardt and Von Hlatky (n 14) 141.

<sup>103</sup> *ibid* 142.

<sup>104</sup> In NATO, this process is often referred to as 'socialising', where a concept is introduced periodically, gradually the concept becomes more defined, and accepted.

After a period of socialisation, the next step would be to introduce a directive outlining the requirement to include human rights analysis during all phases of planning. This directive must articulate the requirements to create HRBA AD and HRBA FP (focal points) in all NATO headquarters; member states to develop a HRBA action plan; and to develop and deliver HRBA training to all forces prior to deployment. Once the advisor and focal point positions are established, a human rights situational awareness analysis tool is needed. The Universal Periodic Review (UPR) process offers an invaluable source of information for analysis, objective setting, and planning. For HRBA analysis, UPR submissions provide information on the current state of human rights, the host government's commitments vis-a-vis human rights, and what INGOs, NGOs and civil society organisations have said about a host nation's human rights record. The availability of country-specific information through the UPR process is a significant resource for conducting human rights analysis. To avoid the militarisation of HRBA, the final stage of mainstreaming must include robust monitoring and evaluation to ensure the fundamental principles of HRBA are applied throughout NATO's involvement in crisis management.

## 5 Conclusion

Seeking to answer the central research question — what is the desired operational effect of gender advisors in NATO? — this article has approached the question from distinct areas of study, all of which have converged on the strategic importance of gender mainstreaming to NATO. Previous studies evaluating the effectiveness of GENADs were focused on the operational and tactical levels, the same level I worked at during my career. These studies report significant resistance to GENADs and GFPs from male soldiers and officers.<sup>105</sup> Where they

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<sup>105</sup> Hurley ME, 'Gendering NATO: Analysing the Construction and Implementation of the North Atlantic Treaty Organisation's Gender Perspective' (DPhil, Oxford Brookes University 2014)

report success, it is either from the point of view of the GENAD/GFP or from the NATO perspective. Very little evidence was found in the literature on the impact of NATO's implementation of UNSCR 1325 in terms of the aims or intent of the WPS agenda. This was expected, as it matches my personal experience of establishing GENADs and GFP in my unit. The strategic success, at least from a NATO perspective, of gender mainstreaming including the use of GENADs and GFPs, was unexpected. Key senior civilian positions, such as NCGP and NOGP have given NATO access to meetings, conferences, and other information-sharing venues with other ISOs, IOs, INGOs, and civil society networks.

The evolution of the Bi-SCD 40-001 is particularly interesting. Between 2009 and 2017, NATO appears to recognise the strategic potential of adopting the WPS agenda. Two significant changes occur between the two directives. First, the 2017 version incorporates more references to men and boys as part of the gender discussion. The inclusion of men in gender definitions ensures gender mainstreaming is made acceptable to male soldiers and officers at the operational and tactical level, who initially resisted gender mainstreaming because it was about women. Second, the focus is on framing gender mainstreaming and the role of GENADs in terms of enhanced

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<https://radar.brookes.ac.uk/radar/items/9bf895af-5aa6-472c-90e7-3055183c3de3/1/hurley2014gendering.pdf>; Wright K, 'Silences and Silos: NATO's Implementation of UNSCR 1325' (DPil, University of Surrey 2016) <https://ideas.repec.org/p/osf/thesis/5cyng.html> accessed 4 May 2022; Bastick M and Duncanson C, 'Agents of Change? Gender Advisors in NATO Militaries' (2018) 25 *International Peacekeeping* 554-577; Hurley M, 'The "Genderman": (re)negotiating Militarized Masculinities When "Doing Gender" at NATO' (2018) 4 *Critical Military Studies* 72; Hurley M, 'Watermelons and Weddings: Making Women, Peace and Security "Relevant" at NATO Through (Re)Telling Stories of Success' (2018) 32 *Global Society: Journal of Interdisciplinary International Relations* 436; and, Wright K, 'Challenging Civil Society Perceptions of NATO: Engaging the Women, Peace and Security Agenda' (2022) *Cooperation and Conflict* 1.

intelligence gathering, force protection, and operational success. In the 2021 version of Bi-SCD 40-001 the tone changed again, focusing more on the competitive advantage of gender mainstreaming. The 2021 version makes specific reference to GENADs as a military capability to be deployed and whose success must be exploited.<sup>106</sup> NATO appears to have become bolder in identifying gender mainstreaming efforts as self-serving, which makes NATO's adoption of the WPS agenda incompatible with the ideals and intent of UNSCR 1325. Given these findings, particularly those related to the 2021 version of the Bi-SCD 40-001, new research is required into NATO's implementation of the UNSCR 1325. Specifically, a feminist analysis of Bi-SCD 40-001 (2021) is needed to evaluate the extent of the gap between the ideals and intent of the WPS agenda and its progressive implementation by NATO.

Another question to consider is whether a HRBA AD could augment or replace GENADs as part of a Commander's advisory staff. In considering the intent and purpose of a HRBA to development, it would seem that HRBA mainstreaming represents the next logical step in NATO's process to align itself with other ISOs. Operationally and tactically, HRBA is likely to face less resistance than gender mainstreaming because human rights are less nuanced and contested than gender.<sup>107</sup> Human rights are codified in law and HRBA has a more robust legal framework than the WPS agenda.

HRBA planning is compatible with NATO's planning process. The lack of a definitive process for HRBA is a frequent criticism of the approach, however, for NATO, this represents a strength. Provided the tenets of the approach are adhered to, NATO could adapt the process as required.

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<sup>106</sup> NATO Bi-Strategic Command Directive 40-001 (2021) 15.

<sup>107</sup> The codification of rights norms in international law means rights are consistent from one country to another whereas the idea of gender changes from one culture to another. The enduring nature of rights simplifies the incorporation of a human rights analysis of a task or mission while the same is not true for gender considerations.

Even within the development sector, not all HRBA principles are adhered to all the time. The lack of a consistent human rights-based approach provides NATO with significant leeway in mainstreaming HRBA.

The possibility of mainstreaming HRBA in NATO is encouraging because including a HRBA AD in NATO's staff structure offers the opportunity to orient mission tasks and objectives to strengthen the capacity of the duty holder to fulfil human rights obligations and to conduct activities which support the rights holder's ability to claim and fully enjoy those rights. NATO can re-engage with the WPS agenda by applying the HRBA principles of participation, empowerment, non-discrimination, accountability, indivisibility and interdependence, while prioritising the rights of women in future operations.