

Title Women and children and Elephants as Justification for Force

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Abstract

This article examines the use of force described as ‘robust peacekeeping’. Through a review of innovation in Security Council practice – in particular, thematic resolutions, targeted sanctions and robust peacekeeping – I analyse the role normative assertions of the Council, found in thematic resolutions and preambles, play in underpinning new forms of force. Understood in this context, feminists and others who have agitated for inclusion within the work of the Security Council are counselled against pursuing projects that expand the powers of the institution while there remains a lack of checks on how force is mobilised. The reluctance of feminist and/ or critical engagement that addresses the structural aspects of institutional spaces, such as the Security Council, consequently risks a legitimisation of the institution without significant gains in terms of gender equality or, if viewed through recent resolutions establishing targeted sanctions against wildlife poachers, for the protection of elephants.

Keywords

Robust peacekeeping; protection of civilians; women, peace and security; Security Council; targeted sanctions; feminist approaches

This article is concerned with how the authority of Security Council to authorise new measures short of force, and new forms of force, is bolstered by the potential legitimacy the protection of civilians and the women, peace and security agendas project onto the Council’s

action.¹ The use of military force, even when authorised by the United Nations collective security structure, requires a mechanism to mobilise support from international actors, soldiers and member states. The move toward a focus on the protection of civilians by the Security Council, both within mission mandates² and as a normative commitment³ of the Council, is an increasingly important mechanism for the mobilisation of international support for the use of force: providing – it seems – a space of legitimation for authorisations of force within a peacekeeping operation.

I situate the women, peace and security framework within the larger protection of civilian agenda⁴ and argue that the eight Security Council resolutions on women, peace and security must be analysed as an aspect of larger trends within the work of the Security Council, including broader thematic work, the authorisation of robust peacekeeping and the expansion of targeted sanctions regimes. As such, the authority of the Council to authorise force, expanded via these normative components in thematic resolutions has developed to support both authorised and unauthorised force. The failure of feminist dialogues to broach or engage with this consequence of institutional engagement is of considerable importance. I open a

¹ Otto, D, 'The Security Council's Alliance of Gender Legitimacy' in H. Charlesworth and J. Coicaud (ed), *Fault Lines of International Legitimacy* (2010) 239-275.

² See, for example: SC Res 2017 (2015) 28th April 2015 extending MINUSCA's mandate in the CAR (note paragraph 32 which include protection of civilians as a key component of the mandate).

³ See, for example: SC Res 1674 (2006) 28th April 2006 on the Protection of Civilians (note paragraph 16 linking this to peacekeeper mandates).

⁴ Engle makes a similar argument, locating the women, peace and security resolutions with the human security agenda of the Security Council, see: Karen Engle, 'The Grip of Sexual Violence: Reading UN Security Council Resolutions on Human Security' in Gina Heathcote and Dianne Otto (eds), *Rethinking Peacekeeping, Gender Equality and Collective Security*, Palgrave, 2014.

dialogue on the expanding legitimacy and authority of the Security Council acts, to encourage further feminist and critical scholarship to ask questions about the consequences of pursuing normative projects within the Security Council, in particular, and under international law more broadly.

The Security Council's attention to the protection of civilians in armed conflict and peacekeeping states emerges across three types of institutional outputs. The first output is discoverable in Security Council resolutions that provide normative responses, and thus general frameworks, articulating the importance of an understanding of the protection of civilians in peace and enforcement missions.⁵ The second output emerges in situation specific mandates issued by the Security Council which increasingly refer to the protection of civilians as a core component of the mandate, including the mandate for robust peacekeeping operations. The third area of output is found in the work of co-ordinating and subsidiary organs, such as the Secretary-General's Office and special committee reports that expand peacekeeping rules of engagement and regulations to include the protection of civilians as a component of peacekeeper self-defence.⁶ All of these outputs are relevant to the discussion here; however I focus on the thematic resolutions and situation specific resolutions from the UN Security Council to discuss the nexus between the protection of civilians and robust peacekeeping authorisations, while acknowledging the broader institutional apparatus that further sustain the protection of civilians narrative. I argue that analysis of the protection of civilians commitments of the Security Council should encompass adjunct normative frameworks, including the women, peace and security resolutions, the protection of children

⁵ See, for example: SC Res 1674 (2006) 28th April 2006 or SC Res 2227 (2015) 29th June 2015 para. 14 (d).

