

**FEMINIST POLITICS AND THE USE OF FORCE: THEORISING FEMINIST ACTION AND SECURITY  
COUNCIL RESOLUTION 1325**

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*This article reflects on the ten-year anniversary of ‘Security Council Resolution 1325 on Women, Peace and Security’ (hereinafter, “Resolution 1325”). The article contextualises the Security Council’s approach within feminist legal thinking, using Resolution 1325 as a springboard for increased feminist conversations on the recurrent themes of essentialism, victim feminism and praxis. It is argued that feminist action in the Security Council should extend these debates. To this end, the article concludes with reflection on the possibility of force to save women, arguing that this fourth axis of feminist debate be taken up with some urgency by feminist scholars and activists.*

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**I. INTRODUCTION**

Almost twenty years ago, as an undergraduate student at the Australian National University, I took a course on feminist legal theory. The impact of this course has resounded through my life: my goals, my everyday behaviour, my aspirations, my dreams. As a consequence, my interactions with law as a discipline have been fundamentally shaped by my thinking on what it means to be a feminist.

When I reflect on that course, run by Nicola Lacey in 1992, I ask myself what it was about feminist legal theory that was different from other theoretical models and ideas I had encountered as an undergraduate.<sup>1</sup> I think it is this. In addition to the recognition of injustices in society that are

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<sup>1</sup> For an academic discussion of the ideas encountered on this course, see NICOLA LACEY, UNSPEAKABLE SUBJECTS (1997).

borne out across the lives of women, feminist legal theory shaped itself, from my very first interactions, as a model of thinking about the law that, instead of giving comprehensive answers, continually raised new questions and thus, as a method, existed as a series of dialogues or conversations. I found that feminist approaches persisted in relevance and importance due to the strong internal critiques and questions that theorists asked of each other. So, in addition to the real world application, feminist theory has always been a series of dialogues that are able to move the theory forward, even if those movements may sometimes appear to be moving backwards or sideways. This is the life of feminist thinking, the compulsion towards new ways of understanding, new ways of listening and new ways of constructing and imagining the law, within feminist legal scholarship. Feminism's strength remains in the unresolved issues at the heart of its thinking. Three questions intertwine at the core of feminist thinking: how a theory and a political process can speak for all women without losing respect for the diversity of individuals (the question of essentialism); how to articulate women's disadvantage and the everyday harm women encounter without negating women's agency (the question of victim versus agency) and how to develop, without losing the strength of feminists' real world action or losing the sophistication of the theoretical understandings of the limits and strengths of feminist methods (the question of praxis).<sup>2</sup>

This article analyses the Security Council's approach to women, peace and security. My claim is that Resolution 1325<sup>3</sup> (and the subsequent four resolutions on women, peace and security)<sup>4</sup> takes us to the pivot of these three feminist questions. In taking us to the centre of persistent dialogues in feminist thinking, the Security Council Resolutions on women, peace and security present an opportunity for renewed and developed conversation around these tensions.

I studied feminist legal thinking as an undergraduate in the year after the publication of the first piece of scholarship examining the need for developing feminist approaches to international law.<sup>5</sup> I could hardly have imagined that by the end of the decade, a resolution on women, peace and security would have been issued by the Security Council. In this sense, Resolution 1325 is an

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<sup>2</sup>For extended discussion, see GINA HEATHCOTE, *A FEMINIST ANALYSIS OF THE LAW ON THE USE OF FORCE* (2011) *forthcoming*; see also Nicola Lacey, *Feminist Legal Theory and the Rights of Women*, in *GENDER AND HUMAN RIGHTS* 13-56 (Karen Knop ed., 2004).

<sup>3</sup> UNSCOR on Women and Peace and Security, UN Doc. S/RES/1325 (October 31, 2000).

<sup>4</sup> UNSCOR, 5916<sup>th</sup> mtg., UN Doc. S/RES/1820 (2008), 1; UNSCOR, 6915<sup>th</sup> mtg., UN Doc. S/RES/1888 (2009), 1; UNSCOR, 6196<sup>th</sup> mtg., UN Doc. S/RES/1889 (2009), 1; UNSCOR, 6453<sup>rd</sup> mtg., UN Doc. S/RES/1960 (2010), 1.

<sup>5</sup> Hilary Charlesworth, Christine Chinkin & Shelly Wright, *Feminist Approaches To International Law*, 85 AM. J. INT'L L. 613 (1991).

indicator of the success of feminist action and a marker of the impact of central feminist legal scholarship on international law.<sup>6</sup> However, the Security Council as the primary institution responsible for the maintenance of international peace and security also has the capacity to authorise the use of military force, described in binding Security Council resolutions as ‘all means necessary’.<sup>7</sup> This paper argues that the five Security Council resolutions on women, peace and security are instrumental in developing further feminist understanding of the three central tensions in feminist thinking that I have identified. I will also argue that the resolutions on women, peace and security introduce a fourth tension that has remained reasonably muted in feminist accounts of international law and approaches to women, peace and security. That is, can the use of force, function as a ‘feminist’ answer to the maintenance of international peace and security? The use of the Security Council as an institution for reform involves acceptance of the central purpose of the Security Council – that is, its role under Article 42 of the UN Charter as the international body empowered to authorise the use of military force. Beyond the simple dynamics of the Security Council, including its undemocratic makeup and its authority to use military force as a solution to international crisis, I argue that the normative framework developed under Resolution 1325 and its partner resolutions actively moves towards the possibility of the use of force to ‘save women’. There is a need for feminist debate on the repercussions of the current Security Council approach to women, peace and security as it appears to promote rather than minimise the use of force.

