



TEACHING GENDER IN THE MILITARY

A Handbook

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Gender training and the military: The legal and policy framework

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1. Introduction

As is highlighted in Chapter 1 and throughout this handbook, there is a growing understanding of the different impact that armed conflict has on women, girls, boys and men.² Incorporating a gender perspective in military operations can assist in identifying those in vulnerable situations and the protection needs of people in society. The law provides the critical framework for ensuring that the objectives pursued by the international community with regard to gender are implemented and maintained in the correct, non-discriminatory way. As such, understanding how international legal standards have developed to address the protection needs of different groups can also assist us in understanding the importance of incorporating a gender perspective in military operations, as well as the rationale behind many of the policy developments related to gender and security.

Training in both the legal requirements and how to incorporate a gender perspective in operational processes is essential. It needs to be emphasized, however, that training on legal requirements should be conducted by legal experts, such as legal advisers or experts within military operations, academics and practitioners, and their advice and assistance should be sought in courses on gender where these areas are covered.

This chapter builds on Chapter 1 by detailing the international legal and policy requirements relating to incorporating a gender perspective in military operations and the need for training in this regard, and provides the backdrop to Chapter 3, which describes what gender training can entail. The aim of providing this background to the underlying legal and political framework is to aid in understanding other chapters in the handbook and assist in explaining to others the development and importance of incorporating a gender perspective in operations. It is not a comprehensive review of the applicable legal standards or literature, but highlights areas where instructors should have knowledge in explaining the background and historical development. It also aims

to help learners in understanding where they might need the assistance of and can enlist legal experts within their work.³ The chapter begins by giving a broad outline of the legal obligations under international human rights law, international humanitarian law and international criminal law that provide the basis for the UN Security Council's resolutions (UNSCRs) on women, peace and security, followed by a summary of the UNSCRs relating to this area. It moves on to provide an overview of UN strategy and the frameworks for implementing a gender perspective used by the North Atlantic Treaty Organization (NATO), the Organization for Security and Co-operation in Europe (OSCE), the European Union (EU) and other regional bodies.

2. The international legal framework

Under international law, all human beings have the right not to be discriminated against based on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.⁴ In addition, all persons have the right to be recognized as equal before the law.⁵ Human rights law and international humanitarian law contain legal rights and protections for all persons and specific rights and protections for different groups within society. Certain grave violations of the international legal standards are recognized as criminal acts for which individuals are criminally responsible and liable to prosecution and punishment; several of these have a gendered element or their commission may impact on different genders differently. Non-discrimination, equality before the law and equal protection of the law form a bedrock for the protection of all human rights and the protections flowing from international humanitarian law, the violation of which entails state responsibility.⁶ States are obliged to respect and ensure respect for international human rights law and international humanitarian law.⁷ This obligation applies to all those exercising state authority, and includes the actions of military personnel. Training and education on these standards and their integration into codes of conduct, disciplinary structures, manuals and procedures are therefore critical. In military operations, the protections and obligations set out in international human rights law, international humanitarian law and international criminal law are of primary relevance, and as such are the focus of this chapter. Protections afforded under international refugee law may also be relevant, and domestic legal frameworks may include additional protections.

2.1 International human rights law

The protection of human rights is a critical component in the framework for international peace and security established under the UN Charter. Its importance was summed up by a former UN High Commissioner for Human Rights: "Today's human rights violations are the causes of tomorrow's conflicts."¹⁰ Indeed, in defining the purposes of the UN, Article 1 of the UN Charter stipulates the achievement of international cooperation in promoting and encouraging respect for human rights and fundamental freedoms for all

Human rights law is a body of law that regulates the relation between states and individuals through the legal recognition of inherent and inalienable rights owed to all human beings, setting out obligations on states to respect, protect and fulfil the realization of those rights.⁹

without distinction as to race, sex, language or religion, together with the maintenance of international peace and community and the development of friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples. Article 55 builds on this, providing that the UN shall promote universal respect for, and observance of, human rights and fundamental freedom for all without distinction as to race, sex, language or religion. Article 56 obliges UN member states to take joint and separate action in cooperation with the UN for the achievement of the purposes set out in Article 55.

Box 2.1 A short recap of the sources of international law

States' obligations under international law are derived from the recognized sources of international law. The classic sources are listed in Article 38 of the Statute of the International Court of Justice as:

- a. international conventions (treaties)
- b. customary international law
- c. the general principles of law recognized in the legal systems of states
- d. subsidiary means for determination of rules of law – judicial decisions and the teachings of the most highly qualified practitioners.

<p>Treaties (Also referred to as “conventions”, “protocols”, “charters”, etc.)</p> <p><i>Examples</i> The Charter of the United Nations, 1945; the Geneva Conventions, 1949, and their Additional Protocols of 1977 and 2005; the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 1979.</p>	<p>A treaty is an international agreement between states in written form and governed by international law. Treaties are legally binding on the states party to them. They may be multilateral, involving many parties, or bilateral between two states.</p>
<p>Customary international law</p> <p><i>Examples</i> Prohibition of the use of force in international relations; prohibition of genocide; prohibition of torture, inhuman and degrading treatment or punishment; the principle of distinction between civilians and combatants in international humanitarian law.</p>	<p>Custom is made up of established, widespread and consistent practice by states followed in the opinion that they are legally required to do so (<i>opinion juris</i>). All states are bound by customary international law, unless it is a “special” or “local” custom, and save for the exceptional case of a “persistent objector”.⁸</p>
<p>General principles of law</p> <p><i>Example</i> The principle of good faith.</p>	<p>Where there is no provision in treaty or customary international law, recourse may be had to general principles of law as evidenced by the national legal systems of states. As treaty and customary law has grown, this source has less importance today.</p>
<p>Subsidiary means for the determination of rules of law</p> <p><i>Examples</i> Decisions of the International Criminal Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR).</p>	<p>These are not authorities in and of themselves, but are evidence of the sources of international law. States and international organizations adopt a great many instruments which, although not a classic source of international law, contribute to evidence of other sources of law, such as customary international law. As such, the resolutions issued by different UN bodies and international commitments made by states at conferences may be used as evidence of a legal obligation on states.</p>

The UN Charter does not define human rights, however. The substantive provisions on human rights obligations can be found in treaties and customary international law. The first instrument adopted by the UN was the Universal Declaration of Human Rights (UDHR), adopted by consensus by the General Assembly on 10 December 1948. Although not a binding international instrument, its provisions are now considered to be reflective of customary international law.¹¹ The UDHR lists civil and political rights, as well as economic, social and cultural rights. The recognition that all human beings are equal in dignity and rights is set at the forefront of Article 1, closely followed in Article 2 by the provision that everyone is entitled to all rights and freedoms set out

in the UDHR without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. This includes adverse distinction based on gender or gender identity. Article 2 further provides that no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty. Article 7 provides that all are equal before the law and are entitled without any discrimination to equal protection of the law, and to equal protection against any discrimination in violation of the UDHR and against any incitement to such discrimination. These universally recognized and protected principles are fundamental for the exercise of all other rights and mean that all persons, regardless of gender, sex, gender identity, sexual orientation or other similar status, are entitled to the enjoyment of human rights recognized under international law.

Following the adoption of the UDHR, there has been significant development in the treaty regulation of human rights. The International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), adopted in 1966, are often referred to together with the UDHR as the “International Bill of Rights”.¹² In addition, there are to date ten core international human rights instruments covering specific persons or areas, including the International Convention on the Elimination of All Forms of Racial Discrimination, 1965 (CERD), the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment, 1984 (CAT), the Convention on the Rights of the Child, 1989 (CRC) and the International Convention for the Protection of All Persons from Enforced Disappearance, 2006.¹³ Beyond the international system of human rights protection, the Council of Europe, the Organization of American States and the African Union (AU) have adopted sophisticated systems for upholding and enforcing human rights law.¹⁴

Box 2.2 Key legal instruments in international human rights law

- International Convention on the Elimination of All Forms of Racial Discrimination, 1965
- International Covenant on Civil and Political Rights, 1966
- International Covenant on Economic, Social and Cultural Rights, 1966
- Convention on the Elimination of All Forms of Discrimination against Women, 1979 (CEDAW)
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984
- Convention on the Rights of the Child, 1989
- International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990
- International Convention for the Protection of All Persons from Enforced Disappearance, 2006
- Convention on the Rights of Persons with Disabilities, 2006
- Second Optional Protocol to the International Covenant on Civil and Political Rights, 1989, aiming at the abolition of the death penalty
- Optional Protocol to the Convention on the Rights of the Child, 2000, on the involvement of children in armed conflict
- Optional Protocol to the Convention on the Rights of the Child, 2000, on the sale of children, child prostitution and child pornography
- Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 2002

A full list of these instruments is available at www.ohchr.org/EN/ProfessionalInterest/Pages/CoreInstruments.aspx.

States have negative obligations not to infringe upon the rights of individuals and positive obligations to protect the human rights of individuals and ensure the fulfilment of these rights.¹⁵ In this, states are required to exercise due diligence to prevent, investigate, punish and ensure redress for the acts of private persons or entities that breach the human rights of others.¹⁶ This does not mean that states cannot make distinctions for certain categories of persons. Differential treatment may be used by states if it is founded on reasonable and objective criteria and has a legitimate purpose.¹⁷ In addition, the international community has recognized that certain groups are in need of specific protections and has reinforced the general protections provided under the UDHR, ICCPR and ICESCR with treaties addressing the rights of specific groups of persons or areas, such as CERD, CRC and the Convention on the Rights of Persons with Disabilities, 2006.¹⁸ CEDAW is the most comprehensive international treaty on women's rights.¹⁹ As noted by the Committee on the Elimination of All Forms of Discrimination against Women (CEDAW Committee), "Protecting women's human rights at all times, advancing substantive gender equality before, during and after conflict and ensuring that women's diverse experiences are fully integrated into all peacebuilding, peacemaking, and reconstruction processes are important objectives of the Convention."²⁰ By becoming party to this treaty, states are legally obliged to undertake measures to end discrimination against women in all forms, including incorporating the principle of equality of men and women in their legal systems, abolishing discriminatory law and adopting laws prohibiting discrimination against women, ensuring access to justice and equal protection of the law and taking measures to ensure women are protected from discrimination by others in society.²¹ It includes specific provisions relating to the participation of women in political and public life, in government and at the international level.²² In addition to provisions requiring states to ensure the realization of all human rights, the treaty includes provisions specifically relating to the suppression of all forms of traffic in women and exploitation or prostitution of women, the rights of rural women, education and healthcare, among others.²³

State parties to these treaties implement their international obligations in their national legal systems through the adoption of legislation, policy, education and training. To be effective, this requires systems in place to ensure oversight of the standards, enforcement and sanctions for non-compliance. Countries vary on exactly how this is done within their respective legal systems. However, international monitoring mechanisms are established within the treaties to review and assess compliance. For example, in relation to CEDAW, the CEDAW Committee is the treaty body established to monitor state party compliance. When conducting gender training, it is important to understand to what extent the state concerned has implemented international legal requirements under relevant human rights treaties. Advice from legal experts will assist with this.

Human rights are interdependent and indivisible, meaning that they are linked and the non-observance of one right may impact on another. During situations of armed conflict it has been shown that conflicts exacerbate inequalities in society, which can lead to an increase in gender-related and other forms of discrimination. This in turn can affect the exercise and protection of other human rights. The impacts of a lack of or reduced access to essential services, including healthcare, schools and employment, have significant gendered elements, which may in turn be made worse by other socio-economic and/or cultural aspects.²⁴ Examples of these issues have been highlighted in the reports of international bodies, such as the UN Office of the High Commissioner for Human Rights Monitoring Mission in Ukraine, which documents breaches of human rights law in the armed conflict, including detailed breakdowns of the numbers of women, men, girls and boys killed or injured by armed conflict-related violence.²⁵ These reports have documented, for instance, allegations of sexual and gender-based violence against women, trafficking of human beings, the impacts of the conflict on children and the security and health concerns of the predominately male prisoner population in Crimea. They have also highlighted the increased violence and restrictions on freedom of religion and expression affecting the peninsula's Tatar minority, which have had unique consequences for different individuals within the community according to their gender.²⁶

Box 2.3 Gender-based violence as a violation of human rights

The situation of armed conflict increases the risk of violence within society generally, which has gendered impacts. It can increase the risk of violence directed towards individuals based on socially determined roles, expectations and behaviours linked to ideas about gender, referred to as “gender-based violence” (see Box 2.7). Historically the gendered dimensions of violence, as well as many of the specific forms of violence that affect women in particular, were not seen as falling within the domain of international human rights law. However, over time things began to change, and in 1992 the CEDAW Committee issued an important general recommendation recognizing violence against women as a form of discrimination in the application of human rights law.²⁷

Gender-based violence takes many forms, including sexual violence and acts of a non-sexual nature, such as domestic violence.²⁸ Women and men are not homogeneous groups, and certain groups of women and men may be more at risk of violence, such as internally displaced persons and refugees.

