

Getting perspective:
Incorporating a gender
perspective in military
operations and the impact
on international
humanitarian law

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1 Introduction

Since the adoption of United Nations Security Council Resolution 1325 (2000) on women, peace and security,¹ considerable development has taken place in the national, regional and international fields relating to the incorporation of a gender perspective in military operations. This follows from developments during the 1990s by both the United Nations (UN) and States to incorporate a gender perspective more broadly in all their actions, including legislative, policy and programme work.² UNSCR 1325 (2000) expanded this development into UN peacekeeping operations,³ urging the Secretary General to ensure that, where appropriate, field operations include a gender component.⁴ The philosophy behind this was in part that an understanding of the impact of the conflict on gender and ensuring the effective participation of all in the peace process would contribute to both the maintenance of international peace and security and the full implementation of international humanitarian law (IHL) and human rights law protections.⁵

Considerable research has been undertaken on the use of Gender Field Advisers (GFAs) in the implementation of UNSCR 1325 (2000) in military operations.⁶ This has focused on the broader aspects of UNSCR 1325 (2000) and subsequent resolutions, including the structural incorporation of GFAs within the operation and they participate in the operation. Previous

¹ United Nations United Nations Security Council Resolution 1325 (2000), adopted by the Security Council at its 4213th meeting on 31 October 2000, UN Doc. S/RES/1325 (2000), available online at:

[http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1325\(2000\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1325(2000)) (hereinafter “UNSCR 1325 (2000)”).

² United Nations, *Beijing Platform Declaration and Platform for Action*, adopted at the Fourth World Conference on Women, 27 October 1995, A/CONF.177/20 (1995) and A/CONF.177/20/Add.1 para. 38, available at: <http://www.un.org/womenwatch/daw/beijing/pdf/BDPfA%20E.pdf> (hereinafter “*Beijing Platform Declaration and Platform for Action*”). See further examples: Report of the Secretary General, Integrating the gender perspective into the work of United Nations human rights treaty bodies, UN Doc. HRI/MC/1998/6, 3 September 1999; and UN Economic and Social Council, *Mainstreaming a gender perspective into all policies and programmes in the United Nations system*, UN Doc. E/1997/6, 12 June 1997. Further resolutions adopted by the ECOSOC and Secretary General reports on the topic are available online at:

<http://www.unwomen.org/~media/Headquarters/Attachments/Sections/How%20We%20Work/UNSystemCoordination/UNWomen-GenderMainstreamingReportsAndResolutions-en%20pdf.pdf>.

³ See UNSCR 1325 (2000) *supra* n. 1 preamble para. 8, in which the Security Council “recognize[d] the urgent need to mainstream a gender perspective into peacekeeping operations”; and operative paragraph 5 “expresse[d] its willingness to incorporate a gender perspective into peacekeeping operations...”.

⁴ UNSCR 1325 (2000) *supra* n. 1 para. 5. Para. 8 further called all actors involved in negotiating and implementing peace agreements to adopt a gender perspective. Since UNSCR 1325 (2000) was passed, there have been six further SCRs on the matter of women, peace and security namely, UNSCR 1820 (2008), 1888 (2009), 1889 (2009), 1960 (2010), 2106 (2013) and 2122 (2013). There have also been 23 Security Council Presidential Statements relating to the topic. All Resolutions and Presidential Statements available at: <http://www.securitycouncilreport.org/un-documents/women-peace-and-security/>.

⁵ UNSCR 1325 (2000) *supra* n. 1 preamble paragraphs 4, 5, 6 and 10.

⁶ See, for example, Egnell, R., Hojem, P., Berts, H., *Implementing a Gender Perspective in Military Organisations and Operations: The Swedish Armed Forces Model*, Uppsala University, 2012, available online at: http://media.wix.com/ugd/012b60_0f44d6fb686dca7db5637212f5d87380.pdf (hereinafter “Egnell *et al* 2012”); and Olsson, L. and Tejpar, J. (eds), *Operational Effectiveness and UN Resolution 1325 – Practices and Lessons from Afghanistan*, FOI, 2009, available online at: <http://www.foi.se/rapport?rNo=FOI-R--2760--SE>.

research analysed what impact the use of GFAs has had on implementing the requirements set out in the UN Security Council Resolutions on women, peace and security.⁷ In addition, research has also been undertaken into the potential positive impacts of incorporating a gender perspective on the implementation of IHL.⁸ However, the conclusions focused considerably on changes in modern warfare relating to gender - such as the increased number of women combatants, and the work of the international criminal tribunals in prosecuting sexual and gender-based violence - and analysed such changes against the theoretical framework of IHL. However, these conclusions did focus on empirical data to analyse the impact on the implementation of IHL of incorporating a gender perspective on military operations.

In relation to military operations, several different models have emerged within the national, regional and international arenas for how to incorporate a gender perspective. For example, the preferred model for UN peace operations is the incorporation of a gender component in the mission, whereas the preferred model for EU and Swedish operations is the use of GFAs.⁹ The Swedish armed forces have been described as forerunners in implementing a gender perspective in its organisation and operations.¹⁰ GFAs have been operational in the Swedish armed forces troop contributions to international missions since 2007, first deployed as part of the EU mission in Chad, authorised by UNSCR 1778.¹¹ Subsequently, 20 GFAs have been involved in international missions conducted by the Swedish armed forces, including the International Security Assistance Force (ISAF) in Afghanistan.¹² Importantly for the purposes of this study, the Swedish armed forces operated within an IHL framework in Afghanistan

⁷ See, most recently, Lackenbauer, H. and Langlais, R. (eds), *Review of the Practical Implications of UNSCR 1325 for the Conduct of NATO-led Operations and Missions*, FOI, 2013, available online at: http://www.nato.int/nato_static/assets/pdf/pdf_2013_10/20131021_131023-UNSCR1325-review-final.pdf (hereinafter “Lackenbauer *et al* 2013”). See also Olsson, L. and Tejpar, J. (eds), *Operational Effectiveness and UN Resolution 1325: Practices and Lessons from Afghanistan*, FOI, 2009, available online at: http://www.foi.se/ReportFiles/foir_2760.pdf.

⁸ See for example, Durham, H. and O’Byrne, K., *The dialogue of difference: gender perspectives on international humanitarian law*, IRRC Vol. 92 No. 877 March 2010, 31-52 (hereinafter “Durham and Byrne 2010”); International Committee of the Red Cross, *Gender Perspectives on International Humanitarian Law: Report Summary of International Expert Meeting held 24-25 October 2007 in Stockholm, Sweden*, 2007, available online at: http://www.icrc.org/eng/assets/files/other/ihl_and_gender.pdf (hereinafter “ICRC 2007: Gender Perspectives on IHL”).

⁹ See, for example, Boehme J., *Human Rights and Gender Components of UN and EU Peace Operations, Putting Human Rights and Gender Mandates into Practice*, German Institute for Human Rights October 2008, available online at: http://www.institut-fuer-menschenrechte.de/uploads/tx_commerce/study_human_rights_and_gender_components.pdf. On the Swedish model, see further Egnell *et al* 2012, *supra* n. 6.

¹⁰ Egnell *et al* 2012, *supra* n. 6 p. 2.

¹¹ United Nations Security Council Resolution 1778 (2007), adopted by the Security Council at its 5784th meeting on 25 September 2007, UN Doc. S/RES/1778 (2007), available online at: [http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1778\(2007\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1778(2007)).

¹² Thirteen GFAs have been deployed in the contingent attached to the ISAF operation, three in the Nordic Battalion Group, two to the Swedish contribution to the EU training mission in Uganda, one to the Democratic Republic of Congo and one to NATO (SHAPE).

mission from summer 2010. Since that time until December 2013 six GFAs have been deployed with the Swedish armed forces contingent in intervals of six months. The experience of these particular six GFAs provides an opportunity to measure and analyse the possible impact of incorporating a gender perspective on the implementation of IHL. The aim of this study is therefore to analyse data relating to the operation of GFAs in the Swedish armed forces deployed primarily in the ISAF operation from the summer of 2010 to ascertain whether any conclusions may be drawn on the impact of their work on the implementation of IHL.

The first part of this report sets out the research methodology, followed by an outline by the definition of a gender perspective used in this study and how this differs from gender mainstreaming and ensuring gender equal numbers. The chapter also includes an analysis of international humanitarian law from a gender perspective. The second chapter of the report sets out the main findings from the data collated, with analysis, conclusions and recommendations included in the third and final chapter.