My reflections on the normative framework developed from the Security Council resolutions will be structured as follows. I will begin by introducing Resolution 1325, as well as the four subsequent resolutions on women, peace and security issued by the Security Council: Resolutions 1820 ( June 18, 2008), 1888 (September 30, 2009), 1889 (October 5, 2009) and 1960 (December 16, 2010). As I discuss them, I will consider their relative strengths and weaknesses, highlighting recent developments. I will also analyse how the five resolutions, or what has been described as the ‘normative framework’ developed by the five resolutions,<sup>8</sup> engage with the three central feminist tensions that I have identified. I will then close with a discussion of how the

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<sup>6</sup> See HILARY CHARLESWORTH & CHRISTINE CHINKIN, *THE BOUNDARIES OF INTERNATIONAL LAW* (2000).

<sup>7</sup> For example, see UNSCOR 2963<sup>rd</sup> mtg., UN Doc. S/RES/678 (November 29, 1990), op. § 2.

<sup>8</sup> See SECURITY COUNCIL REPORT, CROSS CUTTING REPORT NO. 2, ON WOMEN PEACE AND SECURITY (October 1, 2010), at <http://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/XCutting%20WPS%202010.pdf>.

normative framework envisaged by the resolutions constructs a space for future developments where force might be deployed to ‘save women’.

## II. THE RESOLUTIONS

The Security Council Report, an independent, not-for-profit organisation that facilitates access to the Security Council's activity, describes the Council's resolution on women, peace and security as providing a ‘normative framework’.<sup>9</sup> The notion of a normative framework raises certain questions, from an international law perspective, about the status of the resolutions and the role of the Security Council itself. For the Security Council to have established a normative framework rather than a set of comprehensive, enforceable rules in response to specific threats to international peace and security is not a role envisaged for the Council under the UN Charter. The construction of a normative framework is better described as a function of the United Nations General Assembly as the Council is empowered to respond to specific threats to international peace and security. Although the approach to women, peace and security appears to have resulted in feminist gains within the Security Council,<sup>10</sup> it is important to acknowledge what the further consequences of an undemocratic group, only partially representative of the international community, articulating new norms means to international law and our understanding of the discipline generally. In pursuing the development of Security Council resolutions on women, peace and security feminist activism gives the appearance of support to the Security Council's structure and authority. The turn to the Security Council by feminist actors, and the extension of Security Council powers through these resolutions on women, peace and security, establish certain practices that may influence other elements of the practice of Security Council on any aspects of international peace and security. This may be counter-productive to women's security in the future. This is an important consequence of the resolutions on women, peace and security. The construction of legal frameworks, as opposed to responses to specific crisis by the Council, is an extension of its powers that leaves many international actors silenced, due to the selective nature of Council membership.<sup>11</sup>

Alongside the implicit endorsement of the Council as a legal body, this is also an endorsement of the *ad hoc* and unrepresentative decision making structures that define the

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<sup>9</sup> *Ibid.*, 11.

<sup>10</sup> Dianne Otto, *Power and Danger: Feminist Engagement With International Law Through The Security Council*, 32 AUSTL. FEMINIST L.J. 97 (2010).

<sup>11</sup> For example, *see* UNSCOR 4385<sup>th</sup> mtg., UN Doc. S/RES/1373 (September 28, 2001).

Council's set-up. The five resolutions on women, peace and security illustrate the limits of the Security Council as a forum for legal developments, with each resolution reflecting the foreign policy agenda of the State holding the presidency of the Council. Resolution 1888, constructed under the US presidency, and Resolution 1889, constructed five days later under Viet Nam's presidency, demonstrate the ad hoc politics that lies behind the Security Council agenda.<sup>12</sup> While each resolution was drafted alongside an open debate in the Council, allowing states not on the Council to comment, the variations emphasized across these two resolutions issued within a week of each other demonstrate global differences in what resolutions on women, peace and security might achieve as well as political agendas of powerful states that seem to reflect a partial feminist politics. Debate in the General Assembly may present difficulties in terms of gaining consensus and action;<sup>13</sup> however as a forum with global representation, outcomes will be democratic in manner and content that may not be possible in the Security Council. These limitations of the Security Council as an institution provide the parameters within which any action on women, peace and security must be measured.

The Council's normative framework on women, peace and security spans all five resolutions and Resolution 1325 sets the platform for this approach. Security Council Resolution 1325 comprises of six sections. Operative paragraphs 1-4 focus on increasing women's participation in decision making structures across the spectrum of conflict, that is, in relation to prevention, management and the resolution of conflict, and at local, regional and international levels. Operative paragraphs 6-7 deal with capacity issues, that is, the training of UN personnel and the increasing of financial and technical support for gender-sensitive training within UN structures, specifically those dealing with post-conflict resolution. Operative paragraph 8 promotes the role of women in the negotiation of peace agreements. Operative paragraphs 9, 10 and 11 identify the legal framework in place under international law for the protection of women and girls – that is, the role of international humanitarian law, international human rights law and international criminal law in the protection of women and girls. The fifth element of Resolution 1325, contained in operative paragraphs 12-13, identifies the need for gender-sensitive approaches to refugee populations and internally displaced persons as well recognition of the different needs of female ex-combatants.

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<sup>12</sup> *Supra* note 8, 6-7.

<sup>13</sup> See, for example, the debate on Responsibility to Protect, *see* UNGAOR, 63<sup>rd</sup> sess., 100<sup>th</sup> plen. mtg. at 1, UN Doc. A/63/PV.100 (2009); UNGAOR, 63<sup>rd</sup> sess., 101<sup>st</sup> plen. mtg. at 1, U.N. Doc. A/63/PV.101 (2009).

