

CHAPTER 5

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FEMINIST PERSPECTIVES ON THE LAW ON THE USE OF FORCE

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GINA HEATHCOTE

We don't know what 'being human' is, we are still in the process
of becoming

(Shelly Wright¹)

I. INTRODUCTION

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THIS chapter articulates the idea that, rather than discussing when force is justified or how force is authorized, it is time to re-imagine and expand the parameters of the prohibition on the use of force contained in Article 2(4) of the UN Charter. In returning to the prohibition, I use structural bias feminist approaches to consider how the law on the use of force has fared in the first two decades after the advent of feminist approaches addressing international law.² Structural bias feminism

¹ Shelly Wright, *International Human Rights, Decolonisation and Globalisation: Becoming Human* (New York: Routledge Research in International Law, 2001).

² Hilary Charlesworth, Christine Chinkin, and Shelly Wright, 'Feminist Approaches to International Law' (1991) 85 *American Journal of International Law* 379.

focuses on both organizational and normative structures to demonstrate the gendering of international legal categories and how this contributes to the harm and discrimination women experience globally.³ I focus on women's low participation in decision-making structures, the need for an expanded institutional take-up of feminist approaches, and the neglect of feminist peace studies in international legal scholarship, to draw conclusions about the law on the use of force, in particular the prohibition on the use of force. I reflect on when force has been authorized, using the Security Council action in Libya in 2011 as an example of the normative and organizational exclusion of women, and when force has been justified, in particular contemporary US justifications for targeted strikes against terrorist actors on the territory of another state, to challenge the Council's contemporary understanding of the relationship between women, peace, and security. I note the Security Council's women, peace, and security resolutions⁴ to highlight how the women, peace, and security framework supports and legitimates the use of force. This is an outcome which I am critical of and recommend a focus on strengthening the prohibition on the use of force instead.

In Section II, I focus on women as participants in decision-making structures, reflecting on the access some women have to the Security Council and the impact the Security Council's resolutions on women, peace, and security have had on country-specific resolutions. Using the authorization of force in Libya in 2011, I demonstrate how decisions with respect to the use of force remain untouched by the women, peace, and security framework. This raises questions about the organizational and normative capacity for women's participation as an embedded international norm.

In Section III, I consider the intersection of race and gender privilege in international law and, drawing on the work of Orford,⁵ call for the Council's ongoing work on women, peace, and security to respond to the diversity of feminist approaches. Recognition of diversity complicates our legal projects and mitigates against a single sentence—even if a long one—such as the prohibition on the use of force, in Article 2(4) of the UN Charter, as the only law prohibiting the deployment of military force by states. This section recalls Charlesworth, Chinkin, and Wright's claim in 1991 that 'no single approach can deal with the complexity of international organisations, processes or rules or the diversity of women's experiences'.⁶ Acknowledging the diversity of feminist approaches, and of women's experiences, challenges the

³ Charlesworth, Chinkin, and Wright, 'Feminist Approaches to International Law', 621.

⁴ The Council has issued five resolutions on women, peace, and security, see: SC Res 1325: UN SCOR 4213th mtg, S/RES/1325 (31 Oct 2000); SC Res 1820: UN SCOR 5916th mtg, S/RES/1820 (19 June 2008); SC Res 1888: UN SCOR 6195th mtg, S/RES/1888 (30 Sept 2009); SC Res 1889: UN SCOR, 6196th mtg, S/RES/1889 (5 Oct 2009); SC Res 1960: UN SCOR, 6453 mtg, S/RES/1960 (16 Dec 2010).

⁵ Anne Orford, *Reading Humanitarian Intervention: Human Rights and the Use of Force in International Law* (Cambridge, Cambridge University Press, 2003).

⁶ Charlesworth, Christine Chinkin, and Shelly Wright, 'Feminist Approaches to International Law', 634.

Security Council's framework on women, peace, and security which I describe as legitimating the Council rather than representing a feminist understanding of security.⁷ I use targeted strikes on the territory of other states as an example of the type of force that is insufficiently attended to by the Council yet in violation of Article 2(4). As the justification for targeted strikes in part rests on the failure of states to implement the Council's targeted sanctions regime,⁸ attention to the risks of the targeted sanctions being implicated in targeted strikes requires further attention. Rather than the instigation of new forms of targeted sanctions, such as those developed under the 1325 framework against suspected perpetrators of widespread and systematic sexual violence in armed conflict, recalling the prohibition on the use of force requires condemnation of targeted strikes. As such, Section III demonstrates how the complicity of (some) feminist approaches in legitimating the Security Council's action (and inaction) directly undermines the prohibition on the use of force while equally undermining the perceived legitimacy of feminist analysis in non-Western states.