1.1 Methodology

The report's findings are based on the final reports of GFAs sent to the Swedish armed forces headquarters at the end of their deployment in Afghanistan, made available to the authors to enable the study to be undertaken, and a subsequent questionnaire sent to GFAs.

Two of the four reports received from the Swedish armed forces headquarters related to the period after 2010, and therefore following the change in position that IHL applied to the operations of the Swedish contingent in the ISAFs operation. Although these highlighted some information on which findings could be based, there was insufficient detail on the particular aspects relevant to the implementation of IHL. In addition, there were significant differences between the reports in what information had been included, as no standard reporting requirements have been issued or templates for such reports given. As a result, a further questionnaire was designed by the authors in an effort to illicit further information to address this evidence gap (included below at Annex A). The questions focused on the involvement of the GFAs in processes within the operation that involved the implementation of international humanitarian law. As such, it was hoped that further information on the impact of the GFAs advice on these processes would be discerned. Questions were also included on the GFAs own impressions of how their advice impacted on specific areas

regulated by international law, such as the means and methods chosen in the operation. The questionnaire was sent to the GFAs in July 2013, with all responses received by September 2013. Four of the completed questionnaires matched the criteria of relating to the post-2010 period. The results from these questionnaires provided further insight to the reports from the Swedish armed forces headquarters. The responses received cover the experience of GFAs from the period of December 2010 to December 2011 and May 2012 to May 2013.

By way of background information, the Swedish armed forces headquarters also provided copies of the following documents:

- Checklist of gender related questions to be answered in reports and situation analysis for the EUFOR Tchad/RCA Operation
- FAQ/Briefing notes for Mainstreaming Gender Issues into the EUFOR Tchad/RCA Operation;
- Guidelines and checklists for the practical integration of resolution 1325 in the EUFOR Tchad/RCA operation; and
- Standard Operating Procedure (SOP) for Gender Advisors, Gender Officers and Gender Focal Points, EUFOR Tchad/RCA.

The study focuses on the effects of incorporating a gender perspective on the implementation of IHL. Within the mission, the GFAs role includes advice on incorporating a gender perspective. Although their role is clearly not focused on the implementation of IHL, nor the only component for incorporating a gender perspective, their work could potentially impact on this area and, as such, is of interest. It is also important to note that it is only in exceptional cases that military personnel in peace operations become involved in armed conflicts. Whilst the mandate of the ISAF operation authorises the use of all necessary measures¹³ and in implementing the mandate, ISAF forces have at times become involved in the armed conflict between organised armed groups in the territory of Afghanistan and the Afghanistan government, IHL is only applicable to those parts of the operation that are engaged in the armed conflict. It does not cover the whole spectrum of activities undertaken by the ISAF operations in pursuit of the mandate. As such, not all of ISAFs operations will be conducted under an IHL framework and not all operations of the Swedish contingent were influenced by the application of IHL. Swedish armed forces have been deployed in the

¹³ See United Nations Security Council Resolution 1386 (2001), adopted by the Security Council at its 4443rd meeting on 20 December 2001, UN Doc. S/RES/1386 (2001), para. 3, available online at: [http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1386\(2001\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1386(2001)).

northern part of Afghanistan where the actual fighting was initially less intense. The results from the GFAs reports and the questionnaires do not differentiate between those missions and parts of the operations or the GFAs work that were conducted under an IHL framework and those that were not, which may impact on the findings. The material shows that the GFA were mostly involved in non-IHL related operations. As the study focuses on the implementing of IHL, any impact on the implementation of protections flowing from human rights law are not considered.

There is a period after December 2011 until May 2012 that was not covered in the questionnaire results and the reports. However, in all other respects, the responses to the questionnaires cover a lengthy period of time of the operation and importantly when IHL will have applied to parts of the operation.

As the data is limited to the experiences of the Swedish contingent, it is also difficult to draw broader conclusions applicable to the whole operation. It also only relates to the work of the GFAs, and does not consider wider aspects that have been incorporated to implement the requirements of UNSCR 1325 (2000). Nevertheless, the data gathered does provide an insight into the function of the GFAs in this specific mission and is therefore useful for considering how this role can be shaped and executed in future missions. The recent report published by FOI on how UNSCR 1325 (2000) has been incorporated in NATO-led operations gives a broader overview of how gender mainstreaming and a gender perspective has been incorporated into the whole operation in Afghanistan.¹⁴ Analysis of this wider perspective in relation to its impact on IHL requirements would require further research.

1.2 What is “a gender perspective”?

The UN Office of the Special Advisor to the Secretary-General on Gender Issues and Advancement of Women¹⁵ defined gender as referring to:

“...the social attributes and opportunities associated with being male and female and the relationships between women and men and girls and boys, as well as the relations between women and those between men. These

¹⁴ Lackenbauer et al, *supra* n. 7.

¹⁵ See: <http://www.un.org/womenwatch/osaginew/index.html>.

attributes, opportunities and relationships are socially constructed and are learned through socialization processes. They are context/ time-specific and changeable. Gender determines what is expected, allowed and valued in a women or a man in a given context. In most societies there are differences and inequalities between women and men in responsibilities assigned, activities undertaken, access to and control over resources, as well as decision-making opportunities. Gender is part of the broader socio-cultural context. Other important criteria for socio-cultural analysis include class, race, poverty level, ethnic group and age.”¹⁶

Incorporating a gender perspective is a process of identifying and understanding gender-based differences in a given society between women and men in status and power, and assessing how such differences shape the immediate needs, as well as long term interests, of women and men.¹⁷ In the context of military operations, it can assist in understanding the root causes of conflict and how these may be addressed, as well as the different effects the activities of the mission in a given situation may have on the different genders. This enhanced understanding has the potential impact of strengthening adherence to IHL requirements, as this better understanding will contribute to better implementation of the legal standards, such as those relating to protection of the civilian population, assessing proportionality and understanding the impact of the means and methods utilised by the military operation, among others.¹⁸

Incorporating a gender perspective has on occasion been used synonymously with implementing the requirements of UNSCR 1325 (2000) and related resolutions on women, peace and security. However, more is needed to fully incorporate all the requirements set out in the resolutions in a military operation.¹⁹

Similarly, incorporating a gender perspective includes understanding and promoting women’s rights, but that is not only what it encompasses. For example, in preamble paragraph 8 of UNSCR 2122 (2013), the Security Council noted the need for access to the full range of

¹⁶ See: <http://www.un.org/womenwatch/osagi/conceptsanddefinitions.htm>.

¹⁷ See, for example, the Beijing Declaration and Platform for Action, *supra* n. 2.

¹⁸ See Sec 1.4 below.

¹⁹ By way of example in UN Security Council Resolution 1888 (2009), adopted by the Security at its 6195th meeting on 30 September 2009, UN Doc. S/RES/1888 (2009) para. 19 in which the Security Council “encourages Member States to deploy greater numbers of female military and police personnel to United Nations peacekeeping operations, and to provide all military and police personnel with adequate training to carry out their responsibilities”. More would clearly be needed in this than just incorporating a gender perspective. Available online at: [http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1888\(2009\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1888(2009)) (hereinafter “UNSCR 1888 (2008)”).

sexual and reproductive health services, including regarding pregnancies resulting from rape, without discrimination.²⁰ This need stems from the disproportionate effect of gender and sexual based violence against women and girls in armed conflict and the differences experienced by women and girls from this violence compared to men and boys, recognised in UNSCR 1325 (2000) and related resolutions.²¹ It also clearly points to women's rights on reproductive health which states are obliged to respect, protect and ensure, including the right to decide on the number and spacing of children (Article 16(1)(e) Convention on the Elimination of Discrimination Against Women, "CEDAW"),²² the right not to be discriminated against in the field of health care in order to ensure equal access to health care services, including in family planning (Article 12(1) CEDAW), the obligation on States to ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation (Article 12(2) CEDAW), and the right of access to specific educational information and advice on family planning (Article 10(h) CEDAW), amongst others. However, whilst this addresses in part the differences in the experiences and needs of women, it does not address that of men in a given society, who may themselves have been victims of gender or sexual based violence, or the broader impact on the victim's family and in the wider community, and how gender plays a role in this and how to address this.²³ As such, ensuring the access of women to sexual and reproductive health in armed conflict and post-conflict settings is a part of addressing gender and sexual based violence, the understanding and addressing of which fall within a gender perspective – but fully incorporating a gender perspective does not end there.