A correlation has been shown between the increased prevalence of gender-based violence and discrimination and the outbreak of conflict.²⁹ Women and girls have been shown to be particularly vulnerable to trafficking, which can increase in situations of armed conflict, with internally displaced and refugee women at particular risk.³⁰ It is indisputable that women and girls are primarily and increasingly targeted by the use of sexual violence, which remains severely underreported during armed conflict.³¹ Again, internally displaced and refugee women and girls as well as members of minority groups can be particularly at risk due to the effects of double discrimination.³² A conflict situation can also lead to increases in domestic violence against women.³³

2.2 International humanitarian law

The fundamental aim of this area of law is to protect those who do not or no longer participate in the hostilities from the effects of a conflict, thus striking a balance between military necessity and humanity. International humanitarian law, otherwise referred to as the law of armed conflict, is applicable during armed conflicts.³⁵ Parties to an armed conflict are obliged to ensure respect for international humanitarian law, which includes incorporating the legal requirements in the execution of military operations during armed conflicts, as well as taking measures during peacetime to disseminate knowledge of the requirements, including education of military personnel.³⁶ The International Committee of the Red Cross (ICRC) has compiled a database of state practice in national implementation, which among others gives examples of national legislation, military manuals, court decisions and peace agreements implementing these standards.³⁷ International humanitarian law requirements set the framework for planning of operations, planning within an operation and conduct in the execution of operations during armed conflicts. Understanding the differences that may affect judgements in implementing the requirements of this body of law is therefore fundamental in ensuring the ultimate goal of protecting those who do not take direct part in the hostilities.³⁸ In addition, women, men, boys and girls are afforded specific protections under this body of law.

International humanitarian law, also known as “the law of armed conflict”, is the body of international law that regulates the conduct of hostilities during armed conflict. It protects persons who are not, or are no longer, participating in hostilities, and imposes limits on the means and methods of warfare.³⁴

The rules of international humanitarian law regulating the conduct of hostilities are applicable in “armed conflict”. International humanitarian law differentiates between international and non-international armed conflicts. Broadly speaking an international armed conflict exists when there is a resort to force between states. This relates to both total and partial occupations, and there is no need for the occupation to be met by armed resistance.³⁹ A non-international armed conflict exists when there is protracted armed violence between governmental authorities and organized armed groups, or between such groups in the territory of a state.⁴⁰ Whether or not a situation amounts to an armed conflict is a question of fact. Specific rules also apply to situation of occupation.⁴¹ The question of whether the law of occupation applies to a given territory is also one

of fact, of whether territory has been made subject to the effective control of another state by its military forces and the second state is in a position to exercise authority over the population in the territory in question without the consent of the sovereign state.⁴²

The treaty regulation of international armed conflicts is far more extensive than treaties applicable during intrastate armed conflicts. However, many of the rules for international armed conflicts are now considered to be reflective of customary international law applicable in both interstate and intrastate armed conflicts.

Box 2.4 Key legal instruments in international humanitarian law

- Hague Declaration Concerning Expanding Bullets, 1899
- Hague Convention (IV) on War on Land and its Annexed Regulations, 1907
- Geneva Convention (I) on Wounded and Sick in Armed Forces in the Field, 1949
- Geneva Convention (II) on Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, 1949
- Geneva Convention (III) on Prisoners of War, 1949
- Geneva Convention (IV) on Civilians, 1949
- Additional Protocol (I) to the Geneva Conventions, 1977
- Additional Protocol (II) to the Geneva Conventions, 1977
- Additional Protocol (III) to the Geneva Conventions, 2005
- Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, 2000
- Geneva Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare, 1925
- Convention on the Prohibition of Biological Weapons, 1972
- Convention Prohibiting Certain Conventional Weapons (CCW), 1980
- CCW Protocol (I) on Non-Detectable Fragments, 1980
- CCW Protocol (II) Prohibiting Mines, Booby-Traps and Other Devices, 1980
- CCW Protocol (III) Prohibiting Incendiary Weapons, 1980
- Convention Prohibiting Chemical Weapons, 1993
- CCW Protocol (IV) on Blinding Laser Weapons, 1995
- CCW amended Protocol (II), 1996
- Anti-Personnel Mine Ban Convention, 1997
- CCW Amended Article 1, 2001
- CCW Protocol (V) on Explosive Remnants of War, 2003
- Convention on Cluster Munitions, 2008
- Hague Convention for the Protection of Cultural Property, 1954
- Second Hague Protocol for the Protection of Cultural Property, 1999

The ICRC has compiled a comprehensive database of instruments relating to international humanitarian law at www.icrc.org/ihl.

The majority of the provisions of international humanitarian law do not differentiate between genders. Alongside the prohibition enshrined in the Geneva Conventions and additional protocols of making any adverse distinction in the application of international humanitarian law based on race, colour, sex, language, religion or belief, political or other opinion, national or social origin, wealth, birth or other status or any similar criteria, this means that these provisions should be interpreted in a neutral manner.⁴³ However, as noted above, in the implementation of the law perceptions and stereotypes relating to different groups within a society may lead to differences in how the law is applied.⁴⁴ International humanitarian law provides specific obligations for state

parties in relation to the civilian population within their territories or under their control. Different groups within the civilian population will have different needs and different vulnerabilities. Awareness of this is critical to ensure their protection needs are met while still making no adverse discriminatory distinctions.

There are specific requirements in international humanitarian law that do make a distinction based on gender.⁴⁵ Article 76 of Additional Protocol I provides special protection to women, and Article 77 provides special protection for children. In the general obligation to respect, protect and treat humanely without adverse distinction any wounded, sick or shipwrecked persons, specific mention is made that women must be treated with all consideration due to their sex.⁴⁶ Special protections for women, children and families are included in the regulation of detention under international humanitarian law.⁴⁷ For example, in the protections for prisoners of war and civilian internees, Geneva Conventions III and IV provide for the separation of women and men.⁴⁸ Similarly, Article 5(2)(a) of Additional Protocol II provides that except when men and women of a family are accommodated together, women shall be held in quarters separated from those of men and shall be under the immediate supervision of women. Cases from human rights law have highlighted the different vulnerabilities of different genders in detention and provide important clarification on the standards of treatment of women, men, boys and girls in detention.⁴⁹ Further requirements relating to the provision of food and medical care for pregnant women and nursing mothers, as well as obligations relating to recreation, education, welfare, sports and games for all children, are found under Article 94.⁵⁰

A situation of occupation raises specific obligations for the occupying power in relation to the civilian population within the occupied territory. In addition to obligations owed to all members of the occupied civilian population, several provisions relate to different genders.⁵¹ As an example, under Geneva Convention IV an occupying power is obliged not to hinder the application of any preferential measures regarding food, medical care and protection against the effects of war which may have been adopted prior to the occupation in favour of children under 15 years, expectant mothers and mothers of children under seven. Specific provisions are also included relating to the detention and internment of women, men, children and families, including pregnant women and women with dependent infants.⁵² The occupying power is also under a general obligation to respect “family honour and rights”.⁵³

International humanitarian law provides specific protection for women against rape, forced prostitution and any other form of indecent assault.⁵⁴ The particular vulnerabilities of children are recognized, and children are afforded specific protection against “any form of indecent assault” in Article 77 of Additional Protocol I. These acts are also prohibited during non-international armed conflicts under Article 4(2)(e) of Additional Protocol II,

Box 2.5 The impact of gender on the implementation of international humanitarian law

Gender dynamics may affect the implementation of the general principles of international humanitarian law. For example, understanding gender roles in the local context may assist in identifying civilians directly participating in hostilities during non-international armed conflicts who lose their protection under international humanitarian law and may be lawfully attacked.⁵⁵ By way of example of the different roles undertaken within the context of the conflict in Syria, the UN’s Independent International Commission of Inquiry on the Syrian Arab Republic has noted that women make up an essential part of the Kurdish frontline fighting forces. In areas besieged by various parties to the conflict, women have been active in smuggling food and medicine into these areas.⁵⁶ While women engaged in active combat on the front line would classify as directly participating in the hostilities and so would not be protected as civilians, those involved in smuggling aid into besieged areas would not and would therefore still be protected as civilians.

In implementing the requirements of precautions and proportionality in attacks, parties to the conflict must base their planning and conduct on the best available information possible.⁵⁷ Applying a gender perspective may assist in providing a more detailed understanding of the situation at hand and highlight particularly impacts the attack may have on the civilian population, thus ensuring greater adherence to the legal requirements.

and no distinction is made in this provision between protections being afforded to either men or women. In addition Common Article 3(1)(a) and (c) of the Geneva Conventions, which is applicable in all conflicts, establishes that “violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture” and “outrages upon personal dignity, in particular humiliating and degrading treatment” are prohibited and makes no distinction based on gender or sex.

In carrying out military operations it is essential to understand when these different obligations apply and how they relate to each other. Human rights law does not cease to apply during armed conflict or with the application of international humanitarian law.⁵⁸ How human rights law applies does change, though, with the application of international humanitarian law.⁵⁹ This will vary depending on the specific context and type of operation. It is therefore essential to ensure that military personnel receive the education and training to enable them to carry out their duties in a lawful manner and implement these obligations correctly.

2.3 International criminal law

Certain acts breaching international human rights and international humanitarian law constitute international crimes, for which individuals are liable to be prosecuted and punished. States are obliged to prevent such acts from taking place and are primarily responsible for investigating and prosecuting individuals who commit those acts.⁶¹ As such, they are required to implement national legislation establishing these acts as crimes within their domestic systems.⁶² Military personnel must therefore have sufficient knowledge in the relevant legal principles to be able to identify and prevent or report such acts if they take place.

International criminal law is the body of international law that proscribes and defines certain acts as crimes by international law and ascribes responsibility to individual persons for committing such acts.⁶⁰

In recent years there has been significant development in the substantive legal provisions relating to sexual and gender-based violence, as well as greater understanding of how different genders can be affected by particular international crimes. Indeed, there is now considerable progress in recognizing and understanding the impacts of these crimes on victims, their families and within the wider societal contexts.⁶³ Much of this follows from the work of the *ad hoc* tribunals established in the wake of conflicts during the 1990s, particularly the ICTY and ICTR, and was influential in the drafting of the Rome Statute of the International Criminal Court (ICC).⁶⁴

Box 2.6 Key legal instruments in international criminal law

- Hague Convention (IV) Respecting the Laws and Customs of War on Land, and Annex, Regulations Concerning the Laws and Customs of War on Land, 1907
- Genocide Convention, 1948
- Geneva Conventions, 1949, and Additional Protocols of 1977 and 2005
- Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity, 1968
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984
- Rome Statute of the International Criminal Court, 1998
- International Convention for the Protection of All Persons from Enforced Disappearance, 2006

There are further international conventions relating to protection of cultural property, apartheid, piracy, terrorism, slavery and human trafficking, drug trafficking, hostage taking and other international crimes.