⁶ See, in particular, the Capstone Document here: http://effectivepeacekeeping.org/sites/default/files/04/DPKO-DFS_Capstone%20Document.pdf (last accessed January 2015).

in armed conflict resolutions, as well resolutions on the rule of law and the responsibility to protect. Furthermore, this combined and complementary normative output of the Council must be understood via analysis of the expanding manner in which the Security Council is currently willing to authorise the use of force: raising questions with regard to how the Council mobilises its authority and the tools used to legitimate the expansion of authority.

Robust peacekeeping operations occur within the context of peacekeeping missions, have the consent of the host state and authorise the deployment of a small, time limited enforcement unit with a specific military goal. Robust peacekeeping is distinguished from peace enforcement, that is, a peacekeeping mission transformed as a whole into a Chapter VII enforcement missions and where the consent of the host state is unlikely or not possible. Peace enforcement missions, such as those in Haiti,⁷ Somalia⁸ or the Ivory Coast,⁹ offer similar protection of civilian narratives although the clear enforcement capacity of the mission as whole, perhaps, aligns these authorisations as closer to Responsibility to Protect resolutions, such as the authorisation of force in Libya in 2011.¹⁰ Although not the direct focus of this discussion I return to peace enforcement at the close of the article as a means to think concretely about the expansion of Security Council powers and to raise questions about what, where and when any confines, if any, should be placed on the authorisation of force.

In addition to robust peacekeeping and peace enforcement, I explore the sites where the Security Council has expanded its powers through its practice. While the capacity for international organisations to determine their practice through reference to the object and

⁷ SC Res 1529 (29th February 2004).

⁸ SC Res 794 (3rd December 1992).

⁹ SC Res 1528 (27th February 2004).

¹⁰ SC Res 1973(17th March 2011).

purpose of the organisation is not disputed, the proclivity of the Security Council to broadly interpret its remit well beyond the scope the Charter drew considerable attention in the lead up to the 2005 Summit Outcome document.¹¹ In particular concerns about the Security Council taking up a legislative function drew comment,¹² however by the end of the decade the push for the Security Council to continue to expand its normative framework was emergent from a range of sites, including those working on women's security, the protection of children in armed conflict, arms control and energy security, amongst others. At the same time debates and dialogue around whether the Security Council represented the best place for expansive law making, or even whether the Security Council had the capacity to issue normative as opposed to situation specific resolutions, receded. I seek to re-invigorate this discussion identifying the production of a large corpus of normative resolutions, the expanded targeted sanctions regime and the development of robust peacekeeping initiatives as ultimately permitting new spaces for the authorisation of military force by the Security Council that have, thus far, attracted insufficient attention from international legal scholars.

In the following section I describe the range of sites where the Council has expanded its remit, with a specific focus on normative resolutions, targeted sanctions regimes and the robust peacekeeping components of the DRC mission in the six years between 2008 and 2014. I conclude with a discussion of the Security Council's invocation of protection of civilian narratives, the sites in which the protection of civilians emerges in the Security Council's work and the role the production of specifically feminised vulnerability plays in the

¹¹ See, for example: Talmon, S., 'The Security Council as World Legislature' 99 (2005) *American Journal of International Law*, 175; Szasz, P., 'The Security Council starts Legislating' 96 (2002) *American Journal of International Law*, 901.

¹² *Ibid.*

mobilising of force to protect civilians. I then consider the Security Council's recent initiatives in the Democratic Republic of the Congo (DRC) to stem the flow of funds from the trafficking in ivory that are believed to play a role in fuelling the continuation of violence in the DRC. With 20 000 elephants killed each year in the region for their ivory,¹³ this is a novel use of Security Council powers with some commentators calling for the sanctions against those profiting from wildlife trafficking to be extended to a robust peacekeeping mandate.¹⁴ I conclude that similar to the robust peacekeeping initiatives built on the protection of civilian narratives, the protection of elephants is neither cause nor goal, illuminating the propensity toward international policing through targeted sanctions and robust peacekeeping by the Security Council. Ultimately this indicates a need for caution when supporting the expansion of normative frameworks within the Security Council as the narrative is increasingly deployed to enhance the authorisation of the use of force. The protection of civilian narrative, alongside the responsibility to protect, plays an important role in making military force seem necessary as it reduces the complexity of conflict to the need for a morally dictated mandate with military solutions. At the same time the authority of the Council expands and the legitimacy of force as a mechanism to transform security in a positive way remains unchallenged.

