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Factoring Gender into Kinetic Operations

Jody M. Prescott
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ABSTRACT: US military practice neither considers the gendered effects of kinetic actions in planning and executing operations nor tracks and measures them. The Department of Defense's implementation of the Women, Peace, and Security Act of 2017 instead focuses on the role of women in preventing armed conflict and resolving it. The implementation of the Department of Defense's new *Civilian Harm Mitigation and Response Action Plan* provides an opportunity to close this gap in an operationally relevant way.

Keywords: Women, Peace, and Security (WPS), civilian harm and mitigation response (CHMR), gender, targeting, operational relevance

Protecting civilians during armed conflict has become an area of increasing focus for the United States, NATO, and non-NATO US allies such as Australia.¹ Russia's widespread and often indiscriminate attacks against Ukrainian civilians and infrastructure have heightened this focus.² The US Army is the designated joint proponent for the new Department of Defense (DoD) *Civilian Harm Mitigation and Response (CHMR) Action Plan*, which establishes the protection of civilians in US military operations as a strategic and moral requirement.³ It takes an expanded view of harm to civilians beyond counting casualties and looks at impacts to the "civilian environment," including "the personnel, organizations, resources, infrastructure, essential services, and systems on which civilian life depends."⁴ Although expansive, this list does not

Acknowledgements: The author thanks the reviewers who contributed their valuable expertise and experience to this article, and, in particular, he thanks Mr. Lewis B. Bumgardner for his outstanding research and editing in helping put this article together.

1. US Army War College (USAWC), *Protection of Civilians Military Reference Guide*, 2nd ed. (Carlisle, PA: Peacekeeping and Stability Operations Institute, 2018); Allied Command Operations (ACO), *Protection of Civilians – ACO Handbook* (Mons, BE: ACO, 2020), <https://shape.nato.int/news-archive/2021/the-protection-of-civilians-allied-command-operations-handbook>; and Australian Civil-Military Centre (ACMC), *Australian Guidelines for the Protection of Civilians* (Canberra: ACMC, 2015).

2. Karolina MacLachlan, "Protection of Civilians: A Constant in the Changing Security Environment," *NATO Review* (blog), June 17, 2022, <https://www.nato.int/docu/review/articles/2022/06/17/protection-of-civilians-a-constant-in-the-changing-security-environment/index.html>.

3. Department of Defense (DoD), *Civilian Harm Mitigation and Response Action Plan (CHMR-AP)* (Washington, DC: DoD, August 25, 2022, I), <https://media.defense.gov/2022/Aug/25/2003064740/-1/-1/1/CIVILIAN-HARM-MITIGATION-AND-RESPONSE-ACTION-PLAN.PDF>.

4. DoD, *CHMR-AP*, 1.

account for important social factors, such as gender inequality, that could place certain portions of the civilian population at disparate levels of risk to the effects of a military action.

Gender inequality is a significant driver of some of the more severe effects of armed conflict inflicted upon women and girls. For example, even before the Taliban regained control of Afghanistan in 2021, Afghan women and girls experienced extreme gender inequality, particularly in rural areas.⁵ Not only are they largely confined to their home compounds, but they also rely upon this modest infrastructure in their everyday lives. It provides basic resources for the domestic work and family care to which they are relegated, and it protects them from sexual violence from men outside their families.⁶

Thus, an airstrike against an insurgent's family compound would disproportionately affect the female occupants, who would lose the utility and safety it provided.⁷ The immediate security threat the insurgent posed to the operation would be resolved, but at the cost of destabilizing the civil society the strike was intended to protect. Failing to consider gender in civilian-centric operations threatens the mission's long-term success.⁸ The *CHMR Action Plan* could address this if the US Army were to include gender among the civilian environment factors it recognizes in operational areas.

Before looking at the action plan in detail from the perspective of gender, this article first identifies a troubling gap between the lines of effort established by the DoD implementation of the Women, Peace, and Security (WPS) Act of 2017 and effectively addressing gender in the context of the lethal parts of kinetic operations. Next, while the *CHMR Action Plan* contains no reference to gendered harm itself, it has features in its implementation that are promising points of entry for the inclusion of gender considerations. This article then assesses the degree to which US doctrine and guidance have already factored in the protection of civilians and operational gender considerations.