The sixth element of Resolution 1325, operative paragraphs 5, 14 and 15, direct the Security Council to incorporate a ‘gender perspective’ into peacekeeping, with gender considerations and understandings of the rights of women to be developed through consultation with local women’s groups. Operative paragraph 14 also requires the Security Council to be conscious of the special needs of women and girls when introducing sanctions under article 41 of the UN Charter. As such, Resolution 1325 is described by the Security Council Report as:

*“balanced between increasing women’s participation in all aspects of action and decision-making relevant to international peace and security, and highlighting women’s rights and the importance of women as a **vulnerable subset** of broader protection of civilian considerations”<sup>14</sup> (emphasis added).*

Although the terminology of women as a vulnerable ‘subset’ within a society is misrepresentative, the description of Resolution 1325 as a balanced approach, encompassing the need for women’s participation and consultation as well as recognizing the different needs of women is a reflection of the strength of Resolution 1325. The resolution does provide a framework for future Security Council responses and national, regional and international engagement with the myriad of issues raised when we understand international peace and security through the experiences of women. That Resolution 1325, and its companion resolutions, provides a normative framework for future Security Council action on women, peace and security may not cohere with perceptions of the Council’s role in the United Nations, yet this has become the institutional legacy of Resolution 1325.

In addition to Resolution 1325’s institutional role as a normative framework its impact has been apparent in a range of ways. First, Resolution 1325 has functioned as a catalyst for increased feminist action, outside of action and responses from the Security Council.<sup>15</sup> From a feminist perspective, this demonstrates the role of feminist action in transforming legal dialogues into feminist action that is meaningful to women across cultural and national contexts, and often outside of institutional structures.<sup>16</sup>

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<sup>14</sup> *Supra* note 8, 8.

<sup>15</sup> For example, the work documented by PeaceWomen, a project of the Women’s International League for Peace and Freedom (WILPF), at [www.peacewomen.org](http://www.peacewomen.org).

<sup>16</sup> *Supra* note 10, 120.

Resolution 1325 has also played a vital role in giving women's groups and organisations a language and a framework to address international institutions and states. The second fundamental change brought about by Resolution 1325 has been the manner in which the resolution has changed Security Council practice, as well as that of some member states, through the requirement for National Action Plans.<sup>17</sup> In this regard, the Security Council's response has not been insignificant despite failing to be comprehensive. Some of the consequences of Resolution 1325 in terms of Security Council practice are as follows.

The Secretary-General has provided an annual report on the implementation of Resolution 1325. As such, the Secretary-General has contributed a set of indicators to examine the progress made during the life of Resolution 1325. The Security Council supported the indicators in its debate during October, 2010 on the ten-year anniversary of Resolution 1325 as something it will take forward. However, under the presidency of Uganda in October 2010 this did not result in a new resolution.

The most significant institutional development post-Resolution 1325 by the Security Council has been the production of four further resolutions namely, 1820, 1888, 1889 and 1960.<sup>18</sup> Security Council Resolution 1820, June 18, 2008, on sexual violence in armed conflict, was introduced under the US presidency of the Council and developed the elements of Resolution 1325 that dealt with the protection of women and girls from sexual violence and abuse during armed conflict. Security Council Resolution 1888, September 30, 2009, was again initiated under the US presidency of the Council, led by the actions of Hillary Clinton; while the former had been led by Condoleezza Rice. Resolution 1888 largely asserted the same text as 1820, although it developed three significant new elements: it requested that the Secretary-General appoint a Special Representative on sexual violence in conflict; under Operative Paragraph 8, it requested the rapid deployment of a team of experts to deal with extreme situations of sexual violence in armed conflict and it dealt with the need for special provisions within peacekeeping mandates to develop comprehensive practice by the Security Council in recognising and responding to sexual violence in armed conflict. Security Council Resolution 1889, October 5, 2009, was a product of Viet Nam's

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<sup>17</sup> Sixteen UN member states had constructed national action plans on women, peace and security; *see* [http://www.un.org/womenwatch/ianwge/taskforces/wps/national\\_level\\_impl.html](http://www.un.org/womenwatch/ianwge/taskforces/wps/national_level_impl.html).

<sup>18</sup> *Supra* note 4.

presidency in October, 2009 and its persistent demand for the resolution despite some resistance from other members of the Council. The resolution is considerably wider than 1820 and 1888; although Viet Nam's push for the inclusion of direct references to the economic and social dimensions of women's vulnerability in post-conflict situations were left out of the final text of 1889 the importance of women's participation and education remains in the resolution. Resolution 1889 sets up the request for 'global indicators' of progress from the Secretary-General. Global indicators have now been developed and are, perhaps, the next stage in the life of the Resolution 1325 framework.<sup>19</sup>

The recent Security Council Resolution on women, peace and security, 1960, came after the ten-year anniversary of Resolution 1325 and was again introduced under the US presidency of the Council. Resolution 1960 generally enlarges the framework for the reporting and monitoring of acts of sexual violence in conflict regions with a focus on the role of the Secretary-General in compiling reports and monitoring situations. Resolution 1960 develops the regime for the listing (and delisting) of individuals under the targeted sanctions regime as a means of challenging impunity for sexual violence. However, the resolution also has a handful of paragraphs that are specifically focused on participation. For example, operative paragraph 10 "*welcomes* the work of gender advisers; looks forward to the appointment of more women protection advisers to peacekeeping missions, in accordance with Resolution 1888 (2009); notes their potential contribution in the framework of the monitoring, analysis, and reporting arrangements", operative paragraph 12 states, "in order to carry out their mandate, missions must communicate effectively with local communities; and encourages the Secretary-General to improve their capacity to do so" and operative paragraph 15 "*encourages* Member States to deploy greater numbers of female military and police personnel to United Nations peacekeeping operations, and to provide all military and police personnel with adequate training on sexual and gender-based violence, *inter alia*, to carry out their responsibilities". So while operative paragraphs 10 and 15 focus on the increased participation of women within UN structures, operative paragraph 12 is oblique in that it does not specifically encourage women's participation although the reference to local groups may be read as the need for local women's organisations to be identified as stakeholders in post-conflict processes. The

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<sup>19</sup> Security Council Resolution 1889 requires the Secretary-General to develop a set of global indicators to measure the implementation of Security Council Resolution 1325, *supra* note 4, at op. § 17. In 2010, the Secretary-General produced a list of 26 indicators. The indicators are annexed to Secretary-General Report, *Women and Peace and Security: Report of the Secretary-General*, at 1, UN Doc. S/2010/498 (2010).



need for ‘effective communication with’ local communities remains a process short of participation by local communities.