Given the historical context from which UNSCR 1325 (2000) stems, the emphasis on women's rights is clearly understandable. Women have been excluded from peace processes,

²⁰ UN Security Council 2122 (2013) Security Council Resolution 2122 (2013) adopted by the Security Council in its 7044th meeting on 18 October 2013, UN Doc. S/RES/2122 (2013) para. 8 (hereinafter "UNSCR 2122 (2013)").

²¹ See UN Security Council Resolution 1820 (2008), adopted by the Security Council at its 5916th meeting on 19 June 2008, UN Doc. S/RES/1820 (2008) paras. 10, 11, and particularly para. 13 (available online at: [http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1820\(2008\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1820(2008))) which explicitly addresses Member States in developing and strengthening capacity in national institutions including health systems amongst others in order to provide sustainable assistance to victims of sexual violence in armed conflict and post-conflict situations and reiterated in UNSCR 1888 (2008) *supra* n. 20 para. 9. See also UN Security Council Resolution 1960 (2010), adopted by the Security Council at its 6453rd meeting on 16 December 2010, UN Doc. S/RES/1960 (2010) preamble para. 13, available online at: [http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1960\(2010\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1960(2010)).

²² Convention on Elimination of Discrimination Against Women, adopted by the General Assembly in its Resolution 34/180 on 18 December 1979 UN Doc. A/RES/34/180, came into force on 3 September 1981, available online at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CEDAW.aspx>.

²³ See UN Security Council Resolution 2106 (2013), adopted by the Security Council at its 6984th meeting on 24 June 2013, UN Doc. S/RES/2106 (2013) preamble para. 6 (hereinafter "UNSCR 2106 (2013)").

post-conflict negotiations and settlements. Similarly, the role of women as participants in armed conflicts has been largely ignored and instead women have been thought of only in terms of victims.²⁴ This resulted in a skewed view of conflicts, in which the consequences and impact of actions could not be fully appreciated, as women were not fully included in the processes. UNSCR 1325 (2000) and the further resolutions on women, peace and security aim to address this skewed result. As such, the emphasis on women's rights is a measure to ensure they are included in these processes. However, in understanding women's roles within a society, ensuring promotion, protection and participation, it is critical to understand men's role, and *vice versa*.

It is critical when considering the role of GFAs to understand the broader scope of incorporating a gender perspective. It is argued that whilst GFAs have an important role in this, it cannot be achieved only by deploying a GFA in an operation. Like the promotion of human rights and adherence to requirements of IHL, it is the responsibility of all those involved in the military operation to understand and uphold in order for a gender perspective to properly be incorporated within the mission.

1.3 Separating the inseparable – gender mainstreaming, gender equality and incorporating a gender perspective in the operation

It is also important to understand the difference between “incorporating a gender perspective” and “gender mainstreaming” used in this study. Gender mainstreaming was defined by the UN Economic and Social Council in Resolution 1997/2 as “*the process of assessing the implications for women and men of any planned action, including legislation, policies and programmes, in all areas and at all levels, and as a strategy for making women's as well as men's concerns and experiences an integral dimension of the design, implementation, monitoring and evaluation of policies and programmes in all political, economic and social spheres so that women and men benefit equally and inequality is not perpetuated.*” The ultimate goal of gender mainstreaming is to achieve gender equality. This is not the only goal of incorporating a gender perspective. As noted above, incorporating a gender perspective is a process of identifying and understanding gender-based differences in society between men

²⁴ Durham and Byrne 2010 *supra* n. 8.

and women.²⁵ In this, it contributes to understanding how to overcome gender-based differences, so as to achieve gender equality. However, incorporating a gender perspective is significantly wider than having a gender equal representation of personnel in the operation and will not be achieved simply by ensuring gender equal numbers of personnel.

If the incorporation of gender perspective in a mission is to have an impact on IHL, it is fundamental that all those participating understand what is meant by “incorporating a gender perspective” and what the aim of doing so is, so as not to confuse this with other related, but different concepts. Such understanding will contribute not only to ensuring the potential of the GFA’s role is fulfilled, but will also contribute to a clearer definition of that role.

Whilst gender mainstreaming and incorporating a gender perspective are separate, the data collected in this study indicate that a gender balance of personnel in the operation can contribute to promoting gender considerations in coordination with other local and international actors involved in the operation.²⁶ It may also serve as a tool for incorporating a gender perspective, such as indicated in the data received relating to gathering further information to contribute to the knowledge of the local environment in which the operation takes place and thereby contribute indirectly to better implementation of IHL requirements through this increased awareness.²⁷ Egnell *et al* also noted that interviewees in their study considered that a larger proportion of women in the unit would make it easier to implement a gender perspective.²⁸ Whilst this can have positive impacts on the implementation of IHL in the mission, the results do suggest that some within the mission saw the requirement to incorporate a gender perspective as only ensuring equal numbers of men and women, however.

The potential impact of gender balance within an operational unit on the implementation of IHL is tentative and no firm conclusions on this can be drawn from the data gathered. Further

²⁵ Egnell *et al*, *supra* n. 6, p. 3-4. See also NATO, *Integrating UNSCR 1325 and gender perspectives in the NATO Command Structure (Bi-Strategic Command Directive (BI-SCD) 40-1)*, 8 August 2012, available online at: http://www.nato.int/issues/women_nato/2012/20120808_NU_Bi-SCD_40-11.pdf.

²⁶ The close connection between these two areas can also be seen in UNSCRs requiring that more women be included in peacekeeping operations as special envoys etc. See for example UNSCR 1325 *supra* n. 1 para. 4 and UNSCR 2122 (2013), *supra* n. 20 para. 9. A number of reports received from the Swedish armed forces highlight that calls on local actors to take into consideration gender aspects were undermined by the fact that the unit advocating this approach was not itself representative of gender equal numbers in personnel.

²⁷ In the follow up questionnaires sent to GFAs, it was highlighted that the use of female soldiers in operations resulted in different information being given by members of the local population they encountered, and even suggested that it was easier for female soldiers to talk to both men and women compared with their male counterparts.

²⁸ Egnell *et al* 2012, *supra* n. 6 p. 82.

research on the link between gender equality and the implementation of IHL would be needed.

1.4 The theoretical framework - applying a gender perspective to international humanitarian law (IHL)

IHL applies during armed conflicts and aims primarily to protect those who do not or no longer take a direct part in hostilities. In doing so, it strikes a balance between military necessity and considerations of humanity. Parties to a conflict are obliged to implement IHL during armed conflicts and ensure respect for IHL,²⁹ and as such, must take all necessary actions to execute their obligations under IHL.

IHL differentiates between international armed conflicts (IACs) and non-international armed conflicts (NIACs). In short, an IAC is an armed conflict between states and a NIAC is an armed conflict between a state and an organised armed group or between such groups.³⁰ The treaty based regulation of IACs is by far more developed than treaties applicable during NIACs. However, many of the treaty rules applicable in IACs are considered to be reflective of customary international law which is applicable in both NIACs and IAC's.³¹ Today most armed conflicts are of a non-international character. The conflict in Afghanistan is one such conflict that can be classified as a NIAC, being conducted between the Afghanistan government forces and organised armed groups.

IHL requirements set the framework for the planning of an operation, planning within an operation and the conduct in the execution of operations. There are provisions in the Geneva

²⁹ See Common Article 1 *Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field*, 12 August 1949, 75 U.N.T.S. 31 (1949) (hereinafter "GCI"), *Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea*, 12 August 1949, 75 U.N.T.S. 85 (hereinafter "GCII"), *Geneva Convention Relative to the Treatment of Prisoners of War*, 12 August 1949, 75 U.N.T.S. 135 (hereinafter "GCIII") and *Geneva Convention Relative to the Protection of Civilian Persons in Time of War*, Aug. 12, 1949, 6 U.S.T. 3516, 75 U.N.T.S. 287 (hereinafter "GCIV"). See also Common Article 3 to GCI, GCII, GCIII, and GCIV; Protocol Additional to the Geneva Conventions of 12 Aug. 1949, and Relating to the Protection of Victims of International Armed Conflicts, 1125 U.N.T.S. 3, Art. 1(1) (hereinafter "API"); and Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts, 1125 U.N.T.S. 609, Art. 1(1) (hereinafter "APII"). See further ICRC database of Customary International Humanitarian Law, Rule 139, available online at: http://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule139 (hereinafter "ICRC Customary Rules database"). There are also requirements under IHL during peace time – see for example, GCI Arts. 45 and 47-49; GCII Arts. 46 and 48-50; GCIII Arts. 127-129; GCIV Arts. 144-146 and API Arts. 80 and 83-85.