5. US Department of Homeland Security, US Citizenship and Immigration Services, "Designation of Afghanistan for Temporary Protected Status," 87 Fed. R. 30976, 30982-30983 (May 20, 2022), <https://www.federalregister.gov/documents/2022/05/20/2022-10923/designation-of-afghanistan-for-temporary-protected-status>.

6. Farbia Nawa, "For Afghan Refugee Women, There's No Escape from Violence," *Foreign Policy* (website), April 5, 2019, <https://foreignpolicy.com/2019/04/05/for-afghan-refugee-women-theres-no-escape-from-violence/>.

7. Jody M. Prescott, "The Principle of Proportionality and the Operational Relevance of Climate Change—A Gendered Perspective," *NATO Legal Gazette* 43 (2022): 86.

8. Jody M. Prescott, "Moving from Gender Analysis to Risk Analysis of Failing to Consider Gender," *RUSI Journal* 165 (2020): 8-11.

Existing US doctrine and guidance provide a platform the US Army could use to include gender considerations in the implementation of the action plan. The doctrine and guidance do not, however, provide an obvious entry point to factor in gendered harms from kinetic actions before the harms would occur. Further, in combined and joint targeting, efforts more fully addressing gendered harms to civilians would likely impinge on positions the United States has already staked out consistent with the DoD Women, Peace, and Security implementation plan.

Women, Peace, and Security Strategy and Implementation Plan

The UN Security Council's passage of Resolution 1325 on Women, Peace and Security in 2000 resulted in many nations adopting action plans institutionalizing greater protections for women and girls in armed conflicts. It also urged nations to make full use of international human rights law and the law of armed conflict.⁹ The United States is unique in dealing with WPS issues because, rather than just creating a national action plan, it passed legislation to formalize its approach to gender issues and security through the Women, Peace, and Security Act of 2017. The law's statement of US policy, "to promote the meaningful participation of women in all aspects of overseas conflict prevention, management, and resolution, and post-conflict relief and recovery efforts," is less comprehensive than the scope of UN Security Resolution 1325.

The tasks the law assigned to the Department of Defense reflect the law's approach. These tasks include training DoD personnel on the importance of including women in conflict prevention and resolution processes, considering gender in international law, preventing human trafficking, and "[e]ffective strategies and best practices for ensuring meaningful participation for women."¹⁰ The national WPS strategy in 2019 amplified this statutory avoidance of gender in the context of armed conflict by aiming to promote "the meaningful inclusion of women in processes to prevent, mediate, resolve, and recover from deadly conflict or disaster."¹¹ The DoD *Women, Peace, and Security Strategic Framework Implementation Plan* provides intermediate objectives to accomplish the national strategy,

9. United Nations Security Council (UNSC), S/RES/1325 – Security Council Resolution on Women and Peace and Security (2000).

10. WPS Act of 2017, § 6(b)(1), (2), and (3).

11. White House, *United States Strategy on Women, Peace, and Security* (Washington, DC: White House, June 2019), 4, 6, 16, https://trumpwhitehouse.archives.gov/wp-content/uploads/2019/06/WPS_Strategy_10_October2019.pdf.

with measurable effects, but it too avoids bringing gender considerations into deadly armed conflict.¹²

The Department of Defense has made progress incorporating gender considerations into high-level planning and other military activities. Significant numbers of US military personnel have now received training to work as gender advisers, and combatant commands and other organizational elements now have gender advisers and staff.¹³ This is important work—however, the remit of these personnel is not gender considerations in the application of kinetic force in armed conflict, but instead security cooperation and the like.¹⁴

Many factors contribute to the gap between current WPS efforts and dealing meaningfully with gender considerations in the conduct of armed conflict. These factors include the lack of institutionalization within the US military of relevant lessons learned from gender-aware efforts during the wars in Afghanistan and Iraq, such as Female Engagement Teams and Special Operational Forces Cultural Support Teams.¹⁵ In addition, gender-consideration proponents have not articulated an overarching theory of gender’s operational relevance that works consistently across the planning, training, and execution phases of all missions.¹⁶ Given these factors, it likely made more sense for the WPS program to steer around the gendered effects of kinetic actions than to work with them incompletely.

Thus, the WPS program cannot be the primary driver for addressing gender considerations in US actions that harm civilians or the civilian environment in kinetic operations. Instead, if gender considerations are

12. DoD, *DoD Women, Peace, and Security Strategic Framework and Implementation Plan* (Washington, DC: DoD, June 2020), https://media.defense.gov/2020/Jun/11/2002314428/-1/-1/1/WOMEN_PEACE_SECURITY_STRATEGIC_FRAMEWORK_IMPLEMENTATION_PLAN.PDF.