The sum of the four subsequent resolutions is a clear strengthening of the Council’s commitment to addressing sexual violence within post-conflict communities, as this is the underlying focus of three of the four resolutions. While the need for recognition and response to sexual violence within post-conflict communities is undisputed, it is disappointing that the wider focus of Resolution 1325 has not been developed in the subsequent decade. Resolution 1960 also demonstrates a recent shift towards specific outcomes that require measurable indicators, either through the increased participation of UN actors in gender training or the documenting of sanctions listings and/or prosecutions of sexual offences. On the one hand, the extensive regime developed after Resolution 1325 represents a position unimaginable in 2000 when the first resolution was being lobbied for, yet these feminist gains do little to challenge the military masculinities that feminist scholarship challenges,<sup>20</sup> neither do they effectively shift beyond the image of the women in conflict as predominantly under threat of sexual harm. As such, the ‘normative framework’ of the Security Council on women, peace and security does little to challenge war and/or violence or harmful gender structures present in all societies.

In addition to the reports by the Secretary-General and the four subsequent resolutions, a further development is the use of country-specific resolutions to develop components of the women, peace and security regime in relation to specific countries. For example, the sanctions regime for the Democratic Republic of the Congo (DRC) and the Ivory Coast both identify sexual violence crimes as a cause for listing under targeted sanctions.<sup>21</sup> The Council has also developed a standard-form directive for UN personnel within country-specific resolutions indicating zero tolerance of sexual exploitation and abuse by UN actors. For example, Security Council Resolution 1920 (April 30, 2010) on the Western Sahara, in operative paragraph 10, states:<sup>22</sup>

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<sup>20</sup> See e.g., JOSHUA S. GOLDSTEIN, *WAR AND GENDER* (2003); CYNTHIA ENLOE, *BANANAS, BEACHES AND BASES: MAKING FEMINIST SENSE OF INTERNATIONAL POLITICS* (1989); ANNE ORFORD, *READING HUMANITARIAN INTERVENTION: HUMAN RIGHTS AND THE USE OF FORCE IN INTERNATIONAL LAW* (2003).

<sup>21</sup> UNSCOR 5861<sup>st</sup> mtg. at 1, UN Doc. S/RES/1807 (2008).

<sup>22</sup> UNSCOR, 6305<sup>th</sup> mtg. at 1, UN Doc. S/RES/1920 (2010).

*“Requests the Secretary-General to continue to take the necessary measures to ensure full compliance in MINURSO with the United Nations zero tolerance policy on sexual exploitation and abuse, and to keep the Council informed, and urges troop-contributing countries to take appropriate preventative action, including pre-deployment awareness training, and other action to ensure full accountability in cases of such conduct”.*

The distinction made between sexual exploitation and abuse and sexual violence in armed conflict within the Security Council framework on women, peace and security lacks comprehensive feminist analysis. The former, sexual exploitation and abuse, focuses on the actions of UN personnel and is governed by codes of conduct that are non-binding regulations to be enforced by member states contributing troops and personnel to UN missions. In contrast, the regime for the protection of women and girls from sexual violence is directed at non-state actors and militaries within conflict regions and is increasingly responded to with UN Charter Article 41 sanctions. This creates binding international law. However, the distinction between sexual exploitation and sexual violence is not clearly articulated and the relationship between these two types of behaviour and different global understandings of military identity are not developed in the Security Council framework on women, peace and security. Recent evidence of sexual violence perpetrated by local military actors in the DRC and the absence of, or failure to act by, nearby UN personnel also indicates that the distinction between sexual exploitation and abuse and sexual violence does not adequately capture the dependence and use of sex by the spectrum of military actors.<sup>23</sup>

The fourth development in Security Council practice in the decade since Resolution 1325 is the recognition, in some country specific resolutions, of the need to protect women and girls from sexual violence and/ or gender based violence. For example, Security Council resolution 1912 (February 26, 2010) on Timor Leste, operative paragraph 15:

*“requests UNMIT to fully take into account gender considerations as set out in Security Council resolutions 1325 (2000), 1820 (2008), 1888 (2009) and 1889 (2009) as a cross cutting issue throughout its mandate, stressing the importance of strengthening the responsiveness of the security sector to the specific needs of women, and further requests the Secretary-General to include in his reporting to the Security Council progress on gender mainstreaming throughout UNMIT and all other aspects relating to the*

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<sup>23</sup> *Supra* note 2, ch. 2.

*situation of women and girls, especially on the need to protect them from gender-based violence, detailing special measures to protect women and girls from such violence”.*

The Security Council Report from October 2010 describes the development of Resolution 1325 norms in Timor Leste as ‘successful gender mainstreaming’.<sup>24</sup> However, the ‘measure’ of the success of Security Council initiatives on gender in Timor Leste through UNMIT revolves around a head count of women in police, military and decision-making structures that, though it might be an element of feminist demands for increased participation under Resolution 1325, undermines larger feminist understandings of the cultural construction of gender and its pervasiveness as a social discourse. The current shift toward global indicators by the Secretary-General raises important feminist concerns about what the measures of success will be. Numerical representation of women within international, national and local structures is not composite of the full meaning of the need for women’s participation envisaged either by Resolution 1325 or within feminist thinking. Strategies that work toward women’s full participation in state and institutional structures must also be developed through education, health and cultural programmes that ensure women’s capacity to participate as well as strategies that seek to disrupt other types of privilege that reduce the diversity of women with access to state and institutional structures. A policy of formal equality through numerical representation cannot account for substantive inequalities that reduce women’s access to these structures and does not address the cultural norms that reduce the authority of women’s voices and contributions.