II. THE EXPANDING POWERS OF THE SECURITY COUNCIL

¹³ Peters, Anne, 'Novel Practice of the Security Council: Wildlife Poaching and Trafficking as a Threat to the Peace' EJIL TALK! February 12th 2014, available online at: <http://www.ejiltalk.org/novel-practice-of-the-security-council-wildlife-poaching-and-trafficking-as-a-threat-to-the-peace/#more-10362> (last accessed February 2014).

¹⁴ *Ibid.*

Since its inception as a primary organ of the United Nations the Security Council has interpreted its mandate beyond the precise wording of the Charter to ensure a commitment to the object and purpose of the organisation. As early as the Security Council's second meeting, adaptations were made to facilitate both consideration and decisions on situations on the Security Council's agenda.¹⁵ Throughout the early phase of the Security Council's work issues such as the deployment of peacekeeping, the capacity of permanent members to abstain from voting and the use of Member States to provide leadership on missions demonstrated the Security Council's willingness to advance its own mandate through novel responses to threats to international peace and security. This creative interpretation of the Security Council's mandate expanded further in the post-1990 period, when the notion of what constituted a threat to international peace and security was slowly expanded to accommodate humanitarian emergencies and internal conflicts with an international dimension. In the post-1990 period, the Security Council began to issue normative, or general, resolutions alongside its responses to specific situations. In this section I consider the most recent innovations in the Security Council's work including the continued expansion of the normative work undertaken and the refinement of sanctions regimes to include targeted and smart sanctions, as well as the development of robust peacekeeping.

i. Normative Components

The areas where the Security Council has been willing to release resolutions that contain general statements, rather than situation specific responses, has increased to include - by 2016

¹⁵ Security Council Resolution 2 (30th January 1946): the Security Council invited the representative of Iran to its meeting to facilitate a decision from the Council and having had agreed during its second meeting that 'States which have presented complaints should be invited to participate in the work, in the sittings of the Council'.

- resolutions on: the Rule of Law;¹⁶ Protection of Civilians;¹⁷ the Protection of Journalists;¹⁸ Women, Peace and Security;¹⁹ Children and Armed Conflict;²⁰ Terrorism;²¹ Arms Control and Disarmament, including small arms;²² health crisis;²³ energy, climate and natural resources;²⁴ as well as hosting general debates and issuing statements on a wider range of ‘new’ challenges to international peace and security.²⁵ Although this vast output from the Security Council would merit further attention and analysis,²⁶ I will focus on the resolutions on women, peace and security to demonstrate the nexus between thematic work and additional developments in preamble and situation specific resolutions. In focusing on these specific aspects I will demonstrate the relationship between the Security Council’s

¹⁶ For an up to date review, see: the Secretary-General’s Report, Measuring the effectiveness of the support provided for by the UN System for the promotion of the Rule of Law in Conflict and Post-Conflict Situations, UN Doc. S/2013/341 (11th June 2013).

¹⁷ S/RES/1265 (17 September 1999); S/RES/1296 (19 April 2000); S/RES/1502 (26 August 2003); S/RES/1674 (28 April 2006); S/RES/1894 (11 November 2009)

¹⁸ SC Res 1738 (23rd December 2006)

¹⁹ See below, notes 25-27.

²⁰ See, for example, SC R 2068 (19 September 2012).

²¹ See, for example, SC Res 2133 (27th January 2014).

²² See, for example, SC Res 2117 (26th September 2013) and SC Res 2055 (26th June 2012).

²³ See, for example, SC Res 2177 (18th September 2014).

²⁴ See, for example, SC Res 1625 (14th September 2005) which includes sustainable development within a general resolution on conflict prevention.

²⁵ For example, the Security Council hosted an open debate on ‘New Challenges to international Peace and Security’ on Wednesday 23rd November, 2011, see: <http://www.whatsinblue.org/2011/11/council-briefing-on-new-challenges-to-international-peace-and-security.php> (last accessed January 2016).

²⁶ See: www.securitycouncilreport.org for detailed study of each of these areas.

increased use of force as an enforcement mechanism and the normative framework it has developed.

By 2016 the women, peace and security framework consisted of eight resolutions, with seven of the eight resolutions issued after 2008.²⁷ The content of the Security Council women, peace and security resolutions extends from the broad focus on issues related to women, peace and security in the first women, peace and security resolution, 1325,²⁸ through to the detailed response to sexual violence in four of the resolutions²⁹ and the more recent, broad ranging, content of Security Council resolutions 2122 and 2242.³⁰ These are, potentially, the set of thematic that have received attention and critique well beyond that given to standard Security Council outputs. The first women, peace and security resolution, 1325, was unique in the role that NGOs were able to play in the drafting of the resolution, in particular Women's International League for Peace and Freedom (WILPF) were instrumental in the pursuit, construction and drafting of this resolution.³¹ The involvement of civil society is generally believed to be reflected in the broad attention to a cross section of feminist issue in

²⁷ After the issue of SC Res 1325 in 2000 the Security Council did not issue the second women, peace and security resolution, 1820, until June 2008.