In Section IV, I turn to feminist peace activism. Feminist peace activism is a persistent yet hidden component of the law on the use of force, recognized as an element of the international structure since at least 1915.⁹ Acknowledging the role of women and feminists as organizing for peace, and disarmament, forces us to recognize that to speak of war (or force) and not to speak of peace is to begin from a premise that ultimately favours rather than restrains military action. This results in the prohibition functioning as a trigger to arguments for justified or authorized force rather than as a restraint on the use of force. For feminist approaches, the references to the potential to the use of 'necessary means' in response to widespread and systematic sexual violence in situations before the Council—found in Security Council Resolutions 1820, 1888, and 1960—further challenges the Council's women, peace, and security agenda as counterintuitive to the history and the diversity of feminist approaches.

In articulating feminist perspectives on the prohibition on the use of force, I demonstrate persistent themes that engage gender, the law on the use of force, and the prohibition contained in Article 2(4) of the UN Charter. The isolation of traditional (or mainstream)¹⁰ approaches to the law on the use of force from gender analysis

⁷ See also: Dianne Otto, 'The Security Council's Gender Legitimacy: The Symbolic Capital of Resolution 1325' in Hilary Charlesworth and Jean Marc Coicard (eds), *Faultlines of International Legitimacy* (Cambridge: Cambridge University Press, 2010).

⁸ Harold Koh, 'Keynote Address: The Obama Administration and International Law' (2010) 104 *Proceedings of the American Society of International Law* 207, 219.

⁹ See: Felicity Ruby, 'Security Council Resolution 1325: A Tool for Conflict Prevention?' in Gina Heathcote and Dianne Otto (eds), *Rethinking Peacekeeping, Gender Perspectives and Collective Security* (London: Pluto Press, 2013.)

¹⁰ For a definition and analysis of what constitutes the 'mainstream' of international law, see: B. S. Chimni, 'A Prolegomena to a Class Approach to International Law' (2010) 21 *European Journal of International Law* 57; also see B. S. Chimni, 'An Outline of a Marxist Course on Public International

requires acknowledgement.¹¹ In addition, appreciation of non-Western feminist understandings of governance, of gender, and of insecurity are vital to challenging the limited perspectives and answers prevalent in mainstream international legal scholarship (MILS).¹² I reflect on the feminist project within international law, its strengths and weaknesses, as well as an emergent division between contemporary Western feminist approaches that have increasingly gained leverage at the UN and the spectrum of feminist thinking on the use of force.¹³ I conclude with a return to Shelly Wright's article, 'The Horizon of Becoming',¹⁴ emphasizing the role that humanity plays as a persistent motif in feminist approaches, so that the prohibition on the use of force is articulated as a useful beginning for imagining the potential of humanity rather than, as international actors often assume, a starting point for justifying further force, further violence, or further destruction.

II. WOMEN'S PARTICIPATION: ORGANIZATIONAL AND NORMATIVE APPROACHES

In 1992 Chinkin noted the 'invisibility of women in nationalists movements and their invisibility in determining the legality or otherwise of any international use of force'.¹⁵ In 2011, as protest in the Middle East garnered global attention, the role of women

Law' (2004) 17 *Leiden Journal of International Law* 1 defining MILS as 'an ensemble of methods, practices and understandings in relation to the identification, interpretation, and enforcement of enforcement of international law' (at 2). Of the four features of MILS that Chimini identifies, pertinent to the analysis in this chapter, is that 'practitioners of MILS do not recognise that there are structural constraints in the international system that greatly limit the pursuit of common good through law' (ibid).

¹¹ eg the four central pieces of Western scholarship on the use of force, despite being published after the first Security Council resolution on women, peace, and security, have no index reference to women or gender: Yoram Dinstein, *War, Aggression and Self-Defense* (5th edn, Cambridge: Cambridge University Press, 2011); Christine Gray, *International Law and the Use of Force* (3rd edn, Cambridge: Cambridge University Press, 2008); Thomas Franck, *Recourse to Force* (Cambridge: Cambridge University Press, 2002); Mary Ellen O'Connell, *International Law and the Use of Force: Cases and Materials* (New York: Federation Press, 2005). ¹² See n 10.

¹³ See: Doris Buss, 'The New Man of International Law' in Amy Bartholomew (ed), *Empire's Law: The American Imperial Project and the 'War to Remake the World'*, (London: Pluto Press, 2006).

¹⁴ Wright, *The Horizon of Becoming*, 1.