13. DoD, “DoD Announces Women, Peace, and Security 2022 Report,” *Defense News* (website), July 19, 2022, <https://www.defense.gov/News/Releases/Release/Article/3098291/dod-announces-women-peace-and-security-2022-report/#:~:text=The%20Joint%20Staff%20and%20Combatant%20Commands%20conducted%20a,personnel%20qualified%20to%20serve%20as%20Gender%20Advisors%20%28GENADs%29.>

14. Commander, Naval Forces Japan, “U.S. Indo-Pacific Command Holds Gender in Security Cooperation Course at Yokosuka,” *Stars and Stripes Japan* (website), January 20, 2020, <https://japan.stripes.com/community-news/us-indo-pacific-command-holds-gender-security-cooperation-course-yokosuka>; and Monica S. Herrera (@Monica S. Herrera), “Earlier this month, our U.S. Indo-Pacific Command WPS team led a Gender Focal Point course,” LinkedIn (website), December 29, 2023, https://www.linkedin.com/in/monica-s-herrera?miniProfileUrn=urn%3AIn%3Afs_miniProfile%3AACoAAABTrhABH1woSRbX_3Z8j7BTPHqGBwnx3KU&lipi=urn%3AIn%3Apage%3Ad_flagship3_search_srp_content%3B43b54WrNtL2MjhRqkUWCAg%3D%3D.

15. Jody M. Prescott, *Armed Conflict, Women and Climate Change* (London: Routledge, 2018), 145, 220–21.

16. Jody M. Prescott, “Why Militaries Need a Theory of Gender’s Operational Relevance,” *ICRC, Humanitarian Law & Policy* (blog), July 7, 2022, <https://blogs.icrc.org/law-and-policy/2022/07/07/militaries-theory-gender-operational-relevance/>.

to be addressed, the implementation of the *CHMR Action Plan* needs to include them.

Civilian Harm Mitigation and Response Action Plan

Like the WPS Act of 2017, the *CHMR Action Plan* does not directly address the problem of gender blindness in planning and conducting kinetic operations. Four lines of effort within the action plan, however, provide opportunities to include gender considerations in assessing harm to civilians and the civilian environment. These lines of effort include prioritizing information collection for mission accomplishment, including the discriminate use of force; supporting commanders with resources for civilian protection; integrating civilian protection into mission objectives from the beginning of operations; and prioritizing the protection and restoration of the civilian environment, circumstances permitting.¹⁷

These mutually reinforcing lines of effort present opportunities to factor gender into operational planning, which ultimately supports the action plan's overall goal of responding to and mitigating civilian harm. Although ambitious, the first three lines of effort are largely within the DoD's capacity to realize. The effective implementation of the fourth line of effort (the protection and restoration of the civilian environment) would likely face significant obstacles in the field.

Informed Excellence

The body of the *CHMR Action Plan* describes these lines of effort in greater detail and sets out 11 specific objectives to be accomplished in phases through fiscal year 2025.¹⁸ The information-collection line of effort is fundamental to practicable implementation of the action plan and the accomplishment of these objectives. None of the other lines of effort will succeed without the creation of a reliable and detailed base of data encompassing the features and trends in any given civilian environment. Creating this base of data is important from a gender perspective because informed analysis on the potential impacts of gender inequality requires gathering sex- and gender-disaggregated data at a granular level.¹⁹

17. DoD, *CHMR-AP*, I.

18. DoD, *CHMR-AP*, 12–14, 17–23.

19. Jody M. Prescott, "NATO Gender Mainstreaming: A New Approach to War amongst the People?" *RUSI Journal* 158, no. 5 (2013): 60.

Informed analysis is crucial for accomplishing both the second and the third lines of effort and to ensure the incorporation of guidance on addressing civilian harm into strategy, doctrine, professional military education, training, and exercises.²⁰ For credibility with military audiences, this guidance must be based on robust data sets that can be used to develop closely reasoned and transparent analysis. Given the gender-differentiated human-security impacts of armed conflict in situations of underlying gender inequality, collection and inclusion of data related to these gender-based harms will form more complete operational pictures for commanders and planners.²¹ Here, the second line of effort in the *CHMR Action Plan*, the establishment of the Civilian Protection Center of Excellence, comes into play.