²⁸ SC Res 1325 (30th October 2000).

²⁹ SC Res 1820 (18th June 2008); SC Res 1888 (30th October 2009); SC Res 1960 (16th December 2010); SC Res 2106 (June 2013).

³⁰ SC Res 2122 (18th October 2013); SC Res 2242 (13th October 2015).

³¹ See Felicity Ruby, 'Security Council Resolution 1325: A Tool for Conflict Resolution?' in Gina Heathcote and Dianne Otto (eds), *Rethinking Peacekeeping, Gender Equality and Collective Security*, Palgrave, 2014, however note that SC Res 2122 (18th October 2013) marks a return to a larger (future) input from civil society, see: <http://wpsac.wordpress.com/2014/03/06/triskaidekaphilia-2013-and-the-two-new-women-peace-and-security-resolutions/> (last accessed February 2014).

this resolution, including women's participation at all levels of decision-making, the development of gender perspectives within post-conflict institutional structures, the need to respond to gender-based violence in conflict zones, particularly rape and other forms of sexual abuse, and recognition of the special needs of women and girls in conflict and post-conflict communities. Subsequent resolutions, while no longer drafted by WILPF, continued to benefit from the transnational and international women's networks, as well as the eventual creation of UN Women, in terms of lobbying and expertise. The result is a complex array of varied feminist and gender concerns across the eight resolutions on women, peace and security. In addition, the different resolutions are influenced by the member state holding presidency of Security Council at the time of issue, in particular the US and the UK taking the lead on the resolutions focussed on sexual violence during their occupation of the presidency chair but equally Viet Nam's production of resolution 1888.

The women, peace and security resolutions, while producing a normative commitment within the Security Council, have also influenced the means through which local women's groups challenge and speak to national governing bodies, transforming local gender policy, advocacy and strategy within states. This has been documented as having positive impact on local women's initiatives³² while also, problematically, imposing limits on the types of initiatives global and national donors are prepared to support.³³ At the same time the women, peace and security framework has influenced the Security Council's Chapter VII authorisations. In particular, through the development of additional paragraphs regarding gender issues within

³²For examples see www.peacewomen.org

³³ Richter-Devroe, S., "'Here it's not about conflict resolution – We can only resist': Palestinian women's activism in conflict resolution and non-violent resistance', in N. Al-Ali and N. Pratt (eds), *Women and War in the Middle East* (London: Zed Books, 2009) 158

situation specific resolutions. For example, Security Council resolution 2100, which authorised the establishment of the United Nations Multidimensional Integrated Stabilization Mission in Mali (MINUSMA) in 2013, under the protection of civilians component of the mandate in paragraph 16 (c) requires UN personal on the mission to: ‘provide specific protection for women and children affected by armed conflict, including through the deployment of Child Protection Advisors and Women Protection Advisors, and address the needs of victims of sexual and gender-based violence in armed conflict’.³⁴ This is reiterated as a component of the MINUSMA mandate in 2015 via Resolution 2227,³⁵ as is the centrality of protection of civilians to the mandate. In essence, the mandate establishes the parameters within which force might be mobilised by the UN force despite MINUSMA being established as a peacekeeping mission. If force is used in protection of the mandate it is regarded as within the permitted practice of the mission: the mandate is then articulated as the protection of civilians and the protection of civilians is specified as including the protection of women and children from, in particular, conflict-related sexual violence.

Similarly, in Resolution 2211 on the DRC the Council reaffirms, ‘that the successful protection of civilians is critical to the fulfilment of MONUSCO’s mandate’.³⁶ In resolution 2211 the Council also reduces the number of troops stationed in the DRC, while in paragraph 25 condemning ‘the brutal killings of hundreds of civilians in the Beni area’ and ‘expressing ‘deep concern regarding the persistence of violence in the region’.³⁷ The resolutions ties the commitment to the protection of civilians to the protection of women and children throughout

³⁴ SC Res 2100 (25th April 2013) para. 16 (c) (ii).