¹⁵ Christine Chinkin, 'A Gendered Perspective to the International Use of Force' (1992) 12 *Australian Yearbook of International Law* 279, 280.

in popular revolutions was given both media¹⁶ and academic attention.¹⁷ The topic of ‘Women and the Arab Spring’ has attracted continuing global attention yet elections in Tunisia and Egypt demonstrate the difficulties of transforming women’s role in the articulation of dissatisfaction with the state into concrete political reform that is attentive to gender equality. At the same time, women’s movements have struggled to challenge local perceptions that women’s rights are concepts that have been exported from the West and that should be rejected post-revolution.¹⁸ When force has been authorized, women’s rights have been deployed as rhetoric¹⁹ or in post-conflict resolutions but not as a component of the decision-making process with respect to the use of force. This is illustrated below in analysis of the 2011 Libyan intervention.

Security Council Resolution 1973 authorized the use of force to protect the Libyan people from state-led violence.²⁰ Despite the authorization coming over a decade after the first Security Council resolution on women, peace, and security (Resolution 1325) and four subsequent resolutions also emphasizing the need to consider women’s security and to incorporate women’s participation into all stages of the decision-making process, Resolution 1973 was silent on the normative and organizational requirements of Resolution 1325, in particular the need for women’s participation in the decision to authorize force. While the structure of the Security Council in 2011 included some high-profile women, notably Susan Rice representing the US, Maria Luiza Riberio Viotti representing Brazil, and Joy Ogbu representing Nigeria, these women were not charged with representing women’s interests. The presence of three women sitting on the Council when the decision was made to authorize force in Libya highlights the limitations of strategies centred on adding women to existing institutions: as this does little to challenge the organization’s structure or the normative outputs of the institution.

It is not until after the Gaddafi regime had been deposed from power and the UN action in Libya shifts from the authorized use of force to post-conflict strategies for peacebuilding that women were recognized within the Council’s debates as participants and stakeholders within the security discourse. Security Council Resolution 2009, issued seven months after Resolution 1973, established the United Nations Support Mission in Libya (UNSMIL)²¹ and included a condemnation of sexual

¹⁶ See eg <<http://www.bbc.co.uk/news/world-middle-east-20726942>>, <<http://www.opendemocracy.net/5050/deniz-kandiyoti/fear-and-fury-women-and-post-revolutionary-violence>>, and <<http://www.washingtonpost.com/blogs/worldviews/wp/2012/10/25/what-the-arab-spring-has-done-for-womens-equality-in-one-chart/>>.

¹⁷ See eg Nadje Al-Ali, ‘Gendering the Arab Spring’ (2012) 5 *Middle East Journal of Culture and Communication* 26.

¹⁸ Al-Ali, ‘Gendering the Arab Spring’.

¹⁹ Starting just before the invasion of Iraq in 2003, Iraqi women were heralded by the US administration as promoters of freedom and democracy, see <<http://www.gwi-boell.de/web/un-resolutions-embedded-feminism-nadje-al-ali-2811.html>> and contrast with <<http://2001-2009.state.gov/g/rls/rm/2003/18477.htm>>.

²⁰ SC Res 1973: UN SCOR 6598th mtg, S/RES/1973 (17 Mar 2011).

²¹ SC Res 2009 (16 Sept 2011).

violence in its Preamble and a call for accountability for human rights violations, including sexual violence, as well as protection for vulnerable groups.²² The subsequent Security Council resolution on the situation in Libya, Resolution 2016, identified the participation of women (and minority groups) as a concern in its Preamble. Resolutions 2017 and 2022 on Libya made no mention of women or of the risk of gender-based violence during armed conflict.²³ So it is in Resolution 2040, issued by the Security Council a year after the authorization of the use of force,²⁴ where these strands are drawn together and the Council condemns sexual violence (of men, women, and children) in the Preamble, addresses issues of protection from and accountability for acts of sexual violence in operative paragraph 3²⁵ and encourages UNSMIL to promote ‘the empowerment and the political participation of women’,²⁶ as well as the need for the protection of women and children’s human rights.²⁷ In March 2013, with the renewal of UNSMIL’s mandate by the Council, a similar set of concerns are articulated.²⁸ The separation of the authorization of force from attention to women’s security is thus visible across this sequence of resolutions.