The *CHMR Action Plan* recognizes that supporting commanders with the proper resources to address civilian harm in mission areas is crucial to the plan's success in the field. The establishment of a Civilian Protection Center of Excellence is intended to develop and "institutionalize the advancement of knowledge, practices, and tools" quickly to address civilian harm. The action plan anticipates that the center will require an initial core staff of 30 full-time personnel, which would increase to between 50 and 70 once it becomes fully operational. This endeavor would be no small investment. It would be necessary to support the center's efforts to provide direct support to operational commands; develop policy, doctrine, and the Joint Force regarding civilian protection; and monitor and perform innovative analyses of civilian-harm data to inform DoD leaders of critical trends. The *CHMR Action Plan* expects the center to provide services across all phases of an operation and to include a broad range of administrative and operational activities, such as helping to develop command policies, standard operating procedures and tools, and exercise support and capturing lessons learned.²²

The focus on standard operating procedures is among the objectives that lend themselves to the inclusion of gender considerations. Per the earlier example of the significance of home compounds to the human-security needs of women and girls in Afghanistan, standard operating procedures that factor these needs into the employment of artillery or air-dropped munitions could be one way to appropriately address gender in the context of kinetic operations.²³ To make this work, the establishment of the pattern of life at or around the home compounds would be important, which poses

20. DoD, *CHMR-AP*, 9–11.

21. Prescott, "Moving from Gender Analysis," 8–11.

22. DoD, *CHMR-AP*, I, 6. 8.

23. Prescott, "Principle of Proportionality," 86–87.

resource issues, such as the availability of drones to provide real-time data and the availability of sex- and gender-disaggregated data related to the target area in general.

The Civilian Protection Center of Excellence will also help ensure the third line of effort and the integration of civilian protection, including awareness of gender factors, into mission objectives from the beginning of operations. This integration does not begin at the stage of mission planning but with the creation of policy and doctrine that support the development of the Joint Force. Importantly, Joint Force development applies to intellectual capital and to Joint Force members. Accordingly, the center will create professional pathways and certification processes for essential personnel and functions.²⁴

Protection and Restoration of the Civilian Environment

The development of the Joint Force will be fundamental in addressing the final line of effort in the *CHMR Action Plan* that lends itself to the productive inclusion of gender considerations in addressing civilian harm: the protection and restoration of the civilian environment.²⁵ Although the other lines of effort are ambitious from a technical and resource perspective, they are largely within DoD control to implement and regulate. This line of effort is quite broad and only partially within DoD's capability to execute. Further, it would appear to call for the concerted use of multidisciplinary skill sets in very challenging operational settings, perhaps similar to the Provincial Reconstruction Teams and the Agriculture Development Teams used by US forces in Afghanistan.²⁶

The monetary component of mitigating and responding to civilian harm illustrates the scope of the challenges personnel working on these cases might face. Before the wars that followed the al-Qaeda attacks on 9/11, the claims process used by US forces to handle damage claims did not normally cover combat injuries to people or damages to things that would fall in the civilian environment. In Afghanistan and Iraq, the need to maintain civilian support during intense insurgencies provided alternate sources of compensation for damages, including Commanders' Emergency Response Programs, to make so-called *ex gratia* payments. These payments were not ordinarily authorized by US law and therefore were not based on a recognized legal obligation.²⁷

24. DoD, *CHMR-AP*, 6.

25. DoD, *CHMR-AP*, 9.

26. Jody M. Prescott, "Climate Change, Gender, and Rethinking Military Operations," *Vermont Journal of Environmental Law* 15, no. 4 (2014): 790–94.

27. Jody M. Prescott, "Claims," in *The Handbook of the Law of Visiting Forces*, 2nd ed., ed. Dieter Fleck (Oxford, UK: Oxford University Press, 2018), 282–90, 296–300, 311–36.

In 2005, Congress began to appropriate funds to pay for claims resulting from kinetic actions, so there is now a sound legal basis upon which these claims could be paid.²⁸ Under the *CHMR Action Plan*, in fiscal year 2024 the Department of Defense will comprehensively address the policies applicable to these payments, so there should soon be practicable standards in place to adjudicate these claims.²⁹ The larger problem will then likely be the logistics of making payments, given there will be many claimants who live far from US military units and there may be problems in finding reliable interpreters.³⁰

Although the action plan positions the center of excellence as a primary source for creating doctrine, policy, and procedures to support its full implementation, the center would not be writing on a blank slate regarding the doctrinal treatment of gender in operations specifically or on the larger issue of protection of civilians in general. Thus, it is important to assess where US doctrine already addresses gender, how it handles the relationship between gender and the protection of civilians, and where it is lacking because this information would affect the consideration of gendered civilian harms in the implementation of the action plan.