The ICC is a permanent body and can prosecute crimes listed as within its jurisdiction committed in or by nationals of state parties after 1 July 2002 when the Rome Statute came into force.⁶⁵ In addition, the Security Council may refer a situation to the jurisdiction of the ICC, as happened in the situation of Darfur, Sudan,⁶⁶ or a state which is not a party to the Rome Statute may lodge a declaration accepting the jurisdiction of the court with respect to a crime under the jurisdiction of the court, as happened in the situation of Côte d'Ivoire.⁶⁷ Many of the crimes included in the jurisdiction of the ICC are based on customary international law,⁶⁸ and several crimes have specific gender elements. For example, Article 6(d) of the Rome Statute provides that imposing measures intended to prevent births within a group with the intent to destroy, in whole or in part, a national, ethnic, racial or religious group constitutes genocide. Article 7(g) provides that rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization and any other form of sexual violence of comparable gravity constitute crimes against humanity when committed with knowledge as part of a widespread or systematic attack directed against any civilian population.⁶⁹ In addition to crimes with specific gender elements, different genders may be specifically targeted or impacted by the commission of international crimes.⁷⁰ For example, in relation to the crime against humanity of enslavement under Articles 7(1)(c) and 7(2) of the Rome Statute, "enslavement" is defined as "the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children".⁷¹

Box 2.7 Gender-based violence from a criminal law perspective

The Independent International Commission of Inquiry on the Syrian Arab Republic has reported that civilian men make up the largest community of victims, with those perceived to be of fighting age being targeted by warring parties during ground attacks, and civilian men also being primary victims of enforced disappearance, torture and unlawful killings.⁷² Women have been targeted not only on the basis of their gender, but also because of their familial links, actual or assumed, with male members of opposing warring parties.⁷³ Members of minority groups are particularly vulnerable to double discrimination based on their gender and membership of a minority group, as demonstrated in the Syrian conflict where Yazidi women and girls have been held captive in sexual slavery and specifically targeted because of their community's religious identity.⁷⁴ The cases before the ICTY and ICTR showed how sexual violence is often conducted alongside other crimes. In addition, these cases highlighted how different genders may be subjected to different treatment based on their gender, such as in relation to the war crime of committing outrages upon personal dignity, in particular humiliating and degrading treatment.⁷⁵

Cases against perpetrators of such crimes are an important symbol of the international community's definition of wrongful actions, with significant consequences for the perpetrators and recognition of the victims of such crimes.⁷⁶ It is critical to be able to identify groups that might be vulnerable to international crimes to take measures to prevent the commission of these crimes. Incorporating a gender perspective may help not only in identifying such groups, but also in identifying the commission of international crimes, as well as preventing them.⁷⁷ Gender aspects are therefore fundamental in identifying the commission of and culpability for crimes.⁷⁸ In addition, gender aspects may also have an impact in determining the gravity of the crime: if an international crime is conducted for a motive involving discrimination on any of the grounds set out in Article 21 of the Rome Statute, this may also be an aggravating factor in the sentence ultimately imposed.⁷⁹

3. The policy framework

The international legal framework is accompanied by a policy framework which sets out the principles and long-term goals for implementing the legal requirements, and gives overall direction for planning and development and guidance on how aspects of the legal framework alongside other political commitments should be implemented in practice.

3.1 History and development of the women, peace and security agenda

Box 2.8 Pillars of the women, peace and security agenda⁸⁰

The commitments expressed in the UNSCRs adopted under the women, peace and security agenda are often divided into three broad areas, or “pillars”.

Prevention: Prevention of conflict, and prevention of all forms of violence against women and girls in conflict and post-conflict situations, including sexual and gender-based violence.

Participation: The promotion of women’s right to participate equally and gender equality in peace and security decision-making processes, and the meaningful engagement of women in all aspects at all levels (e.g. local, national, regional and international) in public and private spheres.

Protection: Effort to achieve full respect for and promotion of women’s and girls’ rights under international and national laws in conflict-affected situations.

Following developments over the years, some have come to refer to a fourth pillar.

Relief and recovery: Understanding and meeting the specific relief needs of women and girls and ensuring that the capacity of women to act as agents in relief and recovery efforts is reinforced in conflict and post-conflict situations.

On 31 October 2000 the UN Security Council adopted UNSCR 1325 on women, peace and security,⁸¹ expanding efforts during the 1990s by both the UN and states to incorporate a gender perspective more broadly in all their actions, including legislative, policy and programmatic work.⁸² This followed a greater recognition and more developed understanding within the international community of the impact of armed conflicts on women, men, boys and girls and the need to reinforce compliance with legal protections established under human rights law, international humanitarian law and international criminal law. In the 15 years following the passing of this landmark resolution, the Security Council passed seven further resolutions developing and adding to the original framework established in UNSCR 1325. Importantly, these issues are now firmly established on the Security Council’s agenda and linked with its role as being primarily responsible for maintaining international peace and security.⁸³

The UN had addressed the impact of armed conflict on women and girls through a variety of forums over the years, particularly during the 1980s and 1990s.⁸⁴ The issue was brought to the fore again through the work of the ICTY and the ICTR, established in 1993 and 1994 respectively. The cases before these *ad hoc* tribunals highlighted the particular vulnerabilities of different genders to sexual and gender-based violence during the armed conflicts within their jurisdictions. The Beijing Declaration and Platform for Action of 1995 adopted at the Fourth World Conference on Women established an agenda for women’s empowerment by the international community, recognizing that civilian casualties outnumber military casualties, with women and children comprising a significant number of the victims.⁸⁵ In 2000 the Report of the High-Level Panel on United Nations Peace Operations (known as the Brahmini Report), which reviewed the whole of the UN’s activities in peace and security, recognized the need for equitable gender representation in the leadership of peacekeeping missions. These documents, together with the Windhoek Declaration and the Namibia Plan of Action on Mainstreaming a Gender Perspective in Multidimensional Peace Operations of June 2000, were critical developments that led to the adoption of UNSCR 1325.

Box 2.9 The legal nature of UN Security Council resolutions

UNSCRs are formal expressions of the opinion or will of the Security Council. The nature of the resolution determines if it is considered binding on states. Under Article 25 of the UN Charter, member states agree to accept and carry out the decisions of the Security Council. Under Chapter VII of the Charter, the Security Council is authorized to decide on measures to be taken in accordance with Articles 41 and 42 to maintain or restore international peace and security.

While not all UNSCRs entail legal obligations and not all are legally binding, they can often refer to and reinforce legal obligations of member states already in place, such as the UN Charter and CEDAW. In addition, they can include instructions to the Secretary-General and other UN bodies, such as in relation to UN peace operations, which must be followed. The Security Council is the body within the UN system with primary responsibility for the maintenance of international peace and security, and therefore instructions to bodies relating to this must be carried out.

UNSCR 1325, the first resolution passed by the Security Council relating to women, peace and security, recognized the “urgent need” to mainstream a gender perspective into peacekeeping operations and the importance of specialized education for all peacekeeping personnel on the protection, special needs and human rights of women and children in conflict situations.⁸⁶ In the resolution, the Security Council urged the Secretary-General to ensure that, where appropriate, field operations include a gender component, and to expand the role and contribution of women, including as military observers.⁸⁷ The resolution stressed the importance of the full and equal participation of women in the prevention and resolution of conflicts and peacebuilding, rehabilitation and reconstruction efforts, urging all actors to increase the participation of women and promote gender equality in all areas.⁸⁸ In subsequent resolutions the Security Council has built and expanded on these areas, addressing the three pillars of prevention, protection and participation.

UNSCR 1820 (2008) links sexual violence with the primary responsibility of the Security Council, namely the maintenance of international peace and security.⁸⁹ The Security Council notes the developments in international criminal law confirming that rape and other forms of sexual violence can constitute a war crime, a crime against humanity or a constitutive act with respect to genocide, and stresses the importance of ending impunity for such actions. The resolution demands that parties to armed conflict take appropriate measures “to protect civilians, including women and girls, from all forms of sexual violence” and sets out certain measures for furthering this. This resolution also extends the requirements for training and educating peacekeeping personnel.

UNSCR 1888 (2009) expands on and reiterates calls in UNSCR 1820 for the protection of women and children from sexual violence in armed conflict.⁹⁰ The resolution requested the UN Secretary-General to appoint a special representative to “provide coherent and strategic leadership ... to address, at both headquarters and country level, sexual violence in armed conflict, while promoting cooperation and coordination of efforts among all relevant stakeholders”.⁹¹ It encouraged states to “increase access to health care, psychosocial support, legal assistance and socio-economic reintegration services for victims of sexual violence, in particular in rural areas”, and requested the Secretary-General to develop indicators to measure progress in the implementation of UNSCR 1325.⁹²

UNSCR 1889 (2009) addressed women’s participation in peace processes, calling for further increased participation in “all stages of peace processes, particularly in conflict resolution, post-conflict planning and peacebuilding”.⁹⁸ It set out requirements for the UN Secretary-General and urged member states to take specified actions relating to gender equality, increased participation and women’s empowerment and to ensure women’s and girls’ needs are addressed.⁹⁹

Box 2.10 National action plans

In 2002 the Security Council issued a presidential statement “encourag[ing] Member States, the entities of the United Nations system, civil society and other relevant actors, to develop clear strategies and action plans with goals and timetables, on the integration of gender perspectives in humanitarian operations, rehabilitation and reconstruction programmes, including monitoring mechanisms, and also to develop targeted activities, focused on the specific constraints facing women and girls in post-conflict situations, such as their lack of land and property rights and access to and control over economic resources”.⁹³ Following this, states developed the practice of adopting national action plans (NAPs) – policy documents adopted in the national framework to implement the commitments under the UNSCRs on women, peace and security.⁹⁴ These have become a vital tool in the implementation of the women, peace and security agenda. When incorporating gender into military education, it is therefore critical to review and understand these documents relating to the relevant national context.

The Security Council has welcomed the adoption of NAPs by member states, and reinforced its support for this approach in further presidential statements and resolutions on women, peace and security.⁹⁵ Most recently, in UNSCR 2242 (2015) para. 2, the Security Council indicated strong support for the adoption of NAPs by member states in recent years, as well as efforts by regional organizations to adopt regional frameworks, and encouraged them to pursue further implementation.⁹⁶

The CEDAW Committee has also noted that all the areas of concern addressed in the UNSCRs on women, peace and security find expression in the substantive provisions of CEDAW, and as such has recommended state parties to use the reporting procedure under CEDAW to file information on the implementation of Security Council commitments, including NAPs, to consolidate CEDAW and the Security Council’s agenda and thereby broaden, strengthen and operationalize gender equality.⁹⁷

UNSCR 1960 (2010) also addressed sexual violence in armed conflict, adopting a “naming and shaming” approach in which the Secretary-General was encouraged to compile lists of those who are “credibly suspected of committing or being responsible for patterns of rape and other forms of sexual violence in situations of armed conflict”.¹⁰⁰ In addition, the Security Council requested the Secretary-General to develop monitoring, analysis and reporting arrangements on conflict-related sexual violence, including rape in armed conflict, post-conflict and other situations relevant to the implementation of UNSCR 1888.¹⁰¹ The Secretary-General’s reports on this provide detailed country-specific information on conflict-related sexual violence and can be a useful tool when teaching gender.¹⁰²

As an extension of UNSCR 1960 the Security Council adopted UNSCR 2106 (2013), which requires strengthening the efforts of member states and UN agencies to fulfil their obligations in the fight against impunity for perpetrators of sexual violence in conflict, and calls on parties to armed conflict to make and implement specific and time-bound commitments to combat sexual violence and conduct timely investigation of alleged abuses to hold perpetrators accountable.¹⁰³ Educational requirements on gender and sexual and gender-based violence are addressed to personnel working in peace operations, as well as encouragement for more women to be recruited and deployed in peace operations.¹⁰⁴

UNSCR 2122 (2013) addressed gaps in the implementation of the women, peace and security agenda that were highlighted in a report by the Secretary-General,¹⁰⁵ and again emphasized the need for the participation of women in all phases of conflict prevention, conflict resolution and peacebuilding.¹⁰⁶ It also addresses the need for timely information and analysis on the impact of armed conflict on women and girls, the role of women in peacebuilding and the gender dimensions of peace processes and conflict resolution for situations on the Security Council’s agenda, and sets out measures in relation to these.¹⁰⁷

Box 2.11 Examples of provisions on training and education in UN Security Council resolutions on women, peace and security