Consequently, the Security Council’s resolutions on Libya demonstrate the extent to which the agenda developed on women, peace, and security is developed away from decisions on the use of force. There is no attention to the women, peace, and security agenda in the decision to authorize force: this is not attended to by the Council until well into the post-conflict peacebuilding process (and after the creation of UNSMIL in Resolution 2009) and without consistency across the post-conflict initiatives. The approach to women, peace, and security in the Libya resolutions is developed without any requirement that the Council itself be attentive to the participation of women in its own committees and decision-making structures. For example, in Resolution 1973 the Council also established a Panel of Experts, to monitor the situation in Libya, yet again ignored its own decree for women’s participation in decision-making structures at all levels.²⁹ This indicates that the women, peace, and security agenda of the Council would be better understood as a women and peace agenda that perpetuates an understanding that the ‘hard work’ of security, or the decision to authorize the use of force, is inimical to the Council’s development of gender perspectives.

Furthermore, even when the Security Council addresses women’s participation in post-conflict communities, the focus is grounded within a liberal feminist model that is narrow in its focus on strategies to obtain women’s formal equality in

²² SC Res 2009, operative para 7.

²³ SC Res 2016: UN SCOR 6640th mtg, S/RES/2016 (27 Oct 2016); SC Res 2017: UN SCOR 6644th mtg, S/RES/2017 (31 Oct 2011); SC Res 2022: UN SCOR 6673rd mtg, S/RES/2022 (2 Dec 2012).

²⁴ SC Res 2040: UN SCOR 6733rd mtg, S/RES/2040 (12 Mar 2012).

²⁵ SC Res 2040, operative para 3. ²⁶ SC Res 2040, operative para 6(a).

²⁷ SC Res 2040, operative para 6(b).

²⁸ SC Res 2095: UN SCOR 6934th mtg, S/RES/2095 (14 Mar 2013).

²⁹ SC Res 2095., operative para 24.

access to decision-making structures; often within a constricted set of substantive concerns that are identified as of relevance to gender.³⁰ As such, any call for the increased participation of women in the Council's own decision-making structures, such as was hinted at earlier, should be not a quota-type strategy. The empirical aspect of the participation claim lies in the recognition of the relative absence of women in international and national decision-making structures, yet to address this absence the incorporation of women's narratives from outside the mainstream of international law to explain, analyse, and challenge the international law on the use of force is necessary.

A structural bias strategy centred on women's participation replaces demands for gender equality, in terms of women's proportionate or numerical representation, with a sophisticated and long-term commitment to enhancing women's capacity for participation in international and state structures, via attention to education, health, maternal support, and addressing restrictive social narratives on women's roles within communities. This would involve seeking out women's understanding of their own and society's needs, as well as understanding the role of women on the 'peripheries' in challenging social, cultural, and legal norms.³¹

Strategies that encourage women to value themselves, their opinions, and their capabilities, through education, through empowerment strategies, and through the challenging of gendered violence that is tolerated because it is directed against them as women, are the types of strategies that are relevant to enlarging women's participation in institutional and state structures. This also involves thinking through the existing gender imbalances within powerful structures, including the Council, to ask how education of existing participants might assist recognition of how privilege perpetuates gendered harms. None of these structural bias reforms are currently apparent in the resolutions of the Council and without this level of gender reform the Council will continue to contribute to the lack of women's participation in high-level decision-making structures.

For decision-making structures on the use of force, the disproportionately low representation of women (ie in the Security Council) is simple to acknowledge yet this does not mean that either proportionate representation would be the optimal outcome (although it might be a start) or that women do not already work in a multitude of positions that support the work of the Council and remain unrecognized in terms of the formal participants and decision-makers in the Council. The democratic deficit in the make-up of Security Council is easy to identify, more difficult to reform. While the Council is a political body with legal powers that might not be expected to reflect global diversity, the shifts since the early 1990s to expand the range of resolutions the Council issues, including thematic resolutions

³⁰ Gina Heathcote, *The Law on the Use of Force: A Feminist Analysis* (London: Routledge, 2012), ch 6.

³¹ Ratna Kapur, *Erotic Justice: Law and the New Politics of Postcolonialism* (New York: Routledge, 2005), ch 4.

such as those on women, peace, and security, has considerably altered the nature of the Security Council output. The creation of normative frameworks considerably expands the Council's powers and demonstrates a need for a representative Council. In addition, greater regional representation is now an established norm of the Council demonstrating that transformation is possible.

To propose women's full participation in legal processes is, therefore, to embark on a (slow) reworking of legal structures and normative categories, including the Security Council itself. The organization of Council is this way linked to the normative outputs of the Council, with a beginning point being attention to the maintenance of gender imbalances in the Council's own structure. Consequently, when authorizations of force are made, such as in response to the crisis in Libya in 2011, without attention to the impact of force on women or to the gender structures military force functions within, the Council remains complicit in the undermining of women's security. When justifications for the use of force, or authorizations from the Security Council, are articulated and maintained/extended through a narrowly selected group of elite men, with occasional representations from elite women, women's participation—and specifically feminist concerns regarding the deployment of force—remain outside our understandings of the prohibition.