Gender in US Doctrine

Work over the last decade has included operational treatments of gender in US doctrine.³¹ The treatment of gender in joint and US Army doctrine is uneven, however. In some cases, US doctrine addresses gender considerations in detail, including the existing US Army doctrine and guidance on protection of civilians. Other doctrine (such as civil-military operations doctrine, which focuses on the civilian environment) is gender blind.³² To appreciate fully the scope of work that the Civilian Protection Center of Excellence would face to incorporate gender considerations into doctrine for civilian protection, it is important to first establish where the relevant doctrine already includes treatments of operational gender considerations, then to identify the essentially gender-blind doctrine, and finally to examine the doctrine that the *CHMR Action Plan* identifies

28. Joanna Naples-Mitchell, "Under the Pentagon's New Civilian Harm Action Plan, Addressing Credible Cases Is a Moral Imperative," *Just Security* (blog), January 4, 2023, <https://www.justsecurity.org/84563/under-pentagons-civilian-harm-plan-addressing-credible-cases-moral-imperative/>; and Matt Gluck, "An Examination of U.S. Military Payments to Civilians Harmed during Conflict in Afghanistan and Iraq," *Lawfare* (blog), October 8, 2020, <https://www.lawfareblog.com/examination-us-military-payments-civilians-harmed-during-conflict-afghanistan-and-iraq>.

29. DoD, *CHMR-AP*, 26.

30. Gluck, "U.S. Military Payments"; and Captain Dimitri Faracos (US Army), former claims officer, Afghanistan, interview with author, June 20, 2016.

31. Jody M. Prescott, "Gender Blindness in US Doctrine," *Parameters* 50, no. 4 (Winter 2020): 23.

32. Prescott, "Gender Blindness," 22–26.

as requiring modification. This examination is necessary because operational planning should begin with a foundation in doctrine; thus, inclusion of operational gender considerations in kinetic operations must first assess where doctrine does not consider these factors, where it does and to what depth.

Gender-aware Doctrine

The choice of the US Army as the joint proponent for implementing the *CHMR Action Plan* was likely premised in part upon the work already done by the Peacekeeping and Stability Operations Institute at the US Army War College. The Peacekeeping and Stability Operations Institute was the preparing agency for *Protection of Civilians*, Army Techniques Publication (ATP) 3-07.6.³³ Given this work, selection of the US Army as the joint proponent makes sense.

Protection of Civilians contains an extensive discussion of gender issues in operations throughout, devoting a section specifically to the protection of women and girls.³⁴ It describes gender issues as falling along two primary dimensions, “protective” and “participatory.” The protective dimension does not mean increasing the protection of women and girls from the kinetic effects of operations. Instead, it focuses on mitigating “harm, exploitation, discrimination, abuse, conflict-related sexual violence, and human trafficking”; providing access to humanitarian assistance; and safeguarding women and girls’ human rights.³⁵

In 2018, the Peacekeeping and Stability Operations Institute published a revised version of its *Protection of Civilians Military Reference Guide*, which it intended to serve as supplemental guidance to existing doctrine and policy and as a textbook for the protection of civilians. Like *Protection of Civilians*, the guide also contains an extensive and detailed discussion of the role of gender considerations in providing greater protection to civilians. Although the well-developed chapter on risks civilians face in operations includes some gender-differentiated risks faced by women and girls, it does not address the impacts of kinetic operations upon them. The guide notes that US forces support the protection of civilians in two general ways: avoiding civilian harm by operating in conformance with the law of armed conflict and by conducting “offensive, defensive,

33. Headquarters, Department of the Army (HQDA), *Protection of Civilians*, Army Techniques Publication (ATP) 3-07.6 (Washington, DC: HQDA, 2015), iii.

34. HQDA, *Protection of Civilians*, 4-4-4-7.

35. HQDA, *Protection of Civilians*, 1-6.

and stability activities expressly intended to mitigate harm to civilians”³⁶ This description of protection of civilians operations does not provide an easy entry point for including the gender-differentiated effects of kinetic operations in the implementation of the action plan.