UNSCR 1325, 30 October 2000 (S/RES/1325)	
Preamble	Recognizes the importance of specialized training for all peacekeeping personnel on the protection, special needs and human rights of women and children in conflict situations.
Para. 6	Requests the Secretary-General to provide training guidelines and materials for both member states to incorporate into military and police pre-deployment training and the UN to integrate into its training for civilian peacekeeping staff. Topics should include the protection, rights and particular needs of women, and the importance of their involvement in all peacekeeping and peacebuilding measures.
Para. 7	Calls on member states to increase financial and logistical support for these training efforts.
UNSCR 1820, 19 June 2008 (S/RES/1820)	
Para. 3	Demands that all parties to armed conflict take measures to prevent sexual violence, such as training troops on the categorical prohibition of all forms of sexual violence against civilians, debunking myths that fuel sexual violence and upholding the principle of command responsibility in this area.
Para. 6	Requests the UN to develop appropriate training programmes for all peacekeeping and security personnel to help them better prevent, recognize and respond to sexual violence and other forms of violence against civilians.
Para. 7	Urges troop- and police-contributing countries to implement the policy of zero tolerance towards sexual exploitation and abuse through pre-deployment and in-theatre awareness training.
UNSCR 1888, 30 September 2009 (S/RES/1888)	
Para. 19	Encourages member states to deploy greater numbers of female military and police personnel in peacekeeping missions and to ensure that all personnel are given adequate training to carry out their responsibilities.
Para. 20	Requests the Secretary-General to provide technical support, including guidance, to troop- and police-contributing countries in their pre-deployment and induction training on the policy of zero tolerance towards sexual exploitation and abuse.
UNSCR 1889, 5 October 2009 (S/RES/1889)	
Para. 4	Calls upon the Secretary-General to develop a strategy, including appropriate training, to increase women's participation in UN political, peacebuilding and peacekeeping missions.
UNSCR 1960, 16 December 2010 (S/RES/1960)	
Para. 11	Encourages member states to use the UN's newly developed scenario-based training materials on combating sexual violence for peacekeepers.
UNSCR 2106, 24 June 2013 (S/RES/2106)	
Para. 8	Calls on the Secretary-General to ensure comprehensive gender training of all relevant peacekeeping and civilian personnel.
Para. 14	Calls for pre-deployment and in-mission training on sexual and gender-based violence prevention and response to take into account the distinct needs of children.
UNSCR 2122, 24 June 2013 (S/RES/2122)	
Para. 8	Calls on the Secretary-General to ensure comprehensive gender training of all relevant peacekeeping and civilian personnel.
Para. 14	Calls for pre-deployment and in-mission training on sexual and gender-based violence responses to take into account the distinct needs of children.
UNSCR 2242, 13 October 2015 (S/RES/2242)	
Para. 9	Deeply concerned over continuing allegations of sexual exploitation and abuse, urges police- and troop-contributing nations to provide robust pre-deployment training on sexual exploitation and abuse, and vet their peacekeeping personnel.

Marking the fifteenth anniversary of the adoption of UNSCR 1325, UNSCR 2242 (2015) addressed women's roles in countering violent extremism and terrorism. In this resolution the Security Council decided to integrate women, peace and security concerns across all country-specific situations on the Security Council's agenda, including relating to counterterrorism and countering violent extremism.¹⁰⁸ The preamble to the resolution affirmed "the primary role of Member States to implement fully the relevant provisions of Security Council resolutions on women, peace and security, and the important complementary role of United Nations entities and regional organizations".¹⁰⁹ The resolution returned to central themes of preventing and addressing sexual and gender-based violence, women's participation and gender equality. In relation to the latter, the Security Council welcomed the Secretary-General's commitment to prioritize the appointment of more women in senior UN leadership positions.¹¹⁰ The resolution also addressed allegations of sexual exploitation and abuse in UN missions, urging current troop- and police-contributing countries to cease such violations and implement action plans expeditiously, thereby avoiding suspension from peace operations.¹¹¹ The UN has also instituted a zero-tolerance policy for sexual exploitation and abuse in UN peace operations in other resolutions issued by the Security Council.¹¹²

The UNSCRs on women, peace and security contain both requirements for actions within the UN system and systematic calls on member states to carry out actions in ensuring gender equality, women's empowerment and participation, and the prevention of sexual and gender-based violence.¹¹³ The implementation of these UNSCRs has led to extensive changes in practice by both member states and the UN. When establishing peace operations the Security Council now routinely references its resolutions on women, peace and security, and those on children and armed conflict and the protection of civilians in armed conflict.¹¹⁴ As noted in Box 2.11, specific instructions are given in relation to peace operations, including the need for gender training and increasing numbers of women deployed in such operations. The Security Council explicitly links these actions with contributing to and ensuring the maintenance of international peace and security. Throughout, the Security Council references the international legal standards of protection and prevention as one way to achieve this, establishing the work in this area firmly within the legal framework and reinforcing states' obligations to uphold and implement these requirements. The CEDAW Committee has highlighted that all the areas of concern addressed in the resolutions on women, peace and security find expression in the substantive provisions of CEDAW and the implementation of these resolutions must be premised on a model of substantive equality, covering all rights enshrined in CEDAW and placed within the broader framework of the implementation of CEDAW and its optional protocol.¹¹⁵

Box 2.12 Examples of Security Council practice incorporating the women, peace and security agenda in peace operations

The Security Council has established specific requirements within the mandates of peace missions to address women, peace and security. For example, in the mission in Mali the Security Council mandated for women's protection advisers to be deployed as part of the mission's task to provide specific protection for women and children affected by armed conflict, and to incorporate gender considerations as a cross-cutting issue throughout the mandate.¹¹⁶ The UN Multidimensional Integrated Stabilization Mission in the Central African Republic is similarly mandated to provide specific protection for women and children affected by armed conflict, including through the deployment of protection advisers for children and women.¹¹⁷ Other mandates are less direct, but many do include reference to the rights of women and children. For example, UNSCR 2240 (2015) references the need to promote and protect effectively the human rights and fundamental freedoms of all migrants, regardless of their migration status and especially those of women and children, in addressing international migration.¹¹⁸

3.2 The policy framework on training and education of the military on gender and women, peace and security

National and international policy requirements emphasize the need to integrate gender into military education and training, including during UN and NATO deployments, which plays a vital role in ensuring that states adhere to their legal obligations to protect, respect and fulfil the human rights of all persons regardless of gender. Institutional structures and requirements have therefore been introduced to ensure that this is done within all national, regional and international organizations.

3.2.1 United Nations

The UN Department of Peacekeeping Operations (DPKO) is responsible for planning and management of UN peace operations. It plays a coordination role between UN, governmental and non-governmental entities in peacekeeping operations. It also provides staff on UN political and peacekeeping missions with guidance and support on matters related to the military, the police and mine action.

As a first step in implementing the resolutions relating to women, peace and security, the DPKO Department of Field Support (DFS) developed its "Policy on gender equality in UN peacekeeping operations" in 2006, which was revised and updated in 2010, and reaffirms the UN's commitment to the women, peace and security agenda.¹¹⁹ The DFS also developed its "Gender forward looking strategy (2014–2018)" to highlight the women, peace and security agenda. This strategy supports the implementation of the UNSCRs in a changing operational environment. It articulates the importance and objectives of gender mainstreaming in peacekeeping, and also outlines a strategic direction for the organization and offers tools to help military personnel better support and protect women and girls where peacekeeping missions are deployed.¹²⁰ Training and education are among the most important objectives in the strategy, and it includes concrete recommendations for training and education on gender in general as well as in pre-deployment and specialized in-mission programmes, such as the collection of sex-disaggregated data for all internal (UN forces) and external (interaction with locals) activities.

In 2009 the Office of Military Affairs and the Gender Unit of the DPKO initiated work on a document titled "Integrating a gender perspective into the work of the United Nations military in peacekeeping operations".¹²¹ This provides guidelines aiming to enhance the operational effectiveness of UN peacekeeping operations through the implementation of a gender perspective. It serves as a practical tool to translate the Security Council's resolutions on women, peace and security into the work of military components. The guidelines aim to support military personnel in recognizing and addressing the security priorities of all parts of the local population – women, men, boys and girls – in a peacekeeping context. They further inform the content of training and education activities targeted at military peacekeeping personnel. In this regard, troop-contributing countries are encouraged to embrace the tool and use it to aid their pre-deployment planning, education and training activities.

While acknowledging the integrated nature of peacekeeping activities, the guidelines are designed to focus specifically on the tasks of military peacekeepers within a broader integrated framework. They are presented in three sections, corresponding to the three levels of military engagement in peacekeeping (strategic, operational and tactical), in accordance with mandated tasks and working conditions.¹²² In addition, the guidelines established a number of mechanisms on how to implement a gender perspective across a mission, including the implementation of a military gender task force and mandatory gender training for all military personnel.¹²³

3.2.2 NATO

NATO's work on gender dates back to 1961, when the first NATO Conference of Senior Women Officers of the Alliance was held. Gender-related activities began to take place on a more regular basis after 1976 when the Committee on Women in the NATO Forces was established, now known as the NATO Committee on Gender Perspectives.¹²⁴ In its current form, it advises the Military Committee on gender-related policies for the armed forces of NATO member nations.

Box 2.13 Structure of the actors responsible for integrating the women, peace and security agenda within processes at NATO



Policy

In response to UNSCR 1325, NATO allies working with their partners in the Euro-Atlantic Partnership Council (EAPC) adopted a policy for its implementation in 2007. Since then the document has been reviewed every two years, and in April 2014 the updated overarching “NATO/EAPC policy for the implementation of UNSCR 1325 on women, peace and security and related resolutions” was adopted. The policy broadly outlines commitments to implement the provisions of the women, peace and security agenda within the framework of NATO’s strategic concept, specifically in relation to three essential core tasks: collective defence, crisis management and cooperative security. It also encourages member nations to implement the women, peace and security agenda in their defence and security policies and activities. Alongside public diplomacy and human resource policies, education, training and exercises are listed as the three “cross-cutting enablers” that can contribute to implementation of UNSCR 1325 and related resolutions. The policy includes specific commitments to

develop appropriate education and training programmes on gender, integrate a gender perspective in existing programmes and exercises and include education and training on gender aspects in all reform efforts within security and defence institutions.¹²⁵

On the tenth anniversary of UNSCR 1325 in 2010, at their Lisbon Summit NATO leaders adopted an action plan for the implementation of the UNSCRs on women, peace and security in NATO-led operations and missions. Updated every two years following a progress report, the latest action plan for the period 2014–2016 translates the policy into 14 outcomes, each with between one and six concrete actions to be implemented by a designated entity. Outcome 12 focuses on education, training and exercises, and calls for “Improved understanding of the civilian and military staff of the practical implications of the Women, Peace and Security agenda, thereby improving their ability to act accordingly.” The actions to be undertaken by NATO international and national staff are to integrate UNSCR 1325 and related resolutions in all levels of education and training curricula, as well as NATO-led exercises, and to involve local civil society in this endeavour as appropriate.¹²⁶

Another of NATO’s milestone gender documents is Bi-Strategic Command Directive 40-1, which integrated the requirements of UNSCR 1325 and a gender perspective into the NATO command structure. Chapter 2 of the directive details how gender is to be implemented in existing education and training policy and frameworks. The first revision of the document, made in 2012, designated the Nordic Centre for Gender in Military Operations (NCGM) as the department head for the delivery of gender adviser (GENAD) and gender field adviser training. It also states the minimum responsibilities for compliance regarding integration of the women, peace and security agenda into the education and training of NATO troops, and details what must be included in pre-deployment training and education.¹²⁷

Finally, NATO’s Strategic Commands developed the NATO gender education and training plan for integrating gender perspectives, approved in 2014. This plan seeks to standardize and harmonize the NATO education and training system for gender in military operations so it is compatible with NATO’s education, training, exercise and evaluation policy. It provides specific guidance on how gender can be integrated in many existing NATO education and training programmes and exercises.¹²⁸

*Implementation*¹²⁹

The implementation of UNSCR 1325 and related resolutions is the joint responsibility of NATO’s Strategic Commands and several divisions and governing bodies within NATO headquarters. These entities also monitor and report on the progress made. To coordinate these different actors, the Women, Peace and Security Task Force (see Box 2.13) was established, headed by the NATO Secretary General’s special representative for women, peace and security. First appointed in 2012, the special representative is the highest focal point for the implementation of this agenda within the alliance. The position became a permanent post in 2014.

Another actor in the implementation structure is the NATO Committee on Gender Perspectives (NCGP). This expert committee advises NATO leadership and member nations on gender-related issues to enhance organizational effectiveness in support of alliance objectives and priorities, including the implementation of the relevant UNSCRs on women, peace and security.¹³⁰ All NCGP recommendations, guidelines and documents explicitly emphasize education and training as one of the most important tools for strengthening the implementation of UNSCRs at NATO and among NATO members and partners.