The last development within Security Council practice identifiable within the Security Council framework on women, peace and security is the manner in which the Council has envisaged its response to widespread and systematic sexual violence within conflict. For example, in Security Council Resolution 1944, (October 14, 2010) on the question concerning Haiti, the Council, in operative paragraph 14, condemns ‘widespread rape and other sexual abuse of women and girls’ in Haiti, calling on the government and MINUSTAH to ‘continue to promote and protect the rights of women and children’ as set out in early resolutions, including the four earlier resolutions on women, peace and security. Yet this resolution was issued only a couple of months after the Council’s failure to act in response to the report of rapes and widespread and systematic use of sexual violence in villages in the DRC – the latter has not resulted in a resolution, or any

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<sup>24</sup> *Supra* note 8, 17.

other action, from the Security Council.<sup>25</sup> As such, Resolution 1325 has changed the text of some resolutions, where paragraphs have acknowledged sexual violence as occurring within armed conflicts and post-conflict communities. These references provide valuable lobbying tools for women within these communities. The *ad hoc* nature of the Security Council's approach, however, has negated the broader impact of these insertions and the non-binding nature of the text has left the taking up of the text dependent on the willingness of local actors or lead personnel within UN missions.

The sum of the five developments in Security Council practice I have identified as occurring after Resolution 1325 make it clear that a normative framework now exists to direct Security Council action on women, peace and security. The development of the four further Security Council resolutions on women, peace and security in 2008, 2009 and 2010 appear to have considerably strengthened the some aspects of Resolution 1325 and cemented the platform for the continued development and refinement of the Security Council's approach to women, peace and security. However, the structure is not without its limits.

### **III. LIMITATIONS**

Cohn writes of Resolution 1325 as failing to challenge 'the war system' or the legal/political structures that endorse force as a legal tool and the military as a solution to violence.<sup>26</sup> The Security Council, as a principal organ of the United Nations, is empowered under Chapter VI and Chapter VII of the UN Charter to recommend action to member states for the peaceful settlement of disputes (Chapter VI) and to authorise both measures short of force (for example, sanctions) and the use of force (Chapter VII) necessary for the maintenance of international peace and security. Despite sophisticated and extensive feminist accounts of the impact of military behaviour and armed conflict on women, the Security Council framework on women, peace and security addresses women's needs within armed conflict as the consequences of violations of the law rather than the intrinsic elements of military structures. Issues such as the high levels of domestic violence both within and around military bases, the complicity of military actors in sex industries and the performance of masculinity that is central to military ideologies, and how these issues create

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<sup>25</sup> See UNSCOR 6400<sup>th</sup> mtg. at 1, UN Doc. SC/10055 (2010).

<sup>26</sup> Carol Cohn, *Mainstreaming Gender in UN Security Policy: A Path to Political Transformation?*, in GLOBAL GOVERNANCE: FEMINIST PERSPECTIVES 185 (Shirin M. Rai and Georgina Waylen eds., 2008).

insecurity for women globally, are not adequately incorporated into the Security Council's agenda.<sup>27</sup> This is a central aspect of feminist writing on armed conflict and gender that is not adequately addressed by Resolution 1325 and the framework it develops. In fact, the structure of the Security Council resolutions proposes military actors and military action as the answer, rather than the cause of women's vulnerability during armed conflict. I will return to the consequence of this in my final discussion below.

Other feminist accounts of the Security Council resolutions on women, peace and security challenge the recurrent imagery of women as victims and the association of these resolutions with a specific strand of feminist thinking, sometimes labelled 'Governance Feminism'<sup>28</sup> or subordination feminism.<sup>29</sup> This criticism challenges the impact of focusing on women as victims as ultimately detrimental to the development of women's agency. Although Resolutions 1325 and 1889 do address women's participation this has not been translated into specific Security Council responses to situations on its agenda. In contrast, the insertion of operative paragraphs on sexual violence has developed the Council's practice since 2000. An example of this is demonstrated by the first resolution after debates in the Council on the ten-year anniversary of Resolution 1325. Although drafted in the week subsequent to the ten-year anniversary debate on Resolution 1325, Security Council Resolution 1947 (2010) on the Peacebuilding Commission<sup>30</sup> is silent on the relevance of the Security Council's resolutions on women, peace and security to the work of the Peacebuilding Commission. For Otto, the framework of Resolution 1325 engages 'inside' strategies,<sup>31</sup> that are strategies for inclusion within mainstream institutional structures, and thus risks unintended outcomes if not supplemented, perhaps even directed by, 'outside' strategies by feminist and women's groups. Outside strategies include activism and scholarship that works outside of

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<sup>27</sup> *Supra* note 2, ch. 2; GOLDSTEIN, *supra* note 20, ch. 1.

<sup>28</sup> See Janet Halley, Prabha Kotiswaran, Hila Shamir & Chantal Thomas, *From the Local to the International in Feminist Legal Responses to Rape, Prostitution/ Sex Work and Sex Trafficking: Four studies in Contemporary Governance Feminism*, 29 Harv. J.L. & Gender 336 (2006).

<sup>29</sup> RATNA KAPUR, *EROTIC JUSTICE: LAW AND THE NEW POLITICS OF POSTCOLONIALISM* 4 (2005).