III. THE MISREPRESENTATION OF WESTERN FEMINISM AS A UNIVERSAL FEMINISM

Orford's seminal text, *Reading Humanitarian Intervention: Human Rights and the Use of Force in International Law* draws on critical legal theory, Third World Approaches to International Law (TWAAIL),³² feminist and postcolonial theory to demonstrate a core feature of feminist approaches to international law that has resonance for the law on the use of force: feminist thinking is immersed in debates and dialogues with a range of other contemporary theoretical approaches that both inform and springboard from feminist thinking. As such, recognition and understanding of the intersection between race and gender needs to be adequately integrated to the feminist reappraisal of women's participation within decision-making structures, so that this can be acknowledged and developed within approaches to the prohibition on the use of force. The intersection of race and gender are extensively theorized in feminist and critical approaches, yet overlooked at the institutional level, in particular

³² For an introduction see: Antony Anghie, B. S. Chimni, Karin Mickelson, and Obiora Okafor (eds), *The Third World and the International Order* (Leiden: Martinus Nijhoff, 2003).

Security Council work on women, peace, and security. For Wright (writing in the context of international human rights law) this requires open engagement with the legacy and reach of decolonization, such that she proclaims:

I would suggest that decolonisation is an immensely more complex process than international law has hitherto acknowledged. It involves seriously questioning the meaning of universality and its association with European humanism.³³

To take Wright's project seriously is, therefore, to openly question and acknowledge the racial and gendered power imbalances that are at once invisible and visible in international relations. These imbalances are often unconsciously propagated in mainstream understandings of the prohibition on the use of force that prioritize justified and authorized violence.³⁴ This also requires reflection on Wright's quest for expanding our understanding of what it means to be human, acknowledging the limited frameworks dominant political, moral, and philosophical models were born from, in particular the gender and racial exclusions that created the conditions for Enlightenment thinking that continues to influence the structures of international law today.

Recognition of the embedded dialogues of feminist approaches allows for greater recognition of the transnational and anti-imperialist dimensions of feminist methods. This also demonstrates the narrow focus of specific institutional, and some Western, feminist dialogues (particularly those that have been developed within the Security Council's women, peace, and security framework) that often fail to reflect, develop, or integrate the established links between feminist and other critical approaches. Orford, writing in 2003, was able to fuse the strengths of TWAIL, postcolonial, and critical legal scholarship with a feminist appraisal of the narratives produced to underpin and justify humanitarian interventions at the onset of the new millennium, compelling readers to work against 'forgetting law's imperial history'³⁵ and thus allowing the text to explore the limits of gender as a mechanism for analysis when used in isolation from other critical models.³⁶ This permits Orford to recognize the role that the prohibition on the use of force plays in reasserting the status quo of international law while permitting powerful states to intervene in extreme circumstances.

The post-millennium use of force through targeted strikes starkly demonstrates this need for a diversity of feminist and critical thinking to be developed within approaches to the prohibition on the use of force. Within the women, peace, and security framework, akin to the work of the Security Council more generally, targeted strikes are not broached. Justifications for the use of targeted strikes on the territory of another state, by the US, relies upon consent of the state where the

³³ Wright, *International Human Rights, Decolonisation and Globalisation*, 10.

³⁴ Heathcote, *The Law on the Use of Force*.

³⁵ Orford, *Reading Humanitarian Intervention*, 39.

³⁶ Orford, *Reading Humanitarian Intervention*, 39.

force occurs or the failure of the territorial state to implement Security Council targeted sanctions to establish the legality of the strikes.³⁷ Regardless of whether these justifications are representative of international law, the parallel development of a targeted sanctions regime within the women, peace, and security framework seemingly provide a feminist endorsement of both the Council's targeted sanctions regime and the Council's silence on the legality of targeted strikes. Yet a feminist analysis of the targeted strikes conducted by the US on the territory of other states would focus precisely on the intersectional harm these attacks produce, including the creation of two tiers of rules on the use of force, the lack of protection for civilians from targeted strikes, and the disproportionate risks to foreign communities as opposed to drone operators in the US.