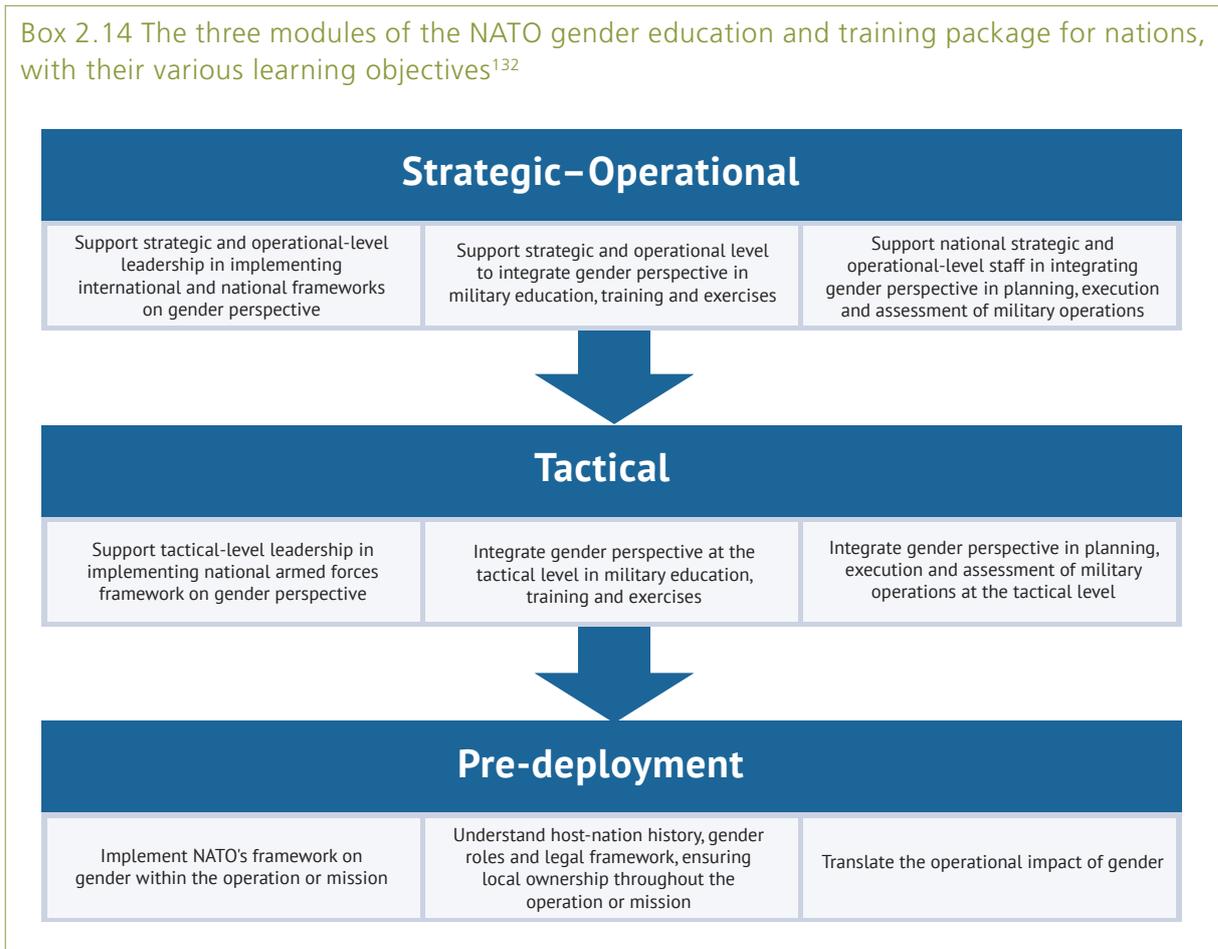
In addition, NATO has GENADs deployed at different levels of its command structure, including within the international military staff, Allied Command of Operations (ACO) and Allied Command Transformation (ACT). GENADs can advise their respective units and institutions on how NATO policy on the women, peace and security agenda should be implemented in specific contexts.

There are also a number of committees and working groups that develop and review specific and overall policy. For example, the ACO Gender Perspective Working Group was established by the SHAPE chief of staff to implement recommendations and operational lessons related to women, peace and security in all aspects of NATO operations.

As noted above, the NCGM has a specific role in implementation of military training and education on gender as the NATO department head. One such activity was to provide support to ACT, which developed a package of gender training and education tools based on a training needs analysis the NCGM conducted. This package was offered to NATO members and partners, and includes best practice examples and guidance from different nations on the institutionalization of a gender perspective within the framework of NATO policy.¹³¹ The package contains three modules, each with three learning objectives (see Box 2.14).

It is worth highlighting that many of the training and education resources produced by NATO are available to other militaries outside the alliance. Training and education on gender have been one of the themes in NATO's cooperation with partner nations through, for example, the Partnership for Peace Consortium of Defense Academies and Security Studies Institutes (PfPC).

Box 2.14 The three modules of the NATO gender education and training package for nations, with their various learning objectives¹³²



3.2.3 ORGANIZATION FOR SECURITY AND CO-OPERATION IN EUROPE

In its comprehensive security concept the OSCE recognizes that gender equality is essential for peace, sustainable democracy and economic development, and has thus committed itself to integrate gender equality into policies and practices within the organization itself and in its missions. Together with participating states and local partners, the OSCE has various initiatives and programmes aimed to empower women and expand local capacities on gender issues.¹³³ The OSCE's commitment to implement UNSCR 1325 is stipulated in numerous Ministerial Council decisions (Box 2.15). In 2004 the OSCE presented its action plan for the promotion of gender equality.¹³⁴ This document recognizes that the full and equal participation of women and men is key to achieving the goals of the OSCE, namely peace, prosperity and stability. It assigns responsibilities and tasks to the OSCE and its states. Essentially, the OSCE's approach to gender equality is based on three pillars: mainstreaming gender in all

OSCE policies, programmes and activities; developing a professional, gender-sensitive management culture and working environment; and promoting the rights, interests and concerns of women to its participating states and supporting them in their efforts to achieve gender equality.¹³⁵

The OSCE has a Gender Section which is part of the Office of the OSCE Secretary General. It is responsible for integrating a gender perspective in policies and programmes; it advises relevant bodies on the implementation and monitoring of the OSCE action plan for the promotion of gender equality; and it directly assists field operations, OSCE institutions and the Secretariat's departments. The Gender Section also produces tools and materials for staff members and participating states, as well as organizing discussions, meetings and courses on gender mainstreaming. Each field operation, institution and department has a gender focal point.

In a joint session in 2015, the OSCE Forum for Security Co-operation and the Permanent Council discussed introducing a gender coach leadership programme to the OSCE member countries. This programme aims to provide key leadership tools that enable gender mainstreaming in an organization. The programme realizes that the successful implementation of gender mainstreaming, especially in military contexts, is dependent on the leadership's role in attaining these goals.¹³⁶

Box 2.15 OSCE documents related to gender

- Istanbul Summit Declaration, 1999
In this declaration the OSCE stated its commitment to make gender equality an integral part of its policies both at the state level and within the organization.
- Ministerial Council Decision 14/04 on OSCE Action Plan for the Promotion of Gender Equality, 2004
This decision establishes increased efforts to integrate gender in all areas of the organization. Ultimately it aims to promote gender equality in participating states.
- Ministerial Council Decision 14/05 on Women in Conflict Prevention, Crisis Management and Post-Conflict Rehabilitation, 2005
Based on UNSCR 1325, this decision integrates the UN commitments into the OSCE and its participating states.
- Ministerial Council Decision 15/05 on Preventing and Combating Violence against Women, 2005
This decision aims to encourage participating states to adopt measures to counter violence against women, as it undermines security.
- Ministerial Council Decision 7/09 on Women's Participation in Political and Public Life, 2009
This decision aims to increase the representation of women in the decision-making structures within legislative, executive and judicial branches in the OSCE area.
- Ministerial Council Decision 10/11 on Promoting Equality in the Economic Sphere, 2011
This decision acknowledges women's essential contribution to economic recovery, sustainable growth and the creation of cohesive societies, and thus promotes their equal participation in the economic sphere.
- Ministerial Council Decision 07/14 on Preventing and Combating Violence against Women, 2014
This decision recognizes new developments in the field of ending violence against women and makes new commitments.

3.2.4 EUROPEAN UNION

Gender equality is central to all EU activities, and EU regulations apply to EU member states, nearly all of which are NATO or Partnership for Peace (PfP) members. Also, EU military and civilian missions are often in NATO member nations or countries where NATO has previously been engaged, thus EU legislation and policies are relevant. Moreover, crisis management through both civilian and military missions is a task that the EU has increasingly begun to take on. The complexity of these situations and the fact that personnel are expected to be involved in both peacekeeping and peacebuilding means that a greater amount of knowledge is required to incorporate a gender perspective.

When analysing EU gender policy and mainstreaming, we should take into account the specific character of the EU as a legal entity. The EU is a political and economic partnership of 28 member states which have relinquished part of their sovereignty to EU institutions. It has evolved significantly from its origins to become a unique legal entity operating supranationally and intergovernmentally to formulate policy and legislation across a broad range of areas.

Principles

Article 2 of the Treaty on European Union lists respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities, as the founding values of the EU.¹³⁷ Article 2 also sets out pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men as values common to the member states. Human rights standards have been integrated into EU policy and within the EU legal system over time. The Lisbon Treaty (2010) developed this further by making the EU Charter on Fundamental Rights legally binding and providing under Article 6(2) that the EU in its entirety shall accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR).¹³⁸ In addition, fundamental guarantees, as outlined by the ECHR and as they result from the constitutional traditions common to the member states, are now established under the treaty as general principles of EU law and thereby binding on all EU countries. One area upon which the EU has expanded significantly is equal treatment and anti-discrimination, and there is now a substantial framework for anti-discrimination law within EU law.¹³⁹

Civilian and military crisis management plays a pivotal role in the EU's external policies. The Treaty on European Union establishes that the EU's Common Foreign Security Policy (CFSP) encompasses all foreign and security issues: the EU has competence to define and implement this policy, but not to adopt legislative acts in this field.¹⁴⁰ In this the EU acts more as an international organization, with the European Council and Council of the EU being the bodies responsible for defining, acting unanimously on and implementing the CFSP and the High Representative of the Union for Foreign Affairs and Security Policy and member states being responsible for putting this into effect.¹⁴¹ Article 21 of the Lisbon Treaty governs the EU's external action and provides that it shall be guided by the principles of democracy, rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, equality and solidarity, and respect for the principles of the UN Charter and international law. Under Article 21(2) one of the EU's objectives in defining and pursuing common policies and actions is to preserve peace, prevent conflicts and strengthen international security, in accordance with the purposes and principles of the UN Charter, among others.¹⁴²

In 1999, in response to the crisis in the former Yugoslavia, the European Security and Defence Policy (ESDP) was launched as part of the CFSP. The ESDP was integrated into the European treaties in 2001 and subsequently converted to the Common Security and Defence Policy (CSDP) in 2007. The CSDP enables the EU to be engaged in crisis prevention, crisis management and post-conflict recovery. CSDP missions cooperate with third countries and other international crisis management organizations, such as the UN, NATO and the OSCE. Cooperation between NATO and the EU has been regulated through the Berlin Plus Agreement since 2003.¹⁴³ In the aftermath of the terrorist attacks of 11 September 2001 a European security strategy was initiated, giving the CFSP a strategic orientation.¹⁴⁴

Through the CSDP the EU is able to take a lead in matters of international security, peacekeeping operations and conflict prevention. Since 2003 the EU has launched more than 30 peace missions and operations.¹⁴⁵ While gender is not a predominant component in CSDP missions, the EU's role in providing development aid and humanitarian assistance is closely tied to its effort to integrate women, peace and security issues in its external policies. In its CSDP the EU has committed itself to both promotion and protection of human rights of women and their participation as positive agents of change and development and the protection of women in conflict situations.

Structures

All current CSDP missions and operations have human rights and/or GENADs or gender focal points appointed.¹⁴⁶ This system has been introduced to ensure that the EU's policies and knowledge are translated into operational guidelines and women, peace and security matters are systematically included in all strategies of CSDP missions (planning, implementation and review), as well as to aid mission and operations staff in their everyday work on gender matters.¹⁴⁷

As part of its efforts to prioritize gender equality internally, the EU has established the post of the European External Action Service principal adviser on gender and the implementation of UNSCR 1325. This position serves to engage with the EU's international, regional and national actors on policies and actions related to gender and women, peace and security, and to coordinate the EU's internal gender mainstreaming. Additionally, the appointed representative will work towards enhancing the visibility of gender in the EU's external action and will collaborate with relevant UN services and agencies.¹⁴⁸

Policies in practice

In 1996 the EU adopted a gender mainstreaming approach, which initially focused on fostering equal opportunities for women and men within EU institutions and bodies. The breakthrough in terms of integrating gender came one month after the Security Council's adoption of UNSCR 1325 in November 2000, when the European Parliament issued a resolution on gender aspects of conflict resolution and peacebuilding.¹⁵⁰ This was the first official document of the EU that called for more active and effective commitment of the European Commission and member states to gender equality and gender issues in the EU's foreign policy and international agenda.