³⁵ SC Res 2227 (29th June 2015) para. 14 (d)

³⁶ SC Res 2211 (26th March 2015) preamble.

³⁷ SC Res 2211 (26th March 2015) para. 25.

the resolution and specifically authorises MONUSCO to ‘take all necessary measures’ to ‘ensure, within its area of operations, effective protection of civilians’.³⁸ The Beni massacres, which occurred in the early months of 2015, occurred during the period when the MONUSCO mandate was already established as to protect civilians. This subsequent resolution while reiterating the need to protect civilians reduces the number of peacekeeping troops in the DRC suggesting real operational problems with actually achieving this goal.

Furthermore, the linkage of the sexual violence components within women, peace and security agenda with the mandate for the protection of children in armed conflict, mirrors the linkage of the women, peace and security agenda and the protection of children agenda within presidential statements and Secretary-General Reports. This is despite the women, peace and security establishing a larger framework than a focus solely on the combating on sexual violence in armed conflict as the eight resolutions include women’s participation, recognition of women’s diversity and the need for consultation with women’s organisations and representatives. Worryingly, the linking of women and children has additional, obvious, conceptual and practical concerns as the linking of women and children without differentiation of diverse needs both within and across these categories also infantilises women and perpetuates the association of femaleness with dependency, a lack of full legal subjectivity and the need for protection.

The third site, beyond the women, peace and security resolutions and situation specific resolutions, where the normative framework on women, peace and security is advanced is in the preamble to situation specific resolutions. Often overlooked because of the non-binding nature of preamble material in Security Council resolutions, the expansive nature of the

³⁸ SC Res 2211 (26th March 2015) para. 9.

preambles in the Security Council's more recent resolutions and their important signalling of larger agendas, including the women, peace and security framework, function as a space of normative and progressive development of the legal work of the Security Council. For example, the Security Council's willingness to invoke human rights, the responsibility to protect and the rule of law in the preamble to resolutions links in the larger thematic work of the Security Council with the authorisations it makes. For example, when the Security Council authorised the use of military force in Libya in 2011 the insertion of a reference to both the responsibility to protect and the protection of civilians in the preamble of resolution 1973 epitomised the importance of the Security Council's shift in preamble output. In the Libyan authorisation questions about the reasons why force was authorised despite the internal nature of the situation were, in part, answered through the deployment of this material in the preamble. This seems to indicate awareness on the part of Security Council of a need to construct justifications for its deployment of military force. Preamble content provides a legitimisation of the content of authorisations, in particular when the institutional authorised action expands the parameters of the Council's own legitimacy. Although, like the foray into thematic resolutions, this is not a requirement under the United Nations Charter, the importance of preambles seems evident in their increased length and coverage of thematic and external issues: Security Council resolution 2246 on piracy in Somali territorial waters has five pages of preambular material addressing issues from sexual exploitation of women and children, natural resources, fishing, the work of the insurance and maritime industry and human rights.³⁹ The explanatory role of this material might be celebrated. However, when coupled with the Security Council's expanded use of binding authorisations, questions about the role of military force in the pursuit of peace and the use of normative and

³⁹ SC Res 2246 (10th November 2015).

affective terminology and agendas to mobilise support for military force, via the Security Council, are increasingly apparent.

ii. Targeted Sanctions

Over the same period that Security Council developed the content and range of thematic resolutions, shifts occurred in collective impositions of sanctions regimes. In particular, after the decade of comprehensive sanctions against the Hussein regime in Iraq, the late 1990s saw a turn by the Security Council to the use of targeted sanctions, against named individuals, and smart sanctions, against industries that fuel conflict. In this section I briefly trace these developments, highlighting recent resolutions that extend the targeted sanctions regimes to individuals suspected of perpetrating crimes of conflict related sexual violence or the recruitment of children into military units, as well as recent smart sanctions against wildlife traffickers and poachers. I also briefly note the use of naming and shaming initiatives, during 2010, via the women, peace and security resolutions.

The Security Council's targeted sanction regime was originally designed to target individuals within the context of interstate conflict at the commencement of the post-cold war security environment with the first sanctions against individuals in Somalia,⁴⁰ Liberia⁴¹ and the Former Yugoslavia.⁴² As such the targeted sanctions regime paralleled the recognition that the Charter focus on interstate conflict was insufficient to respond to new security threats. In particular, it was recognised that the imposition of comprehensive sanctions against a state would be ineffective in halting the violence of non-state actors. By the end of the twentieth

⁴⁰ SC Res 751 (1992).