<sup>30</sup> UNSCOR, 6414<sup>th</sup> mtg. at 1, UN Doc. S/RES/1947 (2010); see also the subsequent Resolution on peace processes in Former Yugoslavia, UNSCOR, 6426<sup>th</sup> mtg. at 1, UN Doc. S/RES/1948 (2010), which is also silent on the role of women in peace processes and conflict prevention, *although* the following Resolution, UNSCOR, 6428<sup>th</sup> mtg. at 1, UN Doc. S/RES/1949 (2010), op. §19, on the situation in Guinea Bissau does incorporate a reference to gender perspectives.

<sup>31</sup> Diane Otto, *The Exile of Inclusion: Reflections on Gender Issues in International Law over the Last Decade*, 10 MELB. J. INT'L L. 11 (2008).

mainstream structures, for example the work of women's groups such as Women in Black.<sup>32</sup> This argument appears to recognise the arguments of structural bias feminists who highlight the institutional and legal limitations of international law when viewed from a feminist perspective.

Otto also argues against the 'exile of inclusion'. That is, when gender experts are expected to complete all the work within institutions under the gender mandate resulting in institutional blindness when those actors are absent.<sup>33</sup> This infers that gender issues are not of relevance to institutional actors without a gender specialisation, despite the role of gender mainstreaming specifically challenging this way of thinking since the mid-1990s. This is identified as a continual problem for the implementation of Resolution 1325 in the Security Council Report that acknowledges that 'gender experts' informing the application of Resolution 1325, and its companion resolutions, are often drawn from the General Assembly's Third Committee (on Social, Humanitarian and Cultural affairs, charged with the examination of human rights questions including the advancement of women) rather than as part of the formal Council team representing a member state. These internal divisions impact on the prevalence of gender within a specific set of Security Council resolutions and lead to *ad hoc* advancements at best. This reinforces Otto's argument that one of the consequences of 'inclusion' in the collective security structure is that 'women's issues' remain the specialised concern of gender experts who are called in to advise and also to conform to the institutional structures they are working within. These institutional structures are often both formally and informally inimical to the advancement of sophisticated feminist politics. Conceptually, this arrangement entrenches the perception of gender perspectives as a method about women's lives and denies the significant scholarship on the role of gender as a socially constructed discourse that plays out in dominant views about masculinity and femininity. Returning to Resolution 1325, the Security Council called for the development of 'gender perspectives', however the continual collapse of gender into meaning 'about women' specifically limits the range of action available to the Council because there appears to be an assumption that the discussion and mobilisation of gender perspectives is women's work.

An additional criticism of the framework instigated under Resolution 1325, which perhaps stems from the institutional restraints, is the lack of precision in terminology employed within the

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<sup>32</sup> *Id.*; for Women in Black, see <http://www.womeninblack.org.uk/>.

<sup>33</sup> *Supra* note 31, 13.

resolutions. The use of the term 'gender perspectives' appears to be used throughout to refer to women's experiences undermining the developed critiques and dialogues within feminist thinking about the role of gender and its social consequences for men and women.<sup>34</sup> This has been specifically developed in feminist engagements with the relationship between gender and military structures, where there is widespread recognition of gender perspectives as inviting awareness of constructions of both femininity and masculinity as constructive, yet widespread social discourses.<sup>35</sup>

The following section looks at the relationship between the Security Council's normative framework on women, peace and security and the three feminist tensions I identified in part one.

#### **IV. FEMINIST DIALOGUES**

The first central feminist dialogue, or tension, concerns essentialism. By essentialism, I am referring to the central question in feminist thinking on how to engage and develop a project on 'women' without reducing understanding of human diversity and difference. Extensions of this debate includes work that seeks to avoid entrenching binaries of 'masculinity' and 'femininity'. As such, even though feminist scholarship and action may be premised on challenging gender binaries and stereotypes, legal reform particularly attracts the use of restrictive terminology that, for feminist activism, can lead to the reinforcement of gendered forms knowledge rather than liberation from them. This issue manifests in the Security Council resolutions on women, peace and security in a range of ways.

The distinction between women and humans within Resolution 1325, and the subsequent resolutions, plays a role in constructing women as 'other' to the regular subject of laws. This approach is seen in the earlier quote from the Security Council Report that describes women as a 'vulnerable subset'. A consequence is the implicit endorsement of women as a special case or group of persons functions as a process that distances women's rights from inclusion as human rights. This essentialises women as that which is not male and militates against approaches that appreciate

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<sup>34</sup> See Hilary Charlesworth, *Are Women Peaceful? Reflections on the Role of Women in Peace-building*, 16 FEMINIST LEGAL STUD. 347 (2008).

<sup>35</sup> CYNTHIA ENLOE, *MANEUVERS: THE INTERNATIONAL POLITICS OF MILITARISING WOMEN'S LIVES* (2000); Doris Buss, *Keeping Its Promise: Use of Force and the New Man of International Law*, in *EMPIRE'S LAW: THE AMERICAN IMPERIAL PROJECT AND THE 'WAR TO REMAKE THE WORLD'* (Amy Bartholomew ed., 2006); *THE POST-WAR MOMENT: MILITARIES, MASCULINITIES AND INTERNATIONAL PEACEKEEPING* (Cynthia Cockburn & Dubravka Zarkov eds., 2002).

and develop women's value as human beings. The persistent use of the phrase 'women and children' throughout Security Council resolutions and practice further emphasises this point; as does the preference for operative paragraphs in country specific resolutions that focus on women's sexual vulnerability more often than women's experiences as combatants and/or agents seeking and contributing to social transformation.