In addition, the use of targeted strikes by the US has occurred in parallel with the US and the UK's shift on the women, peace, and security framework from the general Security Council Resolution 1325 to the production, under the US presidency of the Council, of four resolutions on women, peace, and security that centre primarily on sexual violence during armed conflict. An intersectional feminist analysis raises questions of how both race and gender are constructed in these two moves by the US in relation to security in the post-millennium period. That is, the period where the US developed the technology to use force on the territory of another state without deploying troops to the location of force, has coincided with the period where vast discussion of the dangers of sexual violence during armed conflict has emerged and been led by the US in the Security Council. This allows a form of 'civilized' force to be conducted by the US through targeted strikes, not only with low risks to US actors but with low risks of sexual violence to foreign women (at least from US service personnel). As such, the atrocities of militaries in relation to the perpetration of sexual violence are documented and recorded to demonstrate the non-civilized nature of other forms of warfare and distinguished from the manner in which the US conducts conflicts. A narrative of technologically advanced, precise, and 'safe' warfare conducted by the US is juxtaposed with the brutal stories of conflict documented in the global south. The complicity of Western militaries in the production of negative sexual cultures and sexual crimes is thus rendered less visible while new forms of forceful intervention are proposed as less damaging forms of warfare, justified through the exceptionalism of the global war on terror.

While feminist scholarship directly addressing the prohibition on the use of force may be less in comparison to the mainstream material available on the use of force, the complexity of a feminist approach to the prohibition on the use of force—if embedded in larger critical dialogues on race and global privilege—speaks to contemporary conditions in global relations and demands a remembrance of being human, as articulated by Wright. Becoming human requires we re-imagine and redevelop the boundaries of our thinking, recalling the essence of the prohibition

³⁷ Koh, 'Keynote Address'.

as a restraint on force rather than a space to argue for further force, justified, authorized, or legitimized.

In relation to targeted strikes, this raises new questions about the perpetuation of imperial structures as civilized and uncivilized that, not surprisingly, co-opt ideas about women's protection, particularly the protection of foreign (non-Western) women from non-Western men, which ignore the global prevalence of gendered violence and the manner in which women's rights are deployed to construct standards that reinforce a model of the West as technologically advanced and civilized. Targeted strikes kill men and women producing local narratives that are harmful to the protection of women's rights due to the anti-US sentiment that emerges in the locations of targeted strikes. This often becomes a suspicion of other forms of 'Western' interventions of which feminist action is ~~often~~ included. As such, the combination of the Council's own women, peace, and security agenda and the failure of the Council to address or regulate the practice of targeted strikes, as well as the implicit endorsement of targeted strikes via the targeted sanctions regime, including targeted sanctions against perpetrators of sexual violence in armed conflict, re-appropriates feminist thinking as a Western theory, when it is not. This contributes not only to global inequalities, but also to the articulation of important local feminist concerns and women's rights generally, in spaces where anti-US sentiments arise in response to the risk of targeted strikes, as dangerous.

Consequently there is a need for both targeted strikes and targeted sanctions, including those against actors suspected of being responsible for widespread and systematic sexual violence, to be understood from diverse feminist perspectives and from larger critical writing on international law to expose the power relations that embed rather than dismantle gender, race, and economic privilege.

IV. THE ENDURING RELEVANCE OF FEMINIST PEACE STUDIES

The failure to engage effectively with feminist peace studies within the Security Council's women, peace, and security framework has been matched with a failure to engage the prohibition on the use of force as a gendered component of international relations.³⁸ As such, in recalling feminist peace activism, for example the work of the

³⁸ eg see Fionnula Ni Aoláin, Dina Francesca Haynes, and Naomi Cahn, *On the Frontlines: Gender, War and the Post Conflict Process* (Oxford: Oxford University Press, 2011) which focuses on post-conflict processes.

Women's International League for Peace and Freedom in the creation of the League and the UN,³⁹ the simplicity of Article 2(4) is challenged and a quest for the development of the prohibition in response to contemporary understandings of the nexus between global inequalities, gendered understandings of violence, and the diversity of feminist approaches needs to be developed.

I have argued elsewhere that a failure to develop the legal finesse of Article 2(4) as a prohibition on the use of force is linked with histories of international institutions, such as the UN and the League of Nations, that leave off recognition of the role of feminist peace activism.⁴⁰ In turn, this leads to the preoccupation of states and scholars with the articulation of justifications, rather than the prohibition on the use of force. This constructs a status quo that contributes to, rather than diminishes, the level of conflict globally.

The placement of Article 2(4) as the epitome of state agreement on the nature of prohibited force was a significant legal development in 1945: the failure of states to continue to develop the legal reach of the prohibition does not mean this must always be the case. From a feminist perspective, Article 2(4) must be regarded as the beginning of the outlawing of state violence, so that the elaboration and development of what it means to have a prohibition on the use of force, its limits, its regulation, and its co-option into a gendered understanding of law and violence is connected to global feminist peace activism. Unfortunately, feminist peace activism remains a footnote, a sign, or completely invisible rather than a site of analytical and practical inquiry within MILS.