⁴¹ SC Res 788 (1992).

⁴² SC Res 820 (1993).

century, with resolution 1267, the Security Council expanded the targeted sanctions regime to impose restrictions on the Taliban in Afghanistan, which became the basis for the post-9/11 targeted sanctions against terrorist actors including al Qaida.⁴³ These earlier initiatives have now expanded to include targeted sanctions against perpetrators of specific offences during armed conflict, including the recruitment of child soldiers and crimes of sexual violence.

For example, after the creation of resolution 1888, the Security Council also added perpetrators of conflict related sexual violence to the lists of individuals which targeted sanctions should be administered against. Thus far, the Security Council's sanction committee has included sexual violence crimes as the reason for listing four individuals and one entity in the DRC.⁴⁴ Security Council resolution 1960 also incorporated provisions for the Secretary-General to generate lists of credibly suspected persons that are believed to be involved in the perpetrating of widescale and systematic sexual violence in situations on the Security Council agenda.⁴⁵ This novel use of the Security Council's powers advances a process initiated in an earlier resolution on children in armed conflict, where the Security Council established a similar listing process.⁴⁶

In the recent Security Council resolution on children in armed conflict, Resolution 2143,⁴⁷ the targeted sanctions regime against recruiters of child soldiers was affirmed as part of a wider

⁴³ SC Res 1267 (15 October 1999); SC Res 1373 (12th September 2001).

⁴⁴ For an up to date list, see: http://www.un.org/sc/committees/1533/pdf/1533_list.pdf. As of March 2014 the DRC Sanctions Committee named four individuals for (amongst other things) crimes of sexual violence and one entity (FDLR).

⁴⁵ For further discussion, see: Heathcote, G., 'Naming and Shaming: Human Rights Accountability in Security Council Resolution 1960 (2010) on women, peace and security' 4 (2012) *Journal of Human Rights Practice* 82.

⁴⁶ SC Res 1882 (4th August 2009).

⁴⁷ SC Res 2143 (7th March 2014).

initiative by the Security Council to eradicate the use of children as combatants during armed conflict, reiterating ‘the Security Council’s readiness to adopt targeted and graduated measures against persistent perpetrators of violations and abuses committed against children’.⁴⁸ While this remains a thematic, or general, resolution the link between this resolution and Chapter VII resolutions is made explicit in this wording and underscores the role the protection of children has come to play in the authorisation of force and targeted sanctions regimes.

In 2014 the Security Council issued two resolutions implementing smart sanctions against wildlife traffickers and poachers. The first, resolution 2134,⁴⁹ addressing the escalation of violence in the Central African Republic (CAR) in paragraph 37 establishes that sanctions are to be imposed on individuals or entities breaking the arms embargo,⁵⁰ violating human rights or international humanitarian law, including acts involving sexual violence,⁵¹ recruiting or using child in the conflict⁵² or ‘providing support for armed groups or criminal networks through the illicit exploitation of natural resources, including diamonds and wildlife and wildlife products, in the CAR.’⁵³ Resolution 2134 further authorises the creation a European Union force to ‘take all necessary measures’: that is to use military force alongside the sanctions regime.⁵⁴ The second resolution, 2136,⁵⁵ issued two days after the CAR resolution,

⁴⁸ SC Res 2143 (7th March 2014) para. 10.

⁴⁹ SC Res 2134 (28th January 2014).

⁵⁰ SC Res 2134 (28th January 2014) para. 37 (a).

⁵¹ SC Res 2134 (28th January 2014) para. 37 (b).

⁵² SC Res 2134 (28th January 2014) para. 37 (c).

⁵³ SC Res 2134 (28th January 2014) para. 37 (d).

⁵⁴ SC Res 2134 (28th January 2014) para. 44.

⁵⁵ SC Res 2136 (30th January 2014).

acknowledges in the preamble, ‘the linkage between the illegal exploitation of natural resources, including poaching and illegal trafficking of wildlife, illicit trade in such resources, and the proliferation and trafficking of arms as one of the major factors fuelling and exacerbating conflicts in the Great Lakes region of Africa’.⁵⁶ The resolution then expands the DRC sanctions regime to include individuals and entities ‘supporting armed groups in the DRC through illicit trade of natural resources, including gold or wildlife as well as wildlife products’⁵⁷ while later in the resolution the control of illicit trade in natural resources is connected to the mandate for MONUSCO.⁵⁸

Parallel then to the expansion of thematic resolutions the Security Council has expanded the means through which it polices conflict zones, requiring states to impose targeted measures against a whole range of individuals and requiring states to supply list of perpetrators to the Sanction Committee. While the targeted sanctions model is not explicitly found within the Charter the wording of Article 41 is broad enough to encompass the types of innovations the sanctions regime has undergone. The Charter also does not require any statement of why a specific sanctions (or force) resolutions is created, although the Preamble of each situation specific resolution often indicates precisely these types of concerns. Humanitarian, human rights, women’s rights and the protection of civilians all appear in the preambles to the targeted sanction resolutions, linking the thematic work of the Security Council concretely to the expanding sanctions authorisations the Security Council has been prepared to undertake since the early 1990s.