The US military’s understanding of the law of armed conflict (LOAC) does not consider the impact of secondary effects on civilians from using armed force in a commander’s analysis when assessing whether an engagement is proportional. Instead, traditional US formulations of the principle of proportionality focus on direct impacts to civilians (such as immediate injury, death, or loss of property).³⁷ The United States is not an outlier in this regard. Internationally accepted understandings of proportionality also do not differentiate between civilians in terms of considering gendered impacts of kinetic operations.³⁸

Further, the activities discussed in the reference guide mitigate gendered harm caused by others. For example, it discusses having units conduct patrols along routes civilian women and girls use to draw water and gather firewood to discourage acts of sexual violence against them by unlawful elements.³⁹ Rather than addressing kinetic military activities in which civilian women and girls might suffer significant and foreseeable secondary harm, these understandings of the law of armed conflict and the protection of civilians have the effect of sidestepping them regarding US forces’ actions. The absence of gender considerations in civil-military operations—the most civilian-centric doctrine—compounds this limited perspective.

Gender-blind Doctrine

In addition to including gender considerations, *Protection of Civilians* recognizes the substantial role civil-military operations could play in managing a civilian protection program. It observes that civil-military operations representatives are the primary staff officers tasked with ensuring the inclusion of civil considerations into planning and that this could involve maintaining “civil information databases, the civil reconnaissance plan, or the making of amends.” Further, *Protection of Civilians* specifically addresses the role civil-military operations centers could play in providing military units a better understanding of the civilian situation in an area of operations and in facilitating “remedial action regarding civilian

36. USAWC, *Protection of Civilians*, v, vii.

37. DoD, Office of General Counsel (OGC), *Law of War Manual* (Washington, DC: DoD, OGC, 2015), 241–42.

38. Jody M. Prescott, “Linking Revisions to the AP I Commentary to Gendered Effects of Kinetic Operations,” *Loyola University of Chicago International Law Review* 18, no. 2 (forthcoming).

39. USAWC, *Protection of Civilians*, 67–68.

vulnerabilities and threats.”⁴⁰ These civilian-centric functions and capabilities may lend themselves to the implementation of the action plan, given its emphasis on civilians and the civilian environment.

Unfortunately, civil-military operations doctrine does not meaningfully address gender. At the joint level, for example, *Civil Military Operations*, Joint Publication (JP) 3-57, mentions women only three times—and only in the context of planning. For example, *Civil Military Operations* advises planners to consider additional logistical support that might be required “outside military logistics, such as support to the civilian populace (for example, women, children, and the elderly).”⁴¹ This document fails to recognize that roughly half of any given civilian population in a mission area is female and that the women and girls could have different security needs than their male family members. This approach is not gender-neutral, it is instead male normative and blind to gender considerations.⁴²

In the field, there is no doubt that US Army Civil Affairs units recognize the operational relevance of gender in their work and effectively incorporate these considerations into their activities and missions.⁴³ In service-level civil-military operations doctrine, however, the situation is scarcely better than the joint doctrine with regard to gender. *Civil Affairs Operations*, Field Manual 3-57, does not mention gender specifically, but it notes that when providing humanitarian assistance in the context of population control, women along with children, the elderly, and the disabled may be in the category of “vulnerable” persons who have greater needs than others.⁴⁴ Similarly, subordinate civil-military operations doctrine such as *Civil Affairs Support to Populace and Resources Control*, ATP 3-57.10, and *Civil Affairs Planning*, ATP 3-57.60, note only that the gender of host-nation persons who might be helpful to the mission should be included in their descriptions in reports “if applicable.”⁴⁵ Other service-level civil-military operations doctrine relevant to foreign humanitarian assistance and running civil-military operations centers makes no mention of women, girls, or gender.⁴⁶ Mindful of this absence of gender considerations in what should be the most civilian-centric

40. HQDA, *Protection of Civilians*, 3-3, 4-2-4-3.

41. Chairman, Joint Chiefs of Staff (JCS), *Civil Military Operations*, Joint Publication (JP) 3-57 (Washington, DC: JCS, 2018), III-2.

42. Prescott, “Gender Blindness,” 23–25.

43. Prescott, “Gender Blindness,” 23.

44. HQDA, *Civil Affairs Operations*, Field Manual 3-57 (Washington, DC: HQDA, 2021), 3-15.

45. HQDA, *Civil Affairs Planning*, ATP 3-57.60 (Washington, DC: HQDA, 2014), B-12; and HQDA, *Civil Affairs Support to Populace and Resources Control*, ATP 3-57.10 (Washington, DC: HQDA, 2013), A-12, A-21, A-30.