Within the Security Council's women, peace, and security resolutions, the possibility of force as a mechanism to halt widespread and systematic sexual violence is proposed in operative paragraph 1 of Resolutions 1820, 1888, and 1960.⁴¹ This is markedly different from a feminist politics of peace, which emphasizes the need to work to prevent conflict through attention to social and economic inequalities both within and across states. Nor does the policy of taking 'necessary measures' via the Security Council as operative paragraph 1 of these resolutions proposes, work to challenge existing insecurities, the role of social and cultural constructions of gender, the persistence of gender-based violence within communities, or the need for disarmament rather than deployment of weapons into conflict zones. Like all of the resolutions on women, peace, and security, the provisions imagining the use of force to stop systematic and

³⁹ Lela B. Costin, 'Feminism, Pacificism, Internationalism and the 1915 International Congress of Women' (1982) 5 *Women's Studies International Forum* 301; Anne Wiltsher, *Most Dangerous Women: Feminist Peace Campaigners of the Great War* (London: Pandora, 1985); Leila Rupp, *Worlds of Women: The Making of an International Women's Movement* (Princeton, NJ: Princeton University Press, 1997).

⁴⁰ Heathcote, *The Law on the Use of Force*.

⁴¹ See further: Gina Heathcote, 'Feminist Politics and the Use of Force: Theorising Feminist Action and Security Council Resolution 1325' (2011) 7 *Socio-Legal Review* 23–43; Letita Anderson, 'Politics by Other Means: When Does Sexual Violence Threaten International Peace and Security?' (2010) 17 *International Peacekeeping* 244.

widespread sexual violence in armed conflict construct responses to violence rather than working to stop it occurring in the first place.

The 2009 General Assembly debates on the Responsibility to Protect⁴² demonstrate how, outside powerful Western states, support for increased interventions, authorized or otherwise, is low. In contrast, states in conflict zones recognize the strength of the first pillar of the Responsibility to Protect doctrine: the Responsibility to Prevent. This further indicates the complexity of harnessing the plural perspectives on the use of force that exist globally. That this is difficult, complex, and undoubtedly time-consuming is no reason to avoid commencing such a project.

Feminist perspectives that acknowledge peace activism as a vital voice within global feminism challenge our communities to continue to return to the prohibition, allowing those who have experienced the impact of force to contribute to the future refinement and application of the prohibition. It is, however, important to note that feminist peace activism is not a movement that is premised on women as peacemakers: such an approach would get us no further than the attempts to add women in political structures, discussed earlier, as this relies on stereotypes of femininity that feminist projects work towards disrupting. Feminist peace activism is, instead, a method and a means for speaking about peace through disarmament, through attention to the continuum of violence from the intimate to the international, and through identifying the persistence of gender-based violence in communities defined as peaceful and in those enduring conflict.

The endorsement of the Definition of Aggression⁴³ within the Crime of Aggression by the State Parties to the Rome Statute for the International Criminal Court in 2010 illustrates the difficulties of any attempt to build state consensus on force and aggression. At the same time, the agreement by the state parties to the Rome Statute in Kampala in 2010, and the slow shift towards establishing individual criminal responsibility for the crime of aggression, do demonstrate the possibilities that law offers.⁴⁴ Yet, international criminal law is reactive; in this sense, it cannot stop the use of force although it may, in the future, punish those who instigate force. As such, it is also time to initiate refinement and development of the prohibition on the use of force. Return to the prohibition requires acknowledgement of those who were excluded during international law's formation and from the expression of global values in the early years of the UN. As it is no longer possible to proclaim the inherent universality of a system that overtly excluded on the grounds of gender and ethnicity, strategies for inclusive and pluralist future outcomes need to be incorporated

⁴² Transcript of the 63rd session of the UN General Assembly, 97th–101st Plenary Meeting, 21–28 July 2009, available at <<http://www.responsibilitytoprotect.org/index.php/component/content/article/35-r2pcs-topics/2493-general-assembly-debate-on-the-responsibility-to-protect-and-informal-integrative-dialogue-#debate>>.

⁴³ GA Res 3314 (XXIX) UN GAOR, 29th Sess, Supp No 31 (14 Dec 1974).

⁴⁴ For International Criminal Court developments with respect to the Crime of Aggression, see <<http://www.iccnw.org/?mod=aggression>>.

from this stage forward: as a global community we are well past discussing whether this is necessary.