⁵⁶ SC Res 2136 (30th January 2014) preamble.

⁵⁷ SC Res 2136 (30th January 2014) para. 4 (g).

⁵⁸ SC Res 2136 (30th January 2014) para. 25 (‘MONUSCO should play a role in preventing the provision of support to armed groups from illicit activities, including production and trade in natural resources’.)

Further attention should also be paid to how the targeted sanctions authorisations have been used by some states, in particular the United States, to explain targeted strikes on the territory of other states. This unauthorised force uses the language of targeted strikes, in particular the policing nature of the authorisations, to suggest when states are unable to adhere to the requirements of the targeted sanctions resolutions there may be a space for states to use unauthorised force against the actors named in via targeted sanctions resolutions. The nexus between the thematic resolutions on women, peace and security and on the protection of children in armed conflict and the expanding targeted sanctions regime is clear in the resolutions from Council. The further nexus to a (seemingly spurious and yet ongoing) form of unauthorised force raises questions regarding the role of the targeted sanctions regime and its relationship to potential to enhance new grounds for the use military force.

iii. Force Mandates

The final area of Security Council innovation that I will discuss is the spaces where the manner in which force mandates have been transformed since 2008. Prior to 2008 the Security Council also used its practice to develop its remit through the authorisation of force in humanitarian situations, interstate conflicts, after natural disasters and to restore democratic governance. Since 2008 the notable transformation has been the use of the language of the responsibility to protect in the resolution authorising the use of force in Libya in 2011. However, both peace enforcement missions and robust peacekeeping authorisation during the same period also require further attention. In particular, robust peacekeeping links the thematic focus of the Security Council developed in the protection of civilians, the women, peace and security agenda and the children in armed conflict resolutions to the enhanced means through which the Security Council authorises the use of force. Underlying these authorisations is a series of assumptions about the vulnerability of civilian

communities, their lack of agency or insight into conflict resolution and the necessity of force as a means to resolve an expanding range of scenarios.

Robust peacekeeping has been developed in the DRC through, first, the creation of a Rapid Reaction Force and, more recently, the creation of an Intervention Brigade. The Rapid Reaction Force was first established in 2010 alongside the transformation of the MONUC force into MONUSCO and was conceived as a reserve force ‘capable of redeploying rapidly elsewhere in the country’.⁵⁹ Previously, the MONUC force had been given Chapter VII powers to use force for the protection of civilians.⁶⁰ In March 2013 a third authorisation resolution, 2098, authorised the creation of an Intervention Brigade in the DRC to work alongside the stabilisation mission (MONUSCO) and the Rapid Reaction Force.⁶¹ The 2013 resolution also included the call for the modernisation of UN forces, leading to the contribution of unarmed UAVs by the US to the MONUSCO forces.⁶²

The preamble to resolution 2098 captures the tensions and paradoxes represented by the combination of military and peacekeeping authorisations in the DRC:

Recalling its resolution 2086 (2013) and reaffirming the basic principles of peacekeeping, including consent of the parties, impartiality, and non-use of force, except in self-defence and defence of the mandate, and recognizing that the mandate of

⁵⁹ SC Res 1925 (28th May 2010) para. 4.

⁶⁰ SC Res 1565 (1st October 2004).