46. Prescott, “Gender Blindness,” 26.

of US doctrine, it is useful to assess the doctrinal modifications the *CHMR Action Plan* itself contemplates.

Doctrine Identified in the Action Plan

Although the *CHMR Action Plan* identifies specific joint doctrine that will be updated in fiscal year 2023, civil-military operations doctrine does not make this list. Doctrine it does identify includes *Joint Planning*, JP 5-0, which provides a broad definition of the civilian environment akin to the doctrinal definition of the information environment in the context of the larger operational environment. Next, *Joint Intelligence*, JP 2-0, will be updated to ensure holistic analysis of the civilian environment, by establishing who is responsible for this analysis and how they will conduct it and the “relevant intelligence estimates and products with detailed analysis of the civilian environment.” These doctrinal revisions will be important and useful, but it is difficult to see how these revisions achieve holism without changes in civil-military operations doctrine.⁴⁷

On the operations side, *Joint Operations*, JP 3-0, will now include a description of the civilian environment as a necessary part of the operational environment. Both *Joint Operations* and *Joint Task Force Headquarters*, JP 3-33, will integrate “CHMR considerations across combatant command functions” and make sure that joint task forces consider the staffing requirements that implementing the action plan entails. Similarly, updates to *Multinational Operations*, JP 3-16, will provide guidance to US forces on developing a common operational picture of the civilian environment in operations with allies and partners. *Joint Targeting*, JP 3-60, will be updated to factor in the new organizational elements outlined in the action plan and their work, including the use of Civilian Environment Teams in current joint targeting processes and information and analysis developed as part of civilian protection efforts.⁴⁸

Revising this amount of fundamental and interrelated joint doctrine so quickly to address civilian harm mitigation and response effectively is a bold objective. The need to look at the operational aspects of civilian harm both holistically and cohesively to address the gender-differentiated harms that women and girls could suffer in military actions will likely complicate these efforts. Important doctrine that works to harmonize operations does not

47. DoD, *CHMR-AP*, 9–10.

48. DoD, *CHMR-AP*, 10, 13.

factor in gender considerations. For example, *Multinational Operations*, JP 3-16, currently contains nothing regarding gender.⁴⁹

On the other hand, some of these documents already include operational gender considerations, which at first glance appear to provide potential hooks for more extensive treatment of gender in the revisions the action plan requires. For example, *Joint Planning* notes that the operational environment includes intangible factors, such as gender considerations.⁵⁰ Further, it includes the commander's gender adviser among the staff officers able to provide expertise in joint planning and describes the gender adviser's role in developing a gender analysis.⁵¹

These potential linkage points might be of limited value, however. The interrelationships between these different doctrines highlight particular challenges in effectively implementing the action plan to include operationally relevant gender considerations. An example of this is coordinating joint targeting in multinational operations, which the most recent update to NATO *Allied Joint Doctrine for Joint Targeting*, Allied Joint Publication (AJP) 3.9, shows. It defines *joint targeting* as "taking actions in one or more of the operational domains, using all capabilities available, against a target, in order to create an effect in one or more of the physical, virtual, or cognitive dimensions."⁵² These effects could, therefore, be lethal or nonlethal. In the target development phase of the joint targeting process, *Allied Joint Doctrine for Joint Targeting* has gender advisers provide a gender analysis of the target, noting that the "integration of a Gender perspective contributes to the orchestration of fighting power."⁵³ This statement appears to carve out a very meaningful role for the gender adviser in bringing gender considerations to bear in the targeting process.

Unless it were based on specific and granular sex- and gender-disaggregated data applicable to particular targets, the value a gender adviser's analysis would bring to the combined and joint targeting process is arguable. Aside from that, however, what is especially important regarding the NATO joint targeting process is the phrasing of the American reservation to the use of the gender adviser:

Reservation 10. The United States does not endorse the requirement for targets to be reviewed by a Gender Advisor

49. JCS, *Multinational Operations*, JP 3-16 (Washington, DC: JCS, 2021).

50. JCS, *Joint Planning*, JP 5-0 (Washington, DC: JCS, 2020), xxiii.

51. JCS, *Joint Planning*, III-2, III-29.

52. NATO, *Allied Joint Doctrine for Joint Targeting*, AJP-3.9, ed. B, ver. 1 (Brussels: NATO Standardization Office, 2021), 1-3.