The prevalence of references to women as requiring protection from sexual violence also incorporates a form of victim feminism or victim essentialism. In Resolution 1820, this is carried forward so far as to limit women's participation, in post-conflict processes to women who are survivors of sexual violence rather than as members of a community that should be participating in the transformation of their own society as a matter of course.<sup>36</sup> Protecting and challenging sexual violence is an important aspect of the Security Council resolutions and framework on women, peace and security. However, it is also important to note that this is only one aspect of the Security Council agenda on women, peace and security and reduction of practice to this element risks the collapse of feminist activism into subordination feminism.

The second feminist dialogue present in the resolutions is the binary between victimhood and agency in feminist writing, between thinking and activism. Debates on tensions between victim and agency in feminist scholarship are well-known. Western feminisms,<sup>37</sup> after the 1980s 'Sex Wars' debating anti-prostitution versus anti-censorship approaches,<sup>38</sup> have persistently engaged with this aspect on topics such as sex work, trafficking, domestic violence, sexual violence and sexual harassment. Feminist answers are consequently varied and, at times, oppositional. It is possible to argue that the Security Council's approach represents a unique attempt at balancing the need for protection of women in armed conflict and the need for strategies built towards developing women's agency. Although Resolutions 1820, 1888 and 1960 focus on protection for women and women's specific vulnerabilities to sexual violence, it can be argued that these are only three of five resolutions on women, peace and violence. Thus, the focus on agency and participation in resolutions 1325 and 1889 remain relevant.

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<sup>36</sup> See *supra* note 4, op. §3.

<sup>37</sup> *Supra* note 29, ch. 4.

<sup>38</sup> See CAROL S. VANCE, *PLEASURE AND DANGER: EXPLORING FEMALE SEXUALITY* (1993).



As such, Otto finds that the ‘Governance Feminist’ tendencies (or subordination feminist critique) of 1820 and 1888 miss the role of the resolutions as tools, utilised by groups outside of the UN structure, to lobby for change.<sup>39</sup> Thus Otto argues:

“[T]hese achievements rely on a productive understanding of power that is ‘bottom up’. They loosen the grip of subordination feminism on the feminist imaginary, as it is given content by the diverse women and men (including feminists) directly affected by armed conflict”.<sup>40</sup>

While this approach has some merit in attempting to understand the strengths of the range of feminist action; when maintained within a structure that has limited capacity to see women as diverse humans, the propensity of the Security Council to fall back on these limited visions of female sexuality is highly likely and evidenced in the over-emphasis on women’s sexual vulnerability across the five resolutions. The productive footholds and bottom up strategies of women’s NGOs must be ever mindful of this danger.

My third feminist dialogue is the relationship between action and theory that is central to feminist thinking. Elsewhere, Otto has argued that the use of Security Council as a platform for feminist legal reform reinterprets feminist ideas to serve institutional purposes.<sup>41</sup> The hijacking of feminist histories by the liberal state is also recognised in feminist cultural studies.<sup>42</sup> However, Otto shifts her argument in 2010 when reviewing all four Resolutions of the Security Council, from her early pessimism (when she had described the Resolutions as forming ‘new forms of exile’ for women within the UN structure) to optimistically stating that ‘it is better to think of these processes as creating productive footholds for feminist ideas’.<sup>43</sup> While Otto’s optimism is both refreshing and useful to the construction of new dialogues within feminist scholarship, it is important to also place the Security Council’s attention to women, peace and security in a larger liberal ‘movement’ that has seen Western liberal democracies embrace liberal feminist approaches as integral aspects of liberal histories and consequently writing out of history, the anger, activism

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<sup>39</sup> On governance feminism, see Janel Halley, *Rape at Rome: Feminist Interventions in the Criminalization of Sex-Related Violence in Positive International Law*, 30 MICH. J. INT’L L. 1 (2008).

<sup>40</sup> *Supra* note 10, 106.

<sup>41</sup> *Supra* note 31, 26.

<sup>42</sup> See ANGELA MCROBBIE, *THE AFTERMATH OF FEMINISM* (2009).

<sup>43</sup> *Supra* note 10, 104.

and productivity of the range of feminist approaches, both Western and non-Western, since the second wave of feminism and before.<sup>44</sup>

For Otto, then, the feminist project in all its diversity, theory and action has always been a dialogue within a changing set of narratives. The reform of law can never be the end of feminist dialogue, instead it must be the site where we re-engage dialogues that have been shaped and continue to shape feminist histories and strategies. At the present it is activists, NGOs and international institutions that lead responses to the Security Council's endeavours. Academic feminism, especially in legal scholarship, as well as critical projects within international law generally, has played less heed to the developments and consequences of Resolution 1325 and its companion resolutions.

## V. THE USE OF FORCE TO 'SAVE' WOMEN

The debates and tensions I have discussed above are replicated in a range of literature available on the Security Council Resolutions on women, peace and security.<sup>45</sup> I would like to argue, however, that the central site for engagement with the legal consequences of Security Council resolutions to women peace and security should start with one of the least discussed elements of the four resolutions: joint operative paragraph 1 of resolutions 1820 and 1888. Operative paragraph 1:

*“Reaffirms that sexual violence, when used or commissioned as a tactic of war in order to deliberately target civilians or as a part of a widespread or systematic attack against civilian populations, can significantly exacerbate situations of armed conflict and may impede the restorations of international peace and security; affirms in this regard that effective steps to prevent and respond to such acts of sexual violence can significantly contribute to the maintenance of international peace and security; and expresses its readiness, when considering situations on the agenda of the Council, to take, where necessary appropriate steps to address widespread or systematic sexual violence in situations of armed conflict.”*

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<sup>44</sup> *Supra* note 42, ch. 1.