Two core documents adopted by the Council of the EU are essential for understanding the EU policy framework on implementing UNSCR 1325 and gender mainstreaming. The EU's "Comprehensive approach to the EU implementation of the United Nations Security Council Resolutions 1325 and 1820 on women, peace and security",¹⁵¹ adopted in 2008, constitutes the strategic framework on gender and gender mainstreaming. It gave substantial impetus to the political and operational processes of implementing the UNSCRs, and reflects and legitimizes the EU-specific holistic approach to gender issues in EU external relations, development, security and defence policies.

The EU's comprehensive approach introduced concrete measures that member states and the relevant EU bodies are required to implement. Furthermore, it declared that awareness of gender and UNSCR 1325 are a consistent part of the training requirements for CSDP operations. As such, gender training and education conducted by the EU must be intensified and consolidated at all levels. The policy contains some important innovations concerning education on gender for CSDP operations. Firstly, it calls for the provisions of UNSCRs 1325 and 1820 to be incorporated into the mandatory pre-deployment training and education of personnel and staff. Secondly, it requires the head of mission/operation commander to be given a specific briefing on EU policies and concepts related to UNSCRs 1325 and 1820.¹⁵² Although pre-deployment training of forces and personnel remains a national responsibility, these are important policy developments that should serve to complement and to some extent contribute to the coordination of national efforts. Another innovation is the objective to increase the participation of women from the local population, such as female judges and penitentiary officers, in the training and education given by EU representations as part of their mission.

The second document, entitled "Implementation of UNSCR 1325 as reinforced by 1820 in the context of ESDP"¹⁵³ (now known as the CSDP), was adopted in its revised form in 2008 based on the original version from 2005. It is considered to be the main political directive, and facilitates the implementation of the strategy. In other words, the EU's comprehensive approach defines the overall goals that should shape the EU's policy on security and defence, while the implementation policy contains specific activities that need to be carried out to achieve those goals.

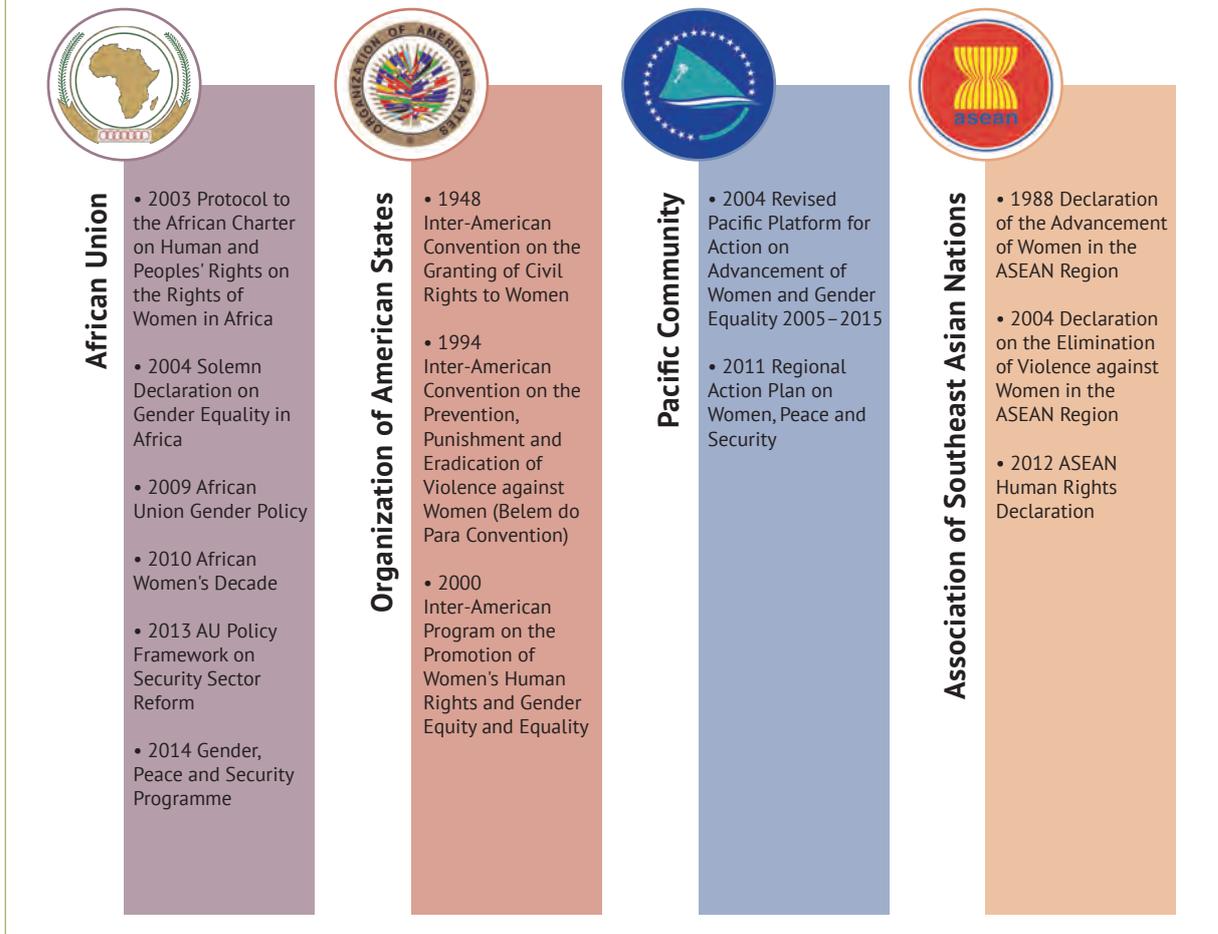
The main goal of the implementation policy is “to ensure gender mainstreaming and implementation of UNSCR 1325 and UNSCR 1820 from the early planning to the conduct of ESDP operations, including their follow-up”.¹⁵⁴ The text itself focuses on increasing the representation of women in the civilian component of ESDP operations as well as promoting the UN’s women, peace and security agenda. The document also dedicates an entire section to gender training and encourages the development of a course on gender in ESDP operations, as well as the inclusion of a gender perspective in all training and education activities, including pre-deployment training and courses offered by the European Defence and Security College.¹⁵⁵

It is also worth noting that the 2008 implementation policy in its “generic standards for behaviour” reaffirms the EU’s pledge of zero tolerance of abuse and misconduct committed by any military or civilian member of mission staff/personnel, including gender-based abuse or violence. The policy included 17 indicators to monitor and evaluate the implementation of the women, peace and security agenda.¹⁵⁶

To consolidate different policies, initiatives and activities related to gender training within the EU, the Council of the EU adopted a specific policy paper in 2009 entitled “Implementation of UNSCR 1325 and 1820 in the context of training for the ESDP missions and operations – Recommendations on the way forward”.¹⁵⁷ This paper aims to establish a consolidated system of gender training and education within the EU by outlining key principles that should be adopted by all member states, especially in pre-deployment training.

3.2.5 OTHER REGIONAL FRAMEWORKS

Box 2.16 Main documents from four regional organizations regarding women, peace and security



Other regional organizations worldwide have committed themselves to implementation of the UN women, peace and security agenda (see Box 2.16). It will often be the case that deployments involving personnel from NATO and PfP member nations take place in contexts where existing regional frameworks need to be considered, as well as national frameworks such as action plans on UNSCR 1325. This section provides examples of some of the existing frameworks outside the NATO/PfP area.

African Union

The AU's commitment to gender equality is rooted in the African Charter on Human and Peoples' Rights. The AU gender policy promotes a gender-responsive environment and practices which contribute to gender equality and women's empowerment in member states. A gender management system is responsible for creating appropriate institutional structures as well as frameworks for gender analysis, gender training, monitoring and evaluation.¹⁵⁸

The AU Women and Gender Development Directorate has the specific mandate to promote gender equality within and throughout the AU as well as within member states by translating the policy agreements and instruments into measurable programmes and projects. It provides oversight by facilitating the development and harmonization of policy and coordination, and initiating gender-mainstreaming strategies. The directorate was created in 2000 under the Office of the Chairperson of the AU Commission.¹⁵⁹

In 2014 the five-year Gender, Peace and Security Programme was launched by the AU Commission, providing a framework for the development of strategies and mechanisms for women's increased participation in the promotion of peace and security. It will also promote the protection of women in conflict and post-conflict situations throughout Africa.¹⁶⁰

Similarly, in 2013 the AU adopted its policy framework on security sector reform, marking another significant accomplishment of its broader peace and security goals.¹⁶¹ The policy acknowledges gender perspectives as critical components of conflict management and peacebuilding processes, which is considered to reinvigorate the debate on and practice of gender mainstreaming.¹⁶²

In 2015 the director of the Women and Gender Development Directorate at the AU Commission declared the year as the "Year of Women's Empowerment and Development towards Africa's Agenda 2063", and 2016 as the "African Year of Human Rights, with Particular Focus on the Rights of Women".¹⁶³

Organization of American States

The Organization of American States brings together 35 member states from the Americas, and aims to foster cooperation in the areas of democracy, human rights, security and development.¹⁶⁴ One of its advisory bodies is the Inter-American Commission of Women, a forum generating policy to promote the rights of women and gender equality and equity, and overseeing mainstreaming gender into the organization's projects, programmes and policies.¹⁶⁵

Pacific Community

As an international development organization, the Pacific Community promotes sustainable Pacific development through science, knowledge and innovation. After the adoption of UNSCR 1325 the Pacific Community has increasingly recognized women's role in conflict prevention and peacebuilding and the security implications of sexual and gender-based violence in the region. Consequently, in 2010 the Pacific Regional Working Group on Women, Peace and Security was established with members from the Pacific Community Forum, the Council of Regional Organizations in the Pacific, UN agencies and civil society, and it developed a regional action plan on women, peace and security in 2011. The plan sets out goals for mainstreaming gender in security policy-making, ensuring women's rights in humanitarian crises and post-conflict situations and enhancing women's role in leadership and conflict prevention and peacebuilding. This framework applies at the regional level for forum members and Pacific territories.¹⁶⁶

Association of Southeast Asian Nations

The Association of Southeast Asian Nations (ASEAN) Secretariat and its member states have committed themselves to the protection and advancement of women's economic and human rights. Their commitments include the Declaration of the Advancement of Women in the ASEAN Region, 1988, the Declaration on the Elimination of Violence against Women in the ASEAN Region, 2004 and the ASEAN Human Rights Declaration, 2012, and the establishment of the ASEAN Committee on Women in 2002 and the ASEAN Commission on the Promotion and Protection of Women and Children in 2009.¹⁶⁷ Supporting the ASEAN ministerial meetings on women and these declarations, the Secretariat is keen to promote gender mainstreaming in the activities of its member states. While these regional commitments show ASEAN's engagement with the topic of women, peace and security, UNSCR 1325 is not fully accounted for in its commitments.¹⁶⁸

4. Conclusion

For states to implement their obligations to respect and protect the human rights of all those within their jurisdiction, it is essential that military personnel have a firm grasp of what those legal obligations are. Training and education are central to this, and should also provide military personnel with a greater understanding of the needs of different groups within society and how different genders are impacted by military actions, thus strengthening the application of the legal requirements. In addition, education by experts on the legal requirements and having the assistance and advice of legal expertise during operations are fundamental in ensuring these obligations are met.

The international community has recognized the importance of training and education in gender for the military as a means of strengthening the implementation of the relevant international legal provisions, as reflected in the UNSCRs on women, peace and security. NATO, the EU and other regional bodies are adopting specific requirements on military gender education and training, to be integrated in national and collective educational programmes, plans, curricula and training courses. Gender education and training are recognized as preconditions for more effective and efficient fulfilment of military tasks at the national level, as well in operations and missions led by the UN, NATO, the EU and the AU.

This chapter has provided a brief background on the international legal framework for protection and how military structures ensure these obligations are incorporated into their operations. It is by no means exhaustive, but hopefully it has highlighted the critical link between the legal requirements and the need to incorporate a gender perspective in military operations, training and education. Through the implementation of the UNSCRs on women, peace and security, states are contributing to fulfilling their legal obligations, and in doing so ensuring the protection of all.