³⁰ See Common Articles 2 and 3 to GCI, GCII, GCIII and GCIV; API Arts. 1(3) and 1(4) and APII Art. 1.

³¹ For a comprehensive analysis of the customary international law rules applicable in IACs and NIACs, see ICRC Customary Rules database, *supra* n. 29.

Conventions of 1949 that are explicitly not gender neutral;³² however, for the most part, the law itself should be interpreted in a neutral manner.³³ Notwithstanding, perceptions and stereotypes about the differences between men and women can lead to differences in how the law is applied.³⁴ In addition, the application of the law may have fundamentally different impacts on women or men. Gender perceptions often put men at greater risk to physical harm than women. Women have increasingly taken a direct part in hostilities, however, increasing the risks of physical harm of those who do participate.³⁵ The report from the 2007 ICRC meeting of experts on gender and IHL offers an example of applying a gender perspective on IHL based on stereotyped gender perceptions: “In the ensuing moments following an attack on a vehicle, young male civilians run the risk of being, wrongly, automatically perceived to be responsible for the attack, based partly upon perception of gender.”³⁶ The report concludes that the ability to understand “the position of men and women in the context of theatres of operations (through appropriate intelligence gathering) will assist in the implementation of policies to ensure the safety and security of men and women not taking direct part in hostilities.”³⁷ In these areas, the work of GFAs can assist in ensuring that equal application of the law, and thus strengthening the protection afforded to men and women. In doing so, this can contribute to ensuring the operation is able to function in a manner that achieves the best possible result whilst complying with the fundamental principles of IHL.

Breaches of IHL can, in some circumstances, amount to war crimes for which individuals can be held criminally responsible for their acts.³⁸ As such, planning processes receive support from those responsible in the operation for specialist areas, including legal advisers, among others. The GFAs role includes participating in the operational planning process to assist in incorporating a gender perspective.³⁹ This role could have a significant impact on how the relevant IHL requirements are incorporated. The information available in the operation on which to base the decisions implementing the IHL requirements is obviously critical to ensuring that the best decisions are taken. Applying a gender perspective on the collection and analysis of data contributes to a more detailed picture of the whereabouts of the local population. This may impact on how the principles of distinction and proportionality are

³² E.g. GC IV, Arts. 14, 27, 38(5), 50, 97, 124 and 132; API Art. 75; and APII Art. 5(2)(a).

³³ See further Durham O’Byrne 2010, *supra* n. 8.

³⁴ ICRC 2007: Gender and IHL *supra* n. 8, p.5.

³⁵ *Ibid*, p. 8.

³⁶ *Ibid*, p. 7.

³⁷ *Ibid*.

³⁸ Common Article 3 GCI, GCII, GCIII and GCIV; GCI Art. 49; GCII Art. 50; GCII Art. 129; GCIV Art. 146; API Art. 85; *Rome Statute of the International Criminal Court*, UN Doc. A/CONF.183/9 (1998) Arts. 8 and 25 (hereinafter “ICC Statute”).

³⁹ Standard Operating Procedure (SOP) for Gender Advisors, Gender Officers and Gender Focal Points, EUFOR Tchad/RCA, p. 2 (on file with the authors).

implemented in a particular decision to neutralise a military objective, for example.

Knowledge provided by GFAs regarding gender specific issues may also contribute to a better understanding of the situation at hand, which in turn will assist in ensuring better application and compliance with IHL.

In both IACs and NIACs, the parties to an armed conflict must at all times distinguish between civilians and combatants, as well as between civilian objects and military objectives.⁴⁰ Civilians must be protected from direct attacks, but lose this protection if and then for such time as they directly participate in hostilities.⁴¹ The nature of modern NIACs makes it inherently difficult to identify those who directly participate in the armed conflict from those that are entitled to protection. There is furthermore a need to distinguish, from a legal and practical perspective, between the mere assistance to those who are directly participating in hostilities from direct participation in hostilities itself. Whereas individuals will lose their protection as a civilian under IHL when directly participating and thus may be lawfully attacked, they will not do so in situations where they participate only indirectly.⁴² Such assistance includes tasks which in some societies would be regarded as being traditionally carried out by women, such as providing food and shelter or fetching water. Ensuring that a gender perspective is fully incorporated when considering these issues could have a significant impact on how these standards are applied and upheld.

The fundamental principles of proportionality and precautions in attack also apply in both IACs and NIACs. Under the principle of proportionality an attack is forbidden if it “may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated.”⁴³ The principle of precautions in attack stipulates furthermore that in the conduct of military operations “constant care shall be taken to spare the civilian population, civilians and civilian objects.”⁴⁴ These general principles, together with more

⁴⁰ API Arts. 51 and 52. In relation to NIACs see APII Art. 13(2) API and Rule 1, ICRC Customary Rules database, *supra* n. 29.

⁴¹ API Art. 51(3) API and APII Art. 13(3); Rule 6, ICRC Customary Rules database *supra* n. 29.

⁴² See Melzer, N. *Interpretive Guidance on the Notion of Direct Participation in Hostilities*, International Committee of the Red Cross, May 2009, available at: <http://www.icrc.org/eng/assets/files/other/icrc-002-0990.pdf>. See also Inter-American Commission on Human Rights, Third report on human rights in Colombia, Doc. OEA/Ser.L/V/II.102 Doc. 9, rev. 1, 26 February 1999, Chapter IV pp. 53 - 58.

⁴³ API Art. 51(5)(b), API Article 57(2)(a)(iii), and Rule 14, ICRC Customary Rules, *supra* n. 29. Specifically in relation to NIACs, see United Nations, *Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects (and Protocols) (As Amended on 21 December 2001)*, 10 October 1980, 1342 UNTS 137 (hereinafter “CCWC Amended Protocol II”) Art. 3(8)(c) and reference to the principle of humanity in the preamble of APII.

⁴⁴ API Art. 57(1). In relation to NIACs see APII Art. 13(1) on general protection from attacks and CCWC Amended Protocol II Art. 3(10), Second Protocol to the Hague Convention of 1954 for the Protection of

detailed rules, mean parties to the conflict need to base their planning and conduct of military operations on the best available information possible. The ability to feed in disaggregated information on the basis of gender into the planning processes provides a more detailed picture for the decision makers that could have significant impacts on mitigating the loss of civilian lives. In addition, it is crucial to base a decision to attack during dynamic targeting on the best available information,⁴⁵ on which applying a gender perspective may impact on the actual execution of that attack.⁴⁶

IHL regulates the means, or weapons, and the methods, or the strategies and tactics, of the conduct of hostilities.⁴⁷ This includes specific restrictions and prohibitions on certain weapons⁴⁸ and methods.⁴⁹ In addition, the means and methods must also accord with the general principles of IHL, such as distinguishing between military and civilian objects,⁵⁰ and proportionality requirements, etc. Weapons causing superfluous injury or unnecessary suffering are explicitly banned under Article 35(2) of Additional Protocol I (“API”), which is generally seen to be reflective of customary international law.⁵¹ The effects of different weapons employed may have different or even adverse consequences on one gender over another. In the operation in Afghanistan, this can be particularly relevant to non-lethal methods which were utilised by the mission. Ensuring a full and complete understanding of how these methods impact on different persons within the society is critical, not only for fulfilling the IHL requirements, but also ensuring the methods employed will achieve the aims of the mission.

One area where it is apparent that the law applicable in NIACs is not as developed as in IACs relates to the taking of detainees. This has raised significant issues in relation to the conflict in Afghanistan. Grounds for detention, standards of treatment, and the question of handing over detainees to another power raise important IHL and human rights law questions. Again, the importance of having the best possible information to decide whether or not a person should

Cultural Property in the Event of Armed Conflict, 26 March 1999, 38 I.L.M. 769, Art. 7 (hereinafter “Second Protocol to the Cultural Property Convention for the Protection of Cultural Property”). See further Rule 15, ICRC Customary Rules database, *supra*. n. 29.