<sup>45</sup> For example, see Diane Otto, *Signs of Weakness – Disrupting Gender Certainties in the Implementation of Security Council Resolution 1325*, 13 MICH. J. GENDER & L. 113 (2006); Torunn L. Tryggstad, *Trick or Treat? The UN and the Implementation of Security Council Resolution 1325 on Women, Peace and Security*, 15 GLOBAL GOVERNANCE 539 (2009); LAURA J. SHEPHERD, *GENDER, VIOLENCE AND SECURITY: DISCOURSE AS PRACTICE* (2008).

While Resolution 1325, and its complement resolutions, raise ongoing issues that have long been at the heart of feminist scholarship, activism and dialogues, joint operative paragraph one of 1820 and 1888 takes feminist thinking into an area less often addressed. In the 1930s Virginia Woolf famously tackled the issue in her work ‘Three Guineas’<sup>46</sup> and during the 1990s Karen Engle in her article ‘Calling in the Troops’<sup>47</sup> analysed what she described as the ‘uneasy relationship’ between women’s rights, human rights and humanitarian intervention critiquing early feminist demands for the use of force to protect women in the Former Yugoslavia. Orford has described the use of military force, even when sanctioned or justified by law, as entrenching patriarchal and imperialist understandings of the role of law to ‘protect’ and to ‘save’.<sup>48</sup> However, beyond this handful of legal scholarship, there is an uneasy silence in feminist debates about when, if ever, the use of military force to save women would be feminist.

Joint Operative Paragraph 1 of Resolutions 1820 and 1888 is ultimately ambiguous in its drafting but certainly prises open the possibility of force to save women with Security Council authority in the future. This is because through the references, in operative paragraph 1 of Resolutions 1820 and 1888, to widespread and systematic sexual violence as significantly impeding the restoration of international peace and security, the Council appears to have identified widespread and systematic sexual violence as a potential trigger to Chapter VII action of the Council – that is, if widespread and systematic sexual violence constitutes either a threat to international peace and security, a breach of the peace or an act of aggression under Article 39 of the UN Charter, the Council may authorise the use of force under Article 42 as an enforcement measure. Furthermore, the use by the Council of the phrase ‘to take, where necessary appropriate steps’ appears to be incorporating the language used throughout the Council’s history to authorise the use of military force. That is, rather than articulating the use of force as its response to a situation the Security Council, acting under Chapter VII, charges member states to use all means necessary.

While it may seem unlikely that the Security Council would authorise the use of force to halt, widespread or systematic sexual violence – indeed events in the DRC seem to indicate a

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<sup>46</sup> VIRGINIA WOOLF, *A ROOM OF ONE’S OWN AND THREE* (1992 Rep.).

<sup>47</sup> Karen Engle, ‘Calling in the Troops’: *The Uneasy Relationship among Women’s Rights, Human Rights and Humanitarian Intervention*, 20 HARV. HUM. RTS. J. 189 (2007).

<sup>48</sup> ORFORD, *supra* note 20.

preference for silence in response to specific incidents - arguments from prominent US feminists for the use of force to 'save women' exist. Further, the use of force initiated against Afghanistan in 2001, after the 9/11 attacks were, at times, justified politically through references to women's security. It is clear that women's rights were not secured or ever the central justification for action in Afghanistan but the use of women's rights to give credibility to a larger agenda has been identified as alarming and harmful to women.<sup>49</sup>

The question of the deployment of military force to save women and/or to combat widespread and systematic sexual violence, authorised by the Security Council or justified by a state through references to Security Council's Resolutions 1820 and 1888 and the framework of Resolution 1325 generally, has not been adequately debated or proposed within feminist activism or scholarship. Yet, the capacity to authorise use of force is the central role of the UN Security Council as the Council's purpose is to maintain international peace and security through a monopoly on legal force. However, the use of force to 'save women' or to put a halt to the widespread and systematic sexual violence complicates the feminist understanding of the complicity of militaries in sexual violence and sexual exploitation and abuse. For the Council to challenge the sexual violence of military actors while also creating a space to authorise military activity to combat sexual violence is not a feminist dialogue. Underlying this, remain questions about the function of the Council and what the turn to the Council to develop a normative framework on women, peace and security means in terms of the underlying political goal of feminism to challenge the inequalities that women experience globally. The further goal of developing gender perspectives that are absent of heterosexual normativity and gender hierarchies will not be realised by the use of force. The reliance on military structures to provide solutions to these complex social, political, cultural and economic realities is a denial of the role of women's peace studies and women's anti-militarism as integral to feminist debates.

At present, feminist approaches to international law have not developed a response to when, if ever, Security Council's authorised force would be an acceptable and successful use of Security Council powers. Yet, significant debates on non-violence, on women's anti-militarism and analysis of law's complicity in the social normalness of some types of violence does exist and

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<sup>49</sup> Deniz Kandiyoti, *Between the Hammer and the Anvil: Post-conflict Reconstruction, Islam and Women's Rights*, 28 THIRD WORLD Q. 503 (2007).

requires incorporation into the normative framework on women, peace and security. If the enlargement of our understandings of international peace and security to include significant threats to women's safety would consequently lead to the idea of a feminist friendly force being deployed – either by the UN Security Council or unilaterally, by states, to protect women from systematic and widespread sexual violence – then, these are not feminist resolutions on women, peace and security; but are just another means to justify international military action.

Security Council Resolution 1325 has instigated a normative framework for international law and the collective security structure that I could not have imagined possible as an undergraduate in 1992. The framework asserts the relevance of the interconnectedness of women's lives to international peace and security and thus represents a triumph of feminist and women's rights strategies. Women's participation remains at the heart of Resolution 1325. As participants we must, therefore, address all aspects of the collective security regime and acknowledge where we stand on the issue of authorised force. Our failure to participate in such a dialogue may lead to the use of force authorised in our names in the future. I would think it is better to initiate and participate in such dialogues now.