5. Annotated bibliography

5.1 International human rights law

Office of the UN High Commissioner for Human Rights, "Report to the Human Rights Council on discrimination and violence against individuals based on their sexual orientation and gender identity", May 2015, A/HRC/29/23, www.ohchr.org/Documents/Issues/Discrimination/LGBT/A_HRC_29_23_One_pager_en.pdf.

This summary report for the UN Human Rights Council details human rights violations commonly committed against individuals based on their sexual orientation and/or gender identity. It also lists key recommendations that states should adopt to provide minimum standards of protection to lesbian, gay, bisexual, transgender and intersex people, as required under international human rights law.

Office of the UN High Commissioner for Human Rights, “Women’s human rights and gender equality”, www.ohchr.org/EN/Issues/Women/WRGS/Pages/WRGSIndex.aspx.

This webpage includes links to other resources and overviews of legal standards and work to promote women’s rights and gender equality, including sections on women, peace and security, trafficking in persons, sexual and reproductive health and rights, land, property, housing and gender stereotypes/stereotyping.

International Committee of the Red Cross, “How does the law protect in war? The interplay between IHL and human rights: Use of force and conduct of hostilities”, 1 July 2015, www.icrc.org/casebook/doc/11-highlight/highlight-the-interplay-between-ihl-and-human-rights-use-of-force-and-conduct-of-hostilities.htm.

The ICRC has produced a collection of case studies and teaching materials to assist university professors, practitioners and students with up-to-date documents on international humanitarian law. There is a specific section on how international humanitarian law and human rights law relate to each other, which includes case studies, reference materials and further resources exploring this topic.

Office of the UN High Commissioner for Human Rights, “Women’s rights are human rights”, United Nations, 2014, www.ohchr.org/Documents/Publications/HR-PUB-14-2.pdf.

Publication outlining the protection of women’s rights under international law, the global commitments, UN bodies, key concepts and how the framework is applied in practice.

5.2 International humanitarian law

International Committee of the Red Cross, “Customary international humanitarian law database”, www.icrc.org/customary-ihl/eng/docs/home.

This is an updated and online version of a study on customary international humanitarian law conducted by the ICRC.

International Committee of the Red Cross, “Treaties, states parties and commentaries database”, www.icrc.org/ihl.

This website contains a compilation of treaties relating to international humanitarian law published by the ICRC.

Tengroth, Cecilia, and Kristina Lindvall (eds), *IHL and Gender – Swedish Experiences* (Stockholm: Swedish Red Cross and Swedish Ministry for Foreign Affairs, 2015), www.redcross.se/ihlandgender.

This e-book produced by the Swedish Red Cross brings together contributions and experiences from a broad field of expertise related to armed conflict, military operations, humanitarian assistance and gender, analysing how gender impacts on international humanitarian law.

International Committee of the Red Cross, *Handbook on Rules Governing Military Operations* (Geneva: ICRC, 2014), www.icrc.org/eng/assets/files/publications/icrc-002-0431.pdf.

This handbook was produced as a tool to assist commanders in incorporating the legal requirements into military strategy, operations and tactics. It provides a broad outline of legal obligations applicable in military operations and places them in a practical, operational context.

“Women”, *International Review of the Red Cross*, Vol. 92, No. 877 (2010), www.icrc.org/en/international-review/women.

This issue of the ICRC’s quarterly journal published by the ICRC and Cambridge University Press focuses on the experiences of women in armed conflict. It includes articles analysing a historical approach to women and war, women as participants in conflict, women in detention, gender violence and discourse and Security Council actions.

International Committee of the Red Cross, “Gender perspectives on international humanitarian law”, report summary of international expert meeting, 4–5 October 2007, Stockholm, www.icrc.org/eng/assets/files/other/ihl_and_gender.pdf.

This report was produced following an international expert meeting held at the Swedish National Defence College on 4–5 October 2007 debating international humanitarian law and gender.

5.3 International criminal law

Washington College of Law, American University, “Gender jurisprudence and international criminal law project”, www.genderjurisprudence.org/index.php/gender-jurisprudence-collections/browse-collections.

This is a collaborative project between the War Crimes Research Office and the Women and International Law Program at American University Washington College of Law which aims to raise awareness of and encourage research and debate about the jurisprudence emerging from international and hybrid tribunals regarding sexual and gender-based violence committed during times of conflict, mass violence or repression, and to facilitate the investigation and prosecution of these crimes under international law.

The ICRC has produced various educational materials and publications on sexual violence in armed conflict.

- “Sexual violence in armed conflict”, *International Review of the Red Cross*, Vol. 96, No. 894 (2014), www.icrc.org/en/international-review/sexual-violence-armed-conflict.
- “Sexual violence in armed conflict”, e-briefing, 2014, app.icrc.org/e-briefing/sexual-violence-armed-conflict/index.html.

Based on *International Review of the Red Cross* No. 894, this e-briefing compiles various electronic resources produced by the ICRC on the topic. It is structured in five parts: introduction, the human cost, the humanitarian response, legal dimensions and prevention efforts. Side-bars point to other useful links and additional resources.

- “How does the law protect in war? Sexual violence in armed conflict”, 7 April 2014, <https://www.icrc.org/casebook/doc/12-previous-highlight/case-study-highlight.htm>.

The ICRC has produced a collection of case studies and teaching materials to provide university professors, practitioners and students with up-to-date documents on international humanitarian law. It includes a specific section on sexual violence in armed conflict, with case studies, movies and workshop outlines to assist in teaching and learning more on the topic.

5.4 Security Council resolutions on women, peace and security

UN Women, “Preventing conflict, transforming justice, securing the peace: A global study on the implementation of United Nations Security Council Resolution 1325”, United Nations, 2015, <http://wps.unwomen.org/en>.

This study was produced 15 years after the passing of UNSCR 1325, reviewing implementation of the resolution at global, regional and national levels to inform the high-level review of women, peace and security held by the Security Council in October 2015. The study includes important recommendations informing the work of the Security Council and member states in progressing this area of work.

Notes

1. Sally Longworth wrote the section on the legal framework and the subsection on the history and development of the women, peace and security agenda. Nevena Miteva and Ankica Tomić wrote the remainder of the section on the policy framework with the support of Anna Kadar. The authors would like to thank Dr Ola Engdahl, Megan Bastick, Bojana Balon, Fernando Izquierdo, Dessy Lazarova and Jody Prescott for comments on this chapter.
2. See, for example, United Nations, “Beijing Declaration and Platform for Action”, adopted at the Fourth World Conference on Women, 27 October 1995, UN Docs A/CONF.177/20 (1995) and A/CONF.177/20/Add.1, para. 135. See also United Nations, “Women, peace and security: Study submitted by the Secretary-General pursuant to Security Council Resolution 1325”, 2002, pp. 13–31, www.un.org/womenwatch/daw/public/eWPS.pdf.
3. A basic understanding of public international law is essential for understanding the legal framework. This is outside the scope of this chapter. Suggested resources on the topic include Malcolm Evans, *International Law*, 4th edn (Oxford: Oxford University Press, 2014); Malcolm N. Shaw, *International Law*, 7th edn (Cambridge: Cambridge University Press, 2014); International Committee of the Red Cross (ICRC), *Handbook on International Rules Governing Military Operations* (Geneva: ICRC, 2013).
4. Universal Declaration of Human Rights (UDHR), adopted by UN General Assembly Resolution 217 A(III), 10 December 1948, UN Doc. A/810, Art. 7; International Covenant on Civil and Political Rights 1966, 999 United Nations Treaty Series (UNTS) 171, Arts 2, 4(1) and 26; International Covenant on Economic, Social and Cultural Rights 1966, 993 UNTS 3, Art. 2; Convention on the Rights of the Child 1989 (CRC), 1577 UNTS 3, Art. 2; International Convention on the Protection of the Rights of Migrant Workers and Members of Their Families 1990, 2220 UNTS 3, Art. 7; International Convention on the Elimination of All Forms of Racial Discrimination 1965 (CERD), 660 UNTS 195, Art. 3; Council of Europe, European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), as amended by Protocols 11 and 14, 4 November 1950, European Treaty Series (ETS) 5, 213 UNTS 22, Art. 14; Council of Europe, Protocol 12 to the ECHR, 4 November 2000, ETS 177; African Union, African Charter on Human and Peoples’ Rights (Banjul Charter), OAU Doc. CAB/LEG/67/3, Rev. 55, 1520 UNTS 217 (1982), Art. 2; African Union, African Charter on the Rights and Welfare of the Child, OAU Doc. CAB/LEG/24.9/49 (1990), Art. 3; Organization of American States, American Declaration of the Rights and Duties of Man, OEA/Ser.L.V.II.23, Doc. 21, Rev. 6 (1948), reprinted in *Basic Documents Pertaining to Human Rights in the Inter-American System*, OEA/Ser.L.V./II.82, Doc. 6, Rev. 1, p. 17, Art. 11; Organization of American States, American Convention on Human Rights (ACHR), OEA/Ser.K/XVY1.1, Doc. 65, Rev. 1, Corr. 1, Organization of American States Treaty Series No. 36 (1970), Art. 1; League of Arab States, Arab Charter on Human Rights, 22 May 2004, reprinted in *International Human Rights*, Vol. 12, Rep. 893 (2005), Arts 3 and 11; European Union, Charter of Fundamental Rights of the European Union (EU Charter), 26 October 2012, 2012/C 326/02, Art. 21.
5. UDHR, *ibid.*, Art. 7; American Declaration, *ibid.*, Art. 11; ACHR, *ibid.*, Art. 24; ECHR Protocol 12, *ibid.*; Arab Charter on Human Rights, *ibid.*, Art. 11; EU Charter, *ibid.*, Art. 20.
6. UN Human Rights Committee, “General comment No. 18: Non-discrimination (37th session, 1989)” in “Compilation of general comments and general recommendations adopted by human rights treaty bodies”, 1994, UN Doc. HRI/GEN/1/Rev. 1, p. 26, para. 1; Common Article 3 to Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (GCI), 12 August 1949, 75 UNTS 31, Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (GCII), 12 August 1949, 75 UNTS 85, Geneva Convention Relative to the Treatment of Prisoners of War (GCIII), 12 August 1949, 75 UNTS 135 and Geneva Convention Relative to the Protection of Civilian Persons in Time of War (GCIV), 12 August 1949, 75 UNTS 287; GCIII, Art. 16; GCIV, Art. 13; Protocol Additional to the Geneva Conventions of 12 August 1949 and Relating to the Protection of Victims of International Armed Conflicts (API), 1125 UNTS 3, Arts 9(1), 69(1), 70(1) and 75(1); Protocol Additional to the Geneva Conventions of 12 August 1949 and Relating to the Protection of Victims of Non-International Armed Conflicts (APII), 1125 UNTS 609, Arts 2(1), 4(1) and 18(2). See also International Law Commission, “Draft articles of the responsibility of states for internationally wrongful acts”, UN General Assembly, 56th Session, 2001, Supp. 10, UN Doc. A/56/10.
7. Common Article 2 to GCI, GCII, GCIII and GCIV, *ibid.*
8. According to the theory of persistent objector, a state that objects consistently to the application of a rule of international law while it is still in the process of forming into a rule will not be bound by it when it comes into existence. See further Elias Olufemi, “Persistent objector”, in Rüdiger Wolfrum (ed.), *The Max Planck Encyclopaedia of Public International Law*, Vol. VIII (Oxford: Oxford University Press, 2012), pp. 280–285.
9. For general background on human rights law see Dinah Shelton (ed.), *The Oxford Handbook of International Human Rights Law* (Oxford: Oxford University Press, 2013); Olivier de Schutter, *International Human Rights Law: Cases, Materials, Commentary*, 2nd edn (Cambridge: Cambridge