⁴⁵ Art. 57(1)(b) API. See further Rule 15, ICRC Customary Rules database *supra*. n. 29.

⁴⁶ See Prescott, J. M., *NATO Gender Mainstreaming*, The RUSI Journal, 2013, 158:5, 56-62 p. 60, available online at: <http://dx.doi.org/10.1080/03071847.2013.847722> (hereinafter “Prescott 2013”).

⁴⁷ API Art. 35(1).

⁴⁸ For a comprehensive list of treaties regulating means and methods of warfare see: <http://www.icrc.org/ihl#view: id1: id2: id250:repeat1:1:labelAnchor>.

⁴⁹ See, for example, AP I Art. 51(7); GCIII Art. 23(1); GCIV Art. 28; APII Art. 13(1); AP I Art. 77(2); AP II Art. 4(3); Art. 40 API.

⁵⁰ See footnote 40 above.

⁵¹ See Rule 70, ICRC Customary Rules database, *supra*. n. 29.

be detained is apparent. Knowledge regarding standards of treatment and the potential implications of handing a detainee to another authority is also crucial, so as to ensure the required standards are upheld in full knowledge of the differences in treatment of persons of different genders and the impact of such decisions on the individuals concerned.

The requirements of IHL outlined above apply to the parties to an armed conflict. It should be noted that most international forces involved in military operations based on Security Council mandates deployed in situations of crises or post-conflict seldom become involved any armed conflict in the country they are based. As such, IHL is not applicable to the conduct of these missions. Rather, their conduct is generally guided by human rights norms.⁵² Indeed, the emphasis and efforts made in ensuring a gender balance in military operations has been argued to be based primarily on concerns emanating from human rights law and rather less on IHL considerations.⁵³ Human rights law and international humanitarian law share humanitarian values and, when IHL is also applicable, these frameworks can strengthen each other and increase the legal protection of individuals. There are, however, important differences between human rights law and IHL. The former regulates obligations owed by States towards persons within their territory or control and authority. The latter regulates the behaviour of the parties to an armed conflict and the use of deadly force is lawfully permitted to a greater extent compared to human rights law. The present study focuses only on IHL. The impact of the work of GFAs on the implementation of human rights law during peace operations would require further investigation that is beyond the scope of the present report.

⁵² For further discussion on the application of human rights law in military operations, see for example Larsen, K. M., *The Human Rights Treaty Obligations of Peacekeepers*, Cambridge University Press: Cambridge, 2012.

⁵³ Prescott 2013, *supra* n. 46, p. 59.

2 The outlook today – findings from the data

As noted above, the findings are based on data contained in two of the four reports received from Swedish armed forces and four questionnaire results. The questionnaire sent to the GFAs included specific questions relation to planning, targeting, the means and methods employed by the mission, analysis of the mission, discernable results and intelligence and information. The data reveals a mixed picture on the way GFAs have impacted on areas which involve the application of IHL within the operations of the Swedish contingent in Afghanistan. Overall, it is clear that GFAs have had an impact. However, further evidence over a longer period of time would be necessary to assert this more concretely. The data does reveal the considerable effort and hard work that GFAs have done in the Afghanistan mission under very difficult circumstances, a great deal of which would not otherwise have been done. There may be indirect impacts of this work that cannot be measured here; for example, furthering the mandate, general awareness raising and understanding within the mission, legitimacy of the mission and roll-on effects to the relations with the local population, which may also impact on strengthening compliance with IHL, as well as human rights.

Planning process

All military operations must be conducted in a lawful manner, taking due regard to the legal basis authorising the operation, as well as the law applicable during the conduct of the operation. As such, legal requirements must be incorporated in the planning of missions within the peace operation.⁵⁴ Incorporating a gender perspective in the planning processes may impact on how these standards are implemented within a particular planned mission and thus further adherence to IHL.

All four questionnaire responses indicated that GFAs were having an impact in the planning processes, although this experience was varied.⁵⁵ One response indicated that the GFAs involvement in planning was limited and was not sought by default, whereas another

⁵⁴ See commentary to Rule 139, ICRC Customary Rules database *supra*. n. 29.

⁵⁵ One report from Swedish armed forces headquarters noted that there had been a shift in focus to the GFA being used in supporting the planning of operations, rather than cooperation with non-governmental organisations and other international organisations. This report is dated March 2012 and highlighted, amongst other factors, a good working relationship with G3 unit, including drafting an annex to the operational documents, indicating when Mixed Engagement Teams could be useful and/or the use of female interpreters and other factors the GFA can contribute to the process. Similarly, work with G5 was also noted as good.

highlighted how advice on gender aspects in planning processes and performance of operations contributed to a longer term change in behaviour towards the population to the general benefit of the operation. Two responses indicated that involvement in the planning processes was the only way to get a gender perspective in the operations at all. It is not possible to measure further what, if any impact this had on the implementation of IHL within those operations the GFA advised on, however. It is also critical to remember in this that in the context of the mission in Afghanistan only a limited number of operations will have been undertaken in an IHL framework.

Within tactical planning, the questionnaire answers indicate that GFAs were involved to a limited extent, even more so than compared with the higher operational level. This subsequently restricted their impact within the process. For example, one response stated that none of their ideas were used in the missions and another highlighted that their advice was only on composition of personnel on missions. Another, however, gave the example of working with the rifle company and a provisional office on a more informal setting and that this setting had a significant impact on the operations at this tactical level.

The reports and questionnaires all point to a lack of appreciation by others within the mission of the benefits of incorporating a gender perspective in their work and how and where this could be done. This working culture could have impacted on the GFAs advice being sought during planning processes. However, where the GFA was involved, it does appear from the reports and questionnaires to have had positive results, such as in the examples noted above regarding work with the rifle company, and advice leading to longer term changes in attitudes in the mission.

Analysis of the mission

Understanding how gender affected the causes of a conflict and shaped the society after the conflict has broken out will affect the overall operation of the mission and the solutions implemented in order to resolve the conflict.⁵⁶ Results were mixed as to what extent gender perspective contributed to analysis of the mission, however. Whilst one questionnaire indicated that next to no analysis of mission was done relating to a gender perspective, another indicated that a gender analysis was integrated in every step of the planning process and led to a distinct change in approach towards the local population. This is an area in which

⁵⁶ Lackenbauer *et al* 2013 *supra* n. 7 p. 22.

the role of gender can have a clear impact on understanding the context in which the conflict is taking place and the root causes of the conflict.⁵⁷ These results suggest that this is not being fully realised. As noted above, the reports of the GFAs indicate a general lack of understanding of how a gender perspective can impact on the mission.

Effects on the civilian population and conduct of the mission

Since 2000, the Security Council has explicitly included in the mandates of peace operations the protection of civilians under imminent threat of physical violence, within the operations capabilities and areas of deployment.⁵⁸ This requirement does not prejudice or alter in any way the State's ultimate responsibility to protect its citizens deriving from human rights law,⁵⁹ or the requirements under IHL for parties to the conflict to protect civilians.⁶⁰ Such a requirement is not explicitly included in ISAF's mandate. However, protection obligations may arise in relation to any individual who comes within the operations effective control and authority,⁶¹ or in situations where ISAFs actions are governed by IHL. It is beyond the scope of this study to go into further detail of the any differences between these protection obligations, however.

The responses to the questionnaires do indicate that there were some discernable effects on the civilian population as a result of the GFA's advice. Such results included generally contributing to long term behaviour change towards the population in the conduct of the operation and creating more positive views in relation to the population,⁶² to specific examples of enhancing security installations in a village. The latter example is a clear illustration of the benefits of incorporating a gender perspective to strengthen the protection of the civilian population.

⁵⁷ For more on this in the Afghanistan context, see further Lackenbauer et al *supra* n. 7 2013 pp. 31-34.

⁵⁸ See, for example, the mandates of UN-led missions UNAMSIL; MONUC; UNMIL; ONUB; MINUSTAH; UNOCI; UNMIS; UNIFIL; UNAMID; and MINURCAT; UNISFA; and MINUSMA. For full details on all UN missions see <http://www.un.org/en/peacekeeping/operations/>. Similar language has been used in mandates for missions led by other organisations, such as UN Security Council Resolution 1973 (2012), adopted by the Security Council at its 6498th meeting on 17 March 2011, UN Doc. S/RES/1973 (2011) authorising the NATO-led mission in Libya, available online at:

[http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1973\(2011\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1973(2011)).