53. NATO, *Joint Targeting*, 1-3, 1-15, 1-19, 1-27.

(GENAD) prior to target validation. The US will follow joint doctrine which requires intelligence (J2), operations (J3), and legal advisor (LEGAD) review of targets to ensure they meet military objectives and the Law of War (LOW). The US has no similar role or function of a GENAD during target development and validation.⁵⁴

The reservation precludes the ordinary NATO proponent of gender considerations in operational planning, the gender adviser, from having a role in the targeting process. This is not surprising; the DoD implementation of the WPS Act of 2017 avoids dealing with gender considerations in the kinetic parts of kinetic operations—the US gender adviser currently has no explicitly established role here. It is ironic that addressing the gender-differentiated harms suffered by civilian women and girls because of kinetic operations as part of the *CHMR Action Plan* could potentially be stymied by the application of US law and policy specifically designed to protect women and girls in the non-kinetic parts of military activities.

Conclusion

The war in Ukraine has brought global attention to the need for increased civilian protection during armed conflict. From the perspective of human security, NATO's new strategic concept establishes the protection of civilians and civilian harm mitigation as central to its approach to crisis prevention and management.⁵⁵ Practical work is occurring within the Alliance and with its partners to operationalize this requirement. This work includes the development of operational doctrine that factors in human security considerations beyond the traditional formulations regarding civilians. These developments are most evident in the recent publication of the NATO ACO handbook on the protection of civilians and in the training the Finnish Defence International Centre provides on the protection of civilians.⁵⁶ These efforts include operational gender considerations, and it should be considered in the implementation of the action plan.

Although the *CHMR Action Plan* contains no specific mention of gender considerations, this topic must be addressed in the context of existing US civilian protection doctrine and guidance that deal

54. NATO, *Joint Targeting*, vii.

55. *NATO 2022 Strategic Concept* (Brussels: NATO, June 29, 2022), 9, https://www.nato.int/nato_static_fl2014/assets/pdf/2022/6/pdf/290622-strategic-concept.pdf.

56. ACO, *Protection of Civilians*, 2020; and Finnish Defence Forces International Centre, "Human Security, Crisis Management & Cooperation – FINCENT's NATO-UN POC Course on the Protection of Civilians," September 7, 2022, <https://puolustusvoimat.fi/en/web/fincent/-/human-security-crisis-management-cooperation-fincent-s-nato-un-poc-course-on-the-protection-of-civilians>.

with gender's operational relevance. Consonant with the action plan's intent to go beyond LOAC requirements to reduce civilian harm, and the expansive definition of the civilian environment to be protected from harm, the gender-differentiated harms suffered by women and girls in armed conflict are suitable for inclusion in the action plan's implementation.⁵⁷

The *CHMR Action Plan* is not merely policy now. With the passage of the James M. Inhofe National Defense Authorization Act for Fiscal Year 2023, Congress established the Civilian Protection Center of Excellence as a matter of law.⁵⁸ Further, the Consolidated Appropriations Act of 2023 provides \$25 million to support implementation of the action plan.⁵⁹ With this support, headquarters units could be guided in learning how to collect sex- and gender-disaggregated data in the field most effectively and then use that information to provide actionable intelligence relevant to the gendered effects of kinetic actions to commanders and planners. The results of these efforts could then be collected and fed into doctrine to institutionalize and normalize operational gender considerations as merely another factor to work within civilian-centric environments. This foundation will be necessary to accomplish fully the ambitious path set out by the action plan and should be addressed in the DoD instruction on civilian harm and mitigation response expected in the first quarter of 2023.⁶⁰

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57. DoD, CHMR-AP, 3 n.1.

58. James M. Inhofe National Defense Authorization Act for Fiscal Year 2023, Pub. L. No 117-263, § 1082, 136 Stat. 2395.

59. Consolidated Appropriations Act, 2023, Pub. L. 117-328, 136 Stat. 4459, 4570.

60. Marc Garlasco and Andrew Hyde, "Civilian Harm Mitigation: An Opportunity for Values-based U.S. Leadership at NATO," *Lawfare* (blog), February 2, 2023, <https://www.lawfareblog.com/civilian-harm-mitigation-opportunity-values-based-us-leadership-nato>.

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