- University Press, 2014); Philip Alston and Ryan Goodman, *International Human Rights* (Oxford: Oxford University Press, 2012).
10. Mary Robinson, "Realizing human rights: Take hold of it boldly and duly", lecture, Oxford University, 11 November 1997, quoted in Monique Castermans-Holleman, Fried Van Hoof and Jacqueline Smith (eds), *The Role of the Nation State in the 21st Century: Human Rights, International Organisations and Foreign Policy – Essays in Honour of Peter Baehr* (The Hague: Kluwer Law International, 1998), p. 440.
 11. See, for example, International Court of Justice (ICJ), *United States v. Iran*, 1980 ICJ, 3, 42, Judgment of 24 May; International Conference on Human Rights, "Declaration of Tehran", 1968, UN Doc. A/CONF.32/41.
 12. See for background UN Office of the High Commissioner for Human Rights (OHCHR), "The International Bill of Human Rights", Fact Sheet No. 2 (Rev. 1), www.ohchr.org/Documents/Publications/FactSheet2Rev.1en.pdf.
 13. CERD and CRC, note 4 above; Convention against Torture and Other Cruel, Inhumane and Degrading Treatment and Punishment 1984, 1465 UNTS 85; International Convention for the Protection of All Persons from Enforced Disappearance 2006, 2716 UNTS 3. For a full list of the core international treaties see www.ohchr.org/EN/ProfessionalInterest/Pages/CoreInstruments.aspx. In addition to these treaties, states have adopted optional protocols that add further rights, as well as treaty monitoring bodies and mechanisms for individuals to bring complaints of violations of rights provided under treaties.
 14. See American Declaration, ACHR, Banjul Charter, ECHR and EU Charter, note 4 above. It is outside the scope of this chapter to give a full overview of the regional systems of human rights protection. For further information see, for example, Rhona Smith, *Textbook on International Human Rights*, 6th edn (Oxford: Oxford University Press, 2012), pp. 86–154.
 15. See further UN Human Rights Committee, "General comment no. 31 [80]: The nature of the general legal obligation imposed on States Parties to the Covenant", 26 May 2004, CCPR/C/21/Rev.1/Add.13.
 16. Martin Scheinin, "Core rights and obligations", in Shelton, note 9 above, pp. 536–538.
 17. UN Human Rights Committee, note 6 above, paras 13 and 18.
 18. Convention on the Rights of Persons with Disabilities 2007, 2515 UNTS 3.
 19. Convention on the Elimination of Discrimination against Women 1979 (CEDAW), 1249 UNTS 13.
 20. Committee on the Elimination of Discrimination against Women (CEDAW Committee), "General recommendation No. 30: On women, conflict prevention, conflict and post-conflict situations", CEDAW/C/GC/30, 18 October 2013, para. 2. The committee was established by CEDAW, *ibid.*, Art. 17, and monitors state party implementation of the treaty through receiving national reports (Art. 18) and individual communications and initiates inquiries into situations of grave or systematic violations of women's rights by states that have ratified the Optional Protocol to the Convention on the Elimination of Discrimination against Women 1999, 2131 UNTS 83. The committee also issues general recommendations clarifying the scope and content of the rights and obligations set out in the convention. See www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx.
 21. CEDAW, note 19 above, Art. 2 (policy measures).
 22. *Ibid.*, Arts 7 (political and public life) and 8 (representation).
 23. *Ibid.*, Arts 1 (discrimination), 2 (policy measures), 3 (guarantee of basic human rights and fundamental freedoms), 4 (special measures), 5 (sex role stereotyping and prejudice), 6 (prostitution), 10 (education), 12 (health) and 14 (rural women).
 24. See CEDAW Committee, note 20 above, paras 48–52. See also Swedish Red Cross, "Study on access to health care during armed conflict and other emergencies: Examining violence against health care from a gender perspective", March 2015, http://healthcareindanger.org/wp-content/uploads/2015/12/report_-_study_on_hcidg_src_tryck.pdf.
 25. In March 2014 the OHCHR deployed the Human Rights Monitoring Mission in Ukraine (HRMMU) upon the invitation of the government of Ukraine; it also provides regular updates on the human rights situation in Crimea. The HRMMU reports are available at www.ohchr.org/EN/Countries/ENACARegion/Pages/UARports.aspx.
 26. See OHCHR, "Report on the human rights situation in Ukraine, 8 October 2014", paras 142–148, www.ohchr.org/Documents/Countries/UA/OHCHR_eighth_report_on_Ukraine.pdf; OHCHR, "Report on the human rights situation in Ukraine, 1 June 2015", para. 56 (noting that the International Organization for Migration had already identified 230 victims of trafficking from Ukraine), www.ohchr.org/Documents/Countries/UA/11thOHCHRreportUkraine.pdf; OHCHR, "Report on the human rights situation in Ukraine, 16 May to 15 August 2015", paras 172–173, www.ohchr.org/Documents/Countries/UA/11thOHCHRreportUkraine.pdf; OHCHR, "Report on the human rights situation in Ukraine, 1 June 2015", para. 171, www.ohchr.org/Documents/Countries/UA/11thOHCHRreportUkraine.pdf; OHCHR, "Report on the human rights situation in Ukraine, 16 September 2014", paras 150–172, www.ohchr.org/Documents/Countries/UA/OHCHR_sixth_report_on_Ukraine.pdf; OHCHR, "Report on

- the human rights situation in Ukraine, 15 December 2014”, para. 80, www.ohchr.org/Documents/Countries/UA/OHCHR_eighth_report_on_Ukraine.pdf.
27. OHCHR, “8 October 2014”, *ibid.*, paras 142–148; OHCHR, “1 June 2015”, *ibid.*, para. 56.
 28. Gloria Gaggioli, “Sexual violence in armed conflicts: A violation of international humanitarian law and human rights law”, *International Review of the Red Cross*, Vol. 96, No. 894 (2014), pp. 503–538 at p. 510.
 29. CEDAW Committee, note 20 above, para. 29.
 30. There is specific regulation in international law relating to the crime of trafficking. See Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, 2 December 1949, UN Doc. A/RES/317, 96 UNTS 271; Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, 2000, 2237 UNTS 319; Protocol against the Smuggling of Migrants by Land, Sea and Air, 15 November 2000, GA Res. 55/25, Annex III, UN GAOR 55th Session, 2001, Supp. 49, UN Doc. A/45/49 (Vol. I), p. 65, 40 ILM 384 (2001). These protocols supplement the Convention against Transnational Organized Crime, 2225 UNTS 209, opened for signature on 15 December 2000, entered into force 29 September 2003. This is also addressed in CEDAW, note 19 above, Art. 6; CRC, note 4 above, Arts 4–5; International Labour Organization, Worst Forms of Child Labour Convention, 17 June 1999, C182. See also Optional Protocol to the CRC on the sale of children, child prostitution and child pornography, GA Res. 54/263, Annex II, UN GAOR 54th Session, 2000, Supp. 49, UN Doc. A/54/49, p. 6, which provides detailed requirements for criminalization of these activities.
 31. CEDAW Committee, note 20 above, para. 35. See also UN Security Council, “Resolution 1820 (2008) on women, peace and security”, 19 June 2008, UN Doc. S/RES/1820.
 32. CEDAW Committee, note 20 above, para. 36.
 33. World Health Organization, “Violence against women in situations of armed conflict”, 1997, www.who.int/gender/violence/v7.pdf; UN Special Rapporteur on Violence against Women, “Integration of the human rights of women and the gender perspective”, 23 January 2001, UN Doc. E/CN.4/2001/73, para. 57. In the context of the conflict in Ukraine, increases in domestic violence have been noted by the HRMMU. See, for example, OHCHR, “Report on the human rights situation in Ukraine, 16 August to 15 November 2015”, para. 100, www.ohchr.org/Documents/Countries/UA/12thOHCHRreportUkraine.pdf; OHCHR, “Report on the human rights situation in Ukraine, 16 February to 15 May 2015”, para. 100, www.ohchr.org/Documents/Countries/UA/10thOHCHRreportUkraine.pdf; OHCHR, “16 September 2014”, note 26 above, paras 147–149.
 34. For general background on international humanitarian law see Dieter Fleck (ed.), *The Handbook of International Humanitarian Law*, 3rd edn (Oxford: Oxford University Press); Yoram Dinstein, *The Conduct of Hostilities under the Law of International Armed Conflict* (Cambridge: Cambridge University Press, 2010); Andrew Clapham and Paola Gaeta (eds), *The Oxford Handbook of International Law in Armed Conflict* (Oxford: Oxford University Press, 2014); ICRC, *ICRC Handbook on Rules Governing Military Operations* (Geneva: ICRC, 2014). For law applicable in peace operations see Terry D. Gill and Dieter Fleck, *The Handbook of the International Law of Military Operations* (Oxford: Oxford University Press, 2011), pp. 81–162.
 35. See ICJ, “Legal consequences of the construction of a wall in the Occupied Territories (advisory opinion)”, ICJ Reports, 2004, para. 106. See further Derek Jinks, “International human rights law in time of armed conflict”, in Clapham and Gaeta, *ibid.*, pp. 656–674.
 36. See Common Article 1 to GCI, GCII, GCIII and GCIV, note 6 above. See also API, note 6 above, Art. 1(1); APII, note 6 above, Art. 1(1). See further ICRC, “Database of customary international humanitarian law”, Rule 139, www.icrc.org/customary-international-humanitarian-law/eng/docs/v1_rul_rule139. For requirements under international humanitarian law during peacetime see, for example, GCI, note 6 above, Arts 45 and 47–49; GCII, note 6 above, Arts 46 and 48–50; GCIII, note 6 above, Arts 127–129; GCIV, note 6 above, Arts 144–146; API, note 6 above, Arts 80 and 83–85.
 37. See, for example, national practice relating to Rule 142 of the ICRC database, *ibid.*, on ensuring instruction on international humanitarian law within armed forces.
 38. ICRC, “Gender perspectives on international humanitarian law: Report summary of international expert meeting held 4–5 October 2007 in Stockholm, Sweden”, 2007, p. 5, www.icrc.org/eng/assets/files/other/international_humanitarian_law_and_gender.pdf.
 39. GCIV, note 6 above, Art. 2.
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45. For example, GCIV, note 6 above, Arts 14, 27, 38(5), 50, 97, 124 and 132; API, note 6 above, Art. 75; APII, note 6 above, Art. 5(2)(a). There is criticism that many of the provisions within the Geneva Conventions addressing the protection needs of women are based on underlying gendered assumptions relating to outdated ideas of family honour and gendered stereotypes on the roles of women within the family. See, for example, GCIV, Art. 27(2), which provides that women shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution or any form of indecent assault. This developed somewhat in the drafting of the additional protocols. See, for example, the wording of API, Art. 76(1), compared with the wording of GCIV, Art. 27(2).
46. GCI, note 6 above, Art. 12; GCII, note 6 above, Art. 12. See also GCIII, note 6 above, Art. 14, setting out the obligation to treat women prisoners of war (POWs) with due regard to their sex; they must also in all cases benefit by treatment as favourable as that granted to men. In the execution of penalties for POWs following disciplinary or judicial measures, GCIII, Art. 88(3) provides that in no case may a woman POW be awarded or sentenced to a punishment more severe, or treated while undergoing punishment more severely, than a male member of the armed forces of the detaining power dealt with for a similar offence. Special protection is also afforded against the exercise of the death penalty for persons under the age of 18 at the time of the offence, pregnant women and mothers of young children under API, note 6 above, Arts. 75(5) and 77(5), and APII, note 6 above, Art. 6(4).
47. In relation to families see also API, note 6 above, Arts 32, 74 and 75(5).
48. GCIII, note 6 above, Arts 25, 97 and 108; GCIV, note 6 above, Arts 76, 85 and 124. GCIV, Art. 82 also provides that interned members of the same family, and in particular parents and children, shall be lodged together in the same place throughout the duration of their internment, except when separation of a temporary nature is necessitated for reasons of employment or health, or for the purposes of enforcement of penal and disciplinary sanction under Chapter IX of the Geneva Conventions.
49. See, for example, European Court of Human Rights, *Valasinas v. Lithuania*, Application No. 44558/98, Judgment, 24 July 2001, para. 117. On conditions in detention see further United Nations, “Standard minimum rules for the treatment of prisoners (Mandela Rules)”, 29 September 2015, UN Doc. A/C.3/70/L.3.
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51. See, for example, *ibid.*, Arts 20 (wounded and sick, hospital staff) and 21 (wounded and sick, land and sea transport).
52. *Ibid.*, Arts 50 (children), 76 (treatment of detainees), 85 (accommodation, hygiene), 97 (valuables and personal effects) and 124 (premises for disciplinary punishments); API, note 6 above, Arts 75 (fundamental guarantees) and 75(5) and 76 (protection of women).
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54. Such prohibitions date back to the Lieber Codes of 1863, Art. 44. See also GCIV, note 6 above, Art. 27; API, note 6 above, Art. 76.
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