Incorporating the participation of women and non-Western actors, with cross-class and cross-cultural perspectives to develop and extend the prohibition on the use of force is not a short-term project; however, few of the projects international law has embarked upon have been short term. If, as MILS tells us, international law began in 1648 with the Peace of Westphalia and the writings of the father of international law, Hugo Grotius, then tri-millennium recognition of the very limited perspective this model affords our understandings of international law are long overdue. The transfer of this recognition into challenging our accepted ways of acting is the next stage. To address the diversity of perspectives that feminist approaches bring to future debates needs to commence with attention to existing gender imbalances, which were discussed earlier. This is a project that equally requires attention as to who is permitted to speak on women's issues within international law and who is empowered within our communities to speak to power.

My recommendation, to develop the parameters of Article 2(4), is in contrast to the increasing emphasis placed on justifications and is voiced in the context of the previous recommendations regarding women's participation and agency. To develop Article 2(4) would require recognition of the inadequacy of the prohibition because it has been consistently read as accommodating justifications for violence rather than as a reason for state restraint. Development of the prohibition requires strategies that seek to disassociate constructions of the nation-state under international law from understandings of the Western-sexed legal subject.⁴⁵ Consequently, what begins as a strategy 'within' the contemporary contours of international law also requires a larger feminist project of re-imagining the basic norms and values that shape international law. Underlying this claim is an expectation that a renewed focus on the prohibition encourages peacebuilding initiatives and preventative strategies.

V. CONCLUSION

In her article on the 11 September 2011 attacks on the US, Wright argues, 'international law might be positively transformed if it were to take the critical approaches of feminist and other scholars seriously.'⁴⁶ This recalls Chinkin's approach in 1992 when a structural bias feminism, that recognized the harm and inequalities that women live with, globally, and the foundational bias of international law, was

⁴⁵ See further: Heathcote, *The Law on the Use of Force*, 9–10.

⁴⁶ Wright, *The Horizon of Becoming*, 216.

perceived as the path for the development of feminist perspectives. The Security Council has elaborated an agenda on women, peace, and security that downplays, and at times renders invisible, the diversity of these feminist approaches to law. The consequence is a failure of international institutions to see the prohibition on the use of force as a starting point for a transformative approach to the foundations of international law: indeed, military force is embedded within the women, peace, and security resolutions as a potential mechanism for halting widespread and systematic sexual violence despite the history of feminist scholarship highlighting the need for preventative strategies, the social and cultural causes of violence against women, and the role military force plays in perpetuating negative gender relations that create risks to women within communities.

Additionally, the failure to develop the spectrum of feminist perspectives within security documents and debates can be linked to the failure to regard the imperial history of international law, and the persistent inequalities both across and within communities, as contributing to the normative contours of debates on the use of force. A strategy of understanding the prohibition as a component of ‘becoming human’, rather than an endpoint in our debates on force, requires attention to the range of structural biases within international structures: gender, race, economic. Seeing the prohibition on the use of force as a foundational law that lacks sufficient interrogation and development is a first step in moving away from debates on when force should be deployed towards understanding that force is prohibited.

The prohibition on the use of force is the lynchpin of the international relationship between law and violence. Feminist scholarship demonstrates the co-option of gendered assumptions into the law and violence relationship⁴⁷ that emerges in the legal enforcement of public and private violence,⁴⁸ state and individual violence.⁴⁹ To reconsider the prohibition, to develop its reach and purpose, to talk seriously about what it means to prohibit the use of force, is a relevant starting point for the next generations of feminist scholars writing international law. The approach I have outlined in this chapter begins with attention to the persistent gender imbalances in institutional structures at all levels, reconsiders the contemporary approach to combating sexual violence in armed conflict to remove the nexus with force, and returns to the diversity of feminist approaches that demonstrate the intersectionality of discriminations and that recall the history and concerns of feminist peace activism. This is also a timely project for international lawyers who seek to better incorporate global understandings of the law on the use of force that are sensitive to the persistence of gender inequalities.

⁴⁷ Lucinda Joy Peach in Jennifer Rycenga and Marguerite Waller (eds), *Frontline Feminisms: Women, War and Resistance* (London: Routledge, 2001).

⁴⁸ Cynthia Cockburn and Dubravka Zarkov (eds), *The Postwar Moment: Militarities, Masculinities and International Peacekeeping* (London: Lawrence and Wishart, 2002).

⁴⁹ Caroline Moser and Fiona Clark, *Victims, Perpetrators or Actors? Gender, Armed Conflict and Political Violence* (London: Zed Books, 2001).