⁵⁹ See, for example, Art. 2 of the *International Covenant on Civil and Political Rights*, GA Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 UNTS 171.

⁶⁰ API Arts. 51 and 52 and APII Art. 13. Rule 1 ICRC Customary Rules database, *supra*. n 31.

⁶¹ See Human Rights Committee, General Comment 31, Nature of the General Legal Obligation on States Parties to the Covenant, U.N. Doc. CCPR/C/21/Rev.1/Add.13 (2004). For a summary of key cases on the extraterritorial application of the European Convention on Human Rights see: http://www.echr.coe.int/Documents/FS_Extra-territorial_jurisdiction_ENG.pdf (updated as at December 2013).

⁶² One response describes this as a changed from "kicking in doors" to a "soft approach".

Significantly, the data gathered provides some examples of where adherence to the required standards has been influenced by advice on and the incorporation of a gender perspective in the conduct of the operation. One questionnaire result gives the example of advice given concerning integration of Afghan female police officers in search operations, to ensure they were performed in a more culturally correct way, and supporting a “softer approach” towards population. Advice was also given on the structure of populations in villages, their life and needs, and estimated negative consequences for men, women and children of suggested operational design (such as the use of heavy vehicles in sensitive areas related to time of year, state of road and transport need i.e. schooling routines for girls/boys and women’s access to medical treatment/maternal care). Although these are only a few examples, it does indicate the potential of GFAs advice on ensuring IHL is implemented and adhered to within a mission. The difficulties highlighted relating to involvement in planning processes may have impacted on these results not being more extensive.

As a general conclusion from the data gathered, GFAs advice does appear to have had more impact on information gathering, which has then led to better implementation of the IHL standards. One example of this given was very good cooperation that was established with local school personnel in a village located in an area of notorious unrest, apparently resulting from advice from the GFA. Such cooperation could have an indirect impact on the protection of the civilian population generally and particularly in relation to children.⁶³ Other examples focus very much again on the use of female personnel (e.g. Civil-Military-Cooperation, or “CIMIC” officers) and interpreters to gather better information which led to increased awareness.⁶⁴

This should be read in context with the difficulties indicated by some of the questionnaires regarding the analysis of the mission from a gender perspective. Whilst one result indicates that together with a G2 analyst, the GFA developed questions that identify patterns of movement of women, girls and boys in a village in a high security area, others highlight a more difficult working relation with the G2 unit. These elements may contribute to the full impact of a gender perspective on the implementation of IHL requirements not being fully realised.

⁶³ Another example indicated that advice on MTs in patrols enabled information on the needs of women and girls in remote areas was gathered which then contributed to the design and implementation of Quick Impact Protects in these areas to address the needs identified.

⁶⁴ One report received from Swedish armed forces headquarters concluded that female personnel not only often find it easier to make contact with local women, but also with local men and they will often get more information.

The targeting process

Under IHL, all attacks must be targeted at military objectives only.⁶⁵ It is during the targeting process that military operations identify potential targets and determine whether or not identified targets are military objectives and can thereby be lawfully attacked. This process also determines what level of force should be implemented, by whom, how etc in relation to that target, incorporating all the relevant rules of IHL. Targeting processes also consider the legality of non-lethal measures against identified targets, such as information and psychological operations. This is a key area where IHL is incorporated in the mission and thus an area where GFAs could also impact on how these standards are implemented.

When it comes to “hard” targeting, as it is referred to in one of the questionnaires, the GFAs appear to have had limited to no impact.⁶⁶ As with involvement in planning processes, the mixed reaction in this area may be in part to the overarching problems relating to the formation of the role, both by others within the operation and the individual GFAs. There is a significant potential for important considerations relating to the legal requirements, such as proportionality, the means and methods used in the operation, and protection and distinction requirements that are potentially missed in this process if a gender perspective is not included. The questionnaires reveal that GFAs have had a greater impact in incorporating a gender perspective in the targeting process for psychological operations and information operations, than other types of operations.⁶⁷ This included advice on outreach to the whole population, which contributed to a greater situational awareness and may then have had subsequent impacts on the implementation of IHL in the wider operation and other missions.

Means and methods

⁶⁵ API Art. 52(2), Rule 7, ICRC Customary Rules database, *supra* n. 29.

⁶⁶ Only one of the four responses received indicated that they were involved in advising the Commanding Officer in the decision processes to launch operations. This response indicated that this advice involved threat and risk analysis in operational design, including risks to civilians, to ANSF and ISAF, as well as advice on execution of the mission and follow up on missions.

⁶⁷ One response did specify that the G3 unit did ask specifically for support from the GFA. One other response indicated that operations were seen as “too dangerous to use female soldiers”. No further detail is provided about this, so it is unclear if this response is motivated from incorporating a gender perspective (e.g. the use of female soldiers in a mission being useful for information gathering purposes) or whether it is motivated by reasons of gender mainstreaming, or both.

The right of parties to an armed conflict to choose methods or means is not unlimited.⁶⁸ As noted above, there is a large body of law prohibiting and restricting the use of particular means and methods,⁶⁹ as well as an obligation on states to determine whether new weapons comply with IHL.⁷⁰ The impact of a particular means or method may have different implications for men or women in a given society, which impacts on the lawfulness of its use. GFAs may be able to advise on whether one particular means or method would be preferable to another due to fewer negative impacts of one compared with others.

On tactical level, the main way in which means and methods seem to have been influenced was including more female personnel and/or female interpreters in different missions. As noted above, one response indicated that more informal networking and advising whilst accompanying different rifle companies and on the tactical level had a significant impact on strengthening understanding and incorporating a gender perspective in those missions. However, beyond this GFAs do not appear to have had a significant influence on the means and methods used in the operations.⁷¹ The incorporation of female personnel and interpreters following advice from the GFAs does appear to have impacted on situational awareness and, in some cases, this impacted on the conduct of such missions as a result of this information. This may have indirect effects on the implementation of IHL requirements. However, there is also the potential of weakening the protections afforded to individuals under IHL. Two of the four questionnaire results indicate that female interpreters were harassed⁷² by local male individuals and even ANSF members.

⁶⁸ API Art. 35(1).

⁶⁹ See Sec. 1.4 above.

⁷⁰ API Art. 36.

⁷¹ One questionnaire response does state that the incorporation of a gender perspective did influence the choice of means and methods “on a number of occasions”, but no further details as to how or in what way are given. Another response points to advising on the use of heavy vehicles in sensitive areas dependent on the time of year and transport needs of the local population (e.g. school routes and access to medical treatment).

⁷² One of these responses states “threatened, bullied, etc.”

3 Conclusions

It is difficult to measure the impact of incorporating a gender perspective on the implementation of IHL, but it is clear that the work of GFAs is having an impact on the conduct of the operation in Afghanistan. GFAs are involved in processes that involve the application of IHL and in doing so will have contributed to the implementation of IHL. However, the results are mixed as to how much of an impact this has had. It appears that the potential of GFAs in these areas has not been fully realised. Whilst the data gathered is limited, the examples included do highlight the potential added value of integrating a gender perspective regarding compliance with IHL and areas have been identified where this could be increased.

The potential role of GFAs in contributing to the implementation of IHL within the mission

The advice of a GFA may be of considerable importance in the application of IHL. In particular, the assistance of individuals with specific training and understanding in the structures, roles and values of the population could have particular impact on the implementation of IHL in relation to the protection of those not participating in hostilities. In this way, GFAs can thus contribute to the realisation of the foundational principles of this body of law.

In this respect, it is important to understand the context in which GFAs operate, so as not to overstate the potential role of GFAs in contributing to implementing IHL requirements. A GFA's role is clearly not primarily nor wholly concerned with the application of IHL - unlike, for example, the legal adviser - and as the GFA's role is new, it is important that the expectations of the role are realistic. In addition, most of the impacts of the GFA's role on the implementation of IHL are likely to be more indirect and thereby very difficult to measure. However, incorporating a gender perspective in operational processes may lead to a better understanding of the context in which to apply IHL standards or even how to apply those standards in a given situation, and as the gender expert on the mission the GFA should be best placed to advise on such matters. This demonstrates the way in which the two specific roles of legal adviser and gender adviser can support each other in the mission, whilst also highlighting the specific and different roles of each.