⁶¹ SC Res 2098 (28th March 2013)

⁶² SC Res 2098 (28th March 2013) para. 30.

each peacekeeping mission is specific to the need and situation of the country concerned.⁶³

As such, although the DRC mission remains a peacekeeping mission resolution 2098 is a Chapter VII resolution that identifies a threat to international peace and security, affirms the need for impartiality and host state consent also authorises:

. . . on an exceptional basis and without creating a precedent or any prejudice to the agreed principles of peacekeeping, include an “Intervention Brigade” consisting inter alia of three infantry battalions, one artillery and one Special force and Reconnaissance company with headquarters in Goma, under direct command of the MONUSCO Force Commander, with the responsibility of neutralizing armed groups . . .⁶⁴

The creation of the rapid reaction force and the subsequent intervention brigade in the DRC are underpinned with references to the protection of civilians, the protection of women from sexual violence and the protection of children. The peacekeeping – military force combination in the DRC falls short of an authorisation of the use of force in a manner that transforms the mission into a full peace enforcement mission, although the 2004 authorisation did transform the rules of peacekeeping engagement to permit the protection of civilians as a component for the use of force by peacekeepers. The hybrid nature of the robust peacekeeping mandate in the DRC is clearly built through on the ground communications and reporting, conducted primarily through the office of the Secretary-General, yet the

⁶³ SC Res 2098 (28th March 2013) preamble.

⁶⁴ SC Res 2098 (28th March 2013) para. 9 and 12 (authorising all necessary measures).

justification throughout is one that is built on a narrative of civilian vulnerability that is closely entwined with the bodily vulnerability of women (and children).

The traditional understanding of peacekeeping as built on the notion of host state consent, peacekeeper impartiality and an absence of troops from Security Council permanent members states⁶⁵ are considerably challenged by the contemporary MONUSCO model. While permanent member states have not sent foot soldiers into the DRC the US, in particular, has become increasingly involved in military training and logistics as well as fulfilling leadership roles. This further blurs the distinction between peacekeeping and military goals that surround the mission.

The key point is to acknowledge that Security Council initiatives to authorise the use of force have expanded alongside the protection of civilians agenda while actively referencing the protection of civilians to underscore the use of force and ensure widespread support for these decisions. Whether we, as individuals, as women, as feminists, as activists, as academics, as international lawyers, as collectives or as populations, agree with these as a rationale for the authorisation of the use of force is not the point. What requires allusion to and attention is that this broadening of force mandates is occurring and the international legal structure contains no mechanism for review of these decisions. In the following section I consider this point more closely, through a review of the role of the various components of the protection of civilians agenda, in particular the developments within the women, peace and security framework regarding the regulation of conflict related sexual violence and the use of smart sanctions to combat illicit use of natural resources related to funding conflict.

⁶⁵ For discussion, see: Gray, *International Law on the Use of Force*, OUP, 2008 at 281.

III. THE USE OF MILITARY FORCE AND THE PROTECTION OF CIVILIANS:

WOMEN, CHILDREN, ELEPHANTS

This section analyses the consequences of the expanding Security Council remit, both in terms of force mandates and thematic resolutions, to argue that the protection of civilians has been placed in this work as the rationale for Security Council transformation of its output. As such, the protection of civilians - and by this I am referring to various components including the women, peace and security as well as the protection of children in armed conflict resolutions - functions as form of new justification for the use of force. While the close of twentieth century and the post-millennium discourse on humanitarian intervention (followed by the responsibility to protect) initially signalled this shift yet remained an area of disagreement and tenuous legality, the protection of civilians as justification for the authorisation of force has emerged with considerably less fanfare or debate. Yet the use of the language of the protection of civilians and the increased deployment of military force, as well as the accepted use of force within the rules of engagement within peacekeeping missions, must be regarded as any other justification for the use of force: on the one hand peripheral to the authorisation and on the other hand playing an important symbolic role to sustain support for force. In sustaining support for force both the expanded authority of the Security Council and the legitimacy of the Security Council as a space of law-making are reinforced and enhanced. I wish to draw out two key aspects connected to this conclusion. First, the authorisation of the use of force for the protection of civilians ignores the agency of local communities, economic capacities and vulnerabilities as well as the risks force bring to communities. Second, the deployment of the protection of civilians as a justification for force mandates, while likely to be effective in mobilising international and regional resources, also brings the same political contingencies and gains that comes with any other form of force (in

particular, illegal or unjustified force as articulated in debates on humanitarian intervention) despite the laudable aims it might appear to prioritise.

As such, when discussing humanitarian interventions and the responsibility to protect as an expansion of collective security norms, as well as with respect to the limitations and legacies of decisions to authorise the use of military force, it is time to also raise discussions of the expansions of Security Council powers with respect to thematic resolutions, sanctions regimes and robust peacekeeping mandates. The range of areas in which the Security Council's work has expanded has often been developed in response to the lobbying and advocacy of those working in grassroots organisations. For example, feminist and women's networks have shaped and continue to shape the women, peace and security resolutions and their implementation. Yet the decision to lobby and promote the expansion of the