As noted above, one of the most important aspects in a targeting process or during dynamic targeting is to base the decision on the best available intelligence in order to be able to properly identify members of armed groups and civilians directly participating in hostilities and distinguish them from civilians who enjoy protection under IHL. The GFA may be able to assist in providing specific information relating to the different roles of men and women in the specific context of the operation to feed into this process, for example, by identifying and assisting in gathering information on the movement of members of the civilian population to determine indicative factors of direct participation in the hostilities, as well as in understanding the different roles played by men, women and even children, in the conduct of hostilities. Once a target has been identified, GFAs can similarly assist in ensuring the principles of proportionality, precautions, prohibition of unnecessary suffering and superfluous injury and other protections afforded under IHL are properly upheld in the execution of the mission through their involvement in the operational processes and advice and information they can feed in. This necessitates working closely with those responsible in the mission for current planning and intelligence,⁷³ as well as others within special staff.

One area that does warrant further consideration regarding the potential of GFAs to contribute to enhancing compliance is in relation to the prevention and reporting of gender and sexual based violence. The Geneva Conventions of 1949 impose a positive obligation to State parties to ensure respect for the Conventions.⁷⁴ Individuals are criminally responsible for war crimes,⁷⁵ and all States are able to, and may be obliged, to prosecute suspected individuals within their jurisdiction, irrespective of where the alleged crime has been committed.⁷⁶ An important aspect of ensuring respect for IHL is the requirement to report war crimes. It may also be included in the mandate of the peace operation that international crimes should be prevented and that the mission is required to assist the national authorities in bringing to justice those responsible for war crimes and other international crimes.⁷⁷ Applying a gender perspective to IHL may provide additional information and knowledge of vulnerable groups

⁷³ Within joint international efforts, commonly referred to as the G3 and G2 units respectively at the level which the Swedish contingent operates.

⁷⁴ Common Article 1 GCI, GCII, GCIII, GCIV.

⁷⁵ ICC Statute Arts. 8 and 25; GCI Art. 49; GCII Art. 50; GCIII Art. 129; GCIV Art. 146. See also Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict, done on 14 May 1954, 249 U.N.T.S. 215, Art. 28; Second Protocol to Cultural Property Convention, Arts. 15 and 22; API Art. 85; CCWC Amended Protocol II, Art. 14. See further Rule 151, ICRC Customary Rules database, *supra* n. 29.

⁷⁶ See, GCI Art. 49; GCII Art. 50; GCIII Art. 129; GCIV Art. 146; and API Art. 85(1). See further Rule 157, ICRC Customary Rules database, *supra* n. 29.

⁷⁷ See, for example, UN Security Council Resolution 2100 (2013), adopted by the Security Council at its 6952nd meeting on 25 April 2013, UN Doc. S/RES/2100 (2013) para. 16(g) relating to the mission in Mali, available online at: [http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2100\(2013\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2100(2013)).

in the area of an armed conflict. Rape may constitute a war crime if conducted in the context of and was associated with an armed conflict.⁷⁸ Women and children are particularly vulnerable to rape and sexual violence during armed conflict, but men may also be victims, as has been documented in the jurisprudence of the International Criminal Tribunal for the former Yugoslavia, among others.⁷⁹ It has been well documented that the differences between men and women in civil societies are exacerbated in war. In societies where women have little or no power over their lives the situation worsens during armed conflict and they become even more vulnerable to violence. A gender perspective on IHL may contribute to an extended knowledge of vulnerable groups in the area of operations. Incorporating a gender perspective may thus affect the planning of operations and information gathering and be geared towards a more effective approach to ensure respect for IHL and contribute increased compliance through the reporting of war crimes.

Applying a gender perspective in the strategic and tactical planning of operations, the targeting process, and in the choice of means and methods of warfare may contribute to a better understanding of the situation and thus assist in deciding when and how military objectives should be attacked. In this way, applying a gender perspective in the conduct of operation and on the application of IHL has the potential of further strengthening these processes and compliance with the law. It is also important, however, that in seeking to advance the implementation of IHL by incorporating a gender perspective in the operational processes, the protections afforded by this body of law should not be weakened. In attempting to advance situational awareness and gathering further information on the local population, it is important that the risk of exposing people to persecution in their society must be duly taken into consideration. For example, within the Afghanistan context, the difficulties of ISAF personnel reaching out to Afghan women have been reported widespread.⁸⁰ The use of female officers or mixed teams can thereby create significantly greater opportunities to understand the needs, perceptions and experiences of the other half of the civilian population.⁸¹ However, if such interaction with the peace operation results in harm or otherwise unduly impacts on those individuals, it goes against the fundamental groundings of IHL.

Understanding “a gender perspective” throughout the operation

⁷⁸ ICC Statute, Arts. 8(b)(xxii) and 8(e)(vi). See further International Criminal Court, Elements of Crimes, U.N. Doc. PCNICC/2000/1/Add.2 (2000), p. 28.

⁷⁹ See, for example, ICTY Cases *Prosecutor v. Tadić*, Case No. IT-94-1, Trial Judgement of 7 May 1997 paras. 206 and 237, and *Prosecutor v. Mucić et al.* Case No. IT-96-21, Trial Judgement of 16 November 1998 paras. 1060-1066.

⁸⁰ See, for example, Lackenbauer *et al* 2013, *supra* n. 7, p. 37.

⁸¹ *Ibid.*

In UN SCR 2016 (2013) operative paragraph 8 “[recognised] the distinct role of Gender Advisors in ensuring that gender perspectives are mainstreamed in policies, planning and implementation by all mission elements.” This is reflected in Swedish armed forces’ description of the role as “directly supporting the commander in the planning of operations, by implementing a Gender Perspective in the operational work.”⁸² Operations are a broad concept including a variety of actions. However, the data shows the work of GFAs in key areas where IHL regulates the conduct of the operation has been limited and will thereby have influenced the extent to which a gender perspective impacts on the implementation of IHL. Other research has also indicated that the role of GFAs in operational processes could be improved.⁸³ Further elements outlined below may also contribute to why the role of GFAs in operational processes has been limited. However, it seems reasonable to suggest that the impact on the implementation of IHL that is evident from this involvement will increase with the greater involvement of GFAs in operational processes.

It is evident from the responses that there is a general lack of understanding of all within the mission of how gender should be incorporated and how others within the mission should work with / receive support from the GFA and the benefits of this, which has significantly impacted on the GFAs ability to carry out their role. As such, this hinders the GFAs work and any further impact on the implementation of IHL. One questionnaire response indicates that gender is often equated with “women’s issues” and the ordinary soldier’s understanding of gender perspective is limited to terms of “feminism” and “equality”. Whilst training on gender is currently undertaken, in the Afghanistan operation context it appears that further work in this area could be undertaken to ensure that all those involved in the mission have a better understanding of the role of the GFA and how incorporating a gender perspective in the mission impacts on the work of others in the mission. When it comes to impacting on the implementation of IHL, it is clearly critical that those whose roles involve the implementation and application of IHL have a clear appreciation of the role of GFAs and how they can support their work. It is furthermore critical that those with responsibility for the mission as a whole appreciate and understand their responsibility of ensuring a gender perspective is properly incorporated within that mission.

Realising the potential - training GFAs in IHL

⁸² See Egnell *et al* 2012, *supra* n. 6, p. 3.

⁸³ Egnell *et al* 2012, *supra* n. 6; Lackenbaur *et al* 2013, *supra* n. 7.

It is also clear from the responses received that GFAs themselves have not yet a full appreciation of how their work could impact the implementation of IHL.⁸⁴ This may be because the majority of operations involving GFAs have not involved the application of IHL. From the data gathered, it also appears that considerable emphasis has been placed on human rights protections accordingly and as such, most of the understanding of this work has been considered from this perspective. Whilst it is only in exceptional situations that military forces involved in peace operations become involved in an armed conflict and the application of IHL is thus the exception, rather than the rule, ISAFs operations are such an exception. To ensure GFAs have a full understanding on the potential impact of their work on IHL, further training and education of GFAs in IHL matters would assist. This is the paramount conclusion that can be drawn from the data.

Such training would enable GFAs to see how their work relates too and can contribute to the implementation of IHL, such as the choice of means and methods. These choices may not be necessarily motivated by a gender perspective, but motivated more by requirements of IHL. However, a particular choice made could have impacts on different genders in a given context that should also be taken into account.

Specific knowledge about the basic principles of IHL, such as the principles of distinction, proportionality and precaution, is necessary to enable the GFA to become an effective component in the operational planning. Training and education on IHL would also be needed in relation to the specific protection of women, such as in situations of detention, as well as understanding how such situations affect men. As noted above, a greater understanding of the requirements of preventing and reporting war crimes combined with a greater understanding of the vulnerability of certain categories of civilians during armed conflict would also require specific education in IHL questions. GFAs could be involved and/or advice on a number of areas in developing strategies, advising on polices, implementing training, fact-finding and investigation, reporting and monitoring. But to enable GFAs to contribute to this field fully, they will need a sufficient understanding of the legal principles underlying this area. This is not a suggestion that the role of the GFA should be changed. It is rather a recommendation to help GFAs fulfil their current role in advising on incorporating a gender perspective in the operational processes.

⁸⁴ One report stated that the task of the GFA was to integrate gender mainstreaming in all operational and tactical activities. Other questionnaire responses implied that GFAs had not got involved in some areas as they related purely to security situations. Note emphasis here in UNSCR 2016 (2013), *surpa* n. 23.

Broadening the responsibility of incorporating a gender perspective to others in the mission beyond the singular role of the GFA may also have broader impacts on the implementation of IHL. Based on the data gathered and the conclusions of previous research, it is apparent that this is perceived to be the responsibility of the GFAs only.⁸⁵ As with many other elements within a mission, all involved bear a responsibility to a great or lesser extent. For example, all military personnel are required to have training in IHL and must take legal requirements into consideration when conducting their work.⁸⁶ The commander of the mission is responsible for the general conduct of the mission, whilst individuals in the missions are also accountable for their individual acts or omissions. As noted above, training in gender taken together with ensuring an understanding in how this can impact on IHL requirements may thereby strengthen the incorporation of these standards in a mission by all within the mission. Whilst it is acknowledged that training in gender is currently conducted with personnel involved in international missions, the responses from the questionnaires suggest that this does not sufficiently highlight how gender impacts on other areas, such as IHL, to give a full understanding of a gender perspective.⁸⁷ Providing such training would thereby contribute to enabling GFAs to fulfil their role within the mission.

Looking to the future

The fact that the role of GFA is so new also makes it difficult to draw broader conclusions beyond the data gathered. It is abundantly clear from the data that the role of the GFA is still being determined in the field, as is the broader question of how a gender perspective should be incorporated in the operational procedures and functions. There are two distinct areas of work that GFAs seem to have focused their efforts on. One is work done in promoting gender balance within the mission, working with Afghanistan authorities and other military counterparts to address gender equality issues within Afghanistan society and the mission. The other is incorporating a gender perspective into the mission. It is apparent from the questionnaire results and the GFAs reports that a significant emphasis has been placed on the GFAs work in promoting gender balance and equality, rather than their role as an advisor to the Operational Commander to assist in implementing a gender perspective in the operation. This in turn impacts on the GFAs ability to impact on the implementation of IHL. Wider research has also noted that in order for the role of the GFA to reach its full potential, it is

⁸⁵ Egnell et al 2012, *supra* n. 6 p. 89.

⁸⁶ GCI Art. 47; GCII Art. 48; GCIII Art. 127; GCIV Art. 144; API Art. 83; APII Art. 19. See further Rule 142, ICRC Customary Rules database, *supra* n. 29.

⁸⁷ Indeed, one questionnaire response noted that the ordinary soldier's understanding of gender was as "women's issues".

necessary that the role is clearly defined and communicated throughout the whole operation.⁸⁸ Clearer guidance on the operational function and standard reporting mechanisms would also assist in measuring the impact of this role in the future.

As the role of the GFA and wider points on incorporating a gender perspective in the mission are still forming, it is likely that over time the impact of the work of GFAs on the implementation of IHL is likely to increase as the role itself becomes more crystallised and a better understanding of how the role can affect the implementation of IHL is gained. This can be equated to an extent to the introduction of legal advisers and political advisers in military operations, which also took time to crystallise, but both roles are now an integral part of a military operation. The potential long-term impacts of incorporating a gender perspective on the implementation of IHL are outside the scope of this study, but the data again highlights the potential for this. For example, gender awareness training may have long-term impacts on increasing preventing and reporting of gender and sexual based violence and the protections of individuals not participating in NIACs.⁸⁹ This is an area in which further data could be collated to compare whether there is an increase in reporting in gender and sexual based violence following implementation of gender awareness training, for example. The operation in Afghanistan is the first in which GFAs have been deployed in a mission that was governed by IHL at certain times. It is therefore critical in future missions to ensure that the role reaches its full potential to enable this work to support the better implementation of IHL.

Further research

This study is the first to have had the benefit of results from the field to analyse the impact of the work of GFAs on the implementation of IHL. However, the data is limited and only relates to one mission over a relatively short period of time. Future research with data from multiple missions operating within an IHL framework will clearly contribute to increasing the understanding of the impact of this role and its interaction with IHL standards. These early results indicate areas where GFAs are having impact. Further research could be done with interviews or a longer questionnaire to get greater detail on how this takes place.

A number of areas have also been noted for future research throughout this study. In addition, the focus on IHL requirements in this study does not take into account human rights law requirements and how the work of GFAs has impacted on the implementation of these

⁸⁸ Egnell et al 2012, *supra* n. 6, p. 80.

⁸⁹ Such training and long-term impacts were highlighted in a questionnaire response from a GFA involved in gender training of members of the armed forces of Somalia as part of the EU training mission based in Uganda.

standards. This is interesting from a legal perspective given the developments in the law of responsibility relating to peace operations and practice of peace operations in this field. It may also be of particular interest to see what, if any, impact the work of GFAs on IHL requirements in relation to detention, and preventing, reporting and accountability for international crimes. These were areas that were not explored in the findings of this study. It does, however, remain an area of concern for the international community in preventing and addressing these issues.⁹⁰

⁹⁰ See, for example, UNSCR 2106, *supra* n. 23.

4 Annex 1

Example of questionnaire sent to GFAs who served in Afghanistan post-May 2010.



Folkrättscentrum

Datum
May 2013

FORBE Research - Further questions to Gender Field Advisers

We are researching the impact of gender perspective on the implementation of international humanitarian law. As GFAs, your experience will provide a unique insight into this topic. The questions below are designed to provide further information on this area, but please do not limit yourself to these questions. Space is also provided if there are other points you feel are relevant outside the scope of the questions.

Give as much detail as possible in answering these questions. Use examples from your personal experience to illustrate your answer. If you have no experience of the questions asked, highlight this and, if you can, offer reason/s why this is the case.

Ola Engdahl (Senior Lecturer) and Sally Longworth (Lecturer)

Your name and rank:

Deployment period as GFA:

Deployment location:

- 1. Describe what, if any, role you had in the planning process of the operation and individual missions? If you did not have role, please explain why this was the case.**

Answer:

- 2. Describe what, if any, role you had in the targeting process.**

Answer:

- 3. Describe what, if any, role you had in tactical planning.**

Answer:

- 4. Please describe your experience as to whether a gender perspective influenced the choice of means and methods of conduct in the operation.**

Answer:

- 5. Did you observe any impact on the use of particular weapons (including non-lethal) from applying a gender perspective to the operations? If so, please describe.**

Answer:

- 6. What were the discernible results from including a gender perspective in a) increasing force protection, and b) effects on the civilian populations, and c) the overall conduct of the operation? These results may be positive, negative, both or neutral. Explain the basis for your answer.**

Answer:

- 7. Can you give examples of information (or any other benefit) gained as a consequence of your advice being implemented that the operation would not otherwise have had?**

Answer:

- 8. Did you personally go out on missions in your capacity as gender adviser? If so, please describe your role, examples of advice you gave during the mission and describe if or how this advice affected the conduct of the mission.**

Answer:

- 9. What, if any, analysis of the mission was done relating to a gender perspective? If this was done, how did it affect the future conduct of the mission?**

Answer:

- 10. Describe how gaining information on women with the G2 (such as the movements of women) affected the conduct of the operation.**

Answer:

- 11. Based on your experiences, what improvements do you think can be made to incorporate a gender perspective in the conduct of operations and why do you think these are necessary?**

Answer:

- 12. If you have any further comments about any of the questions above or the general research field, please outline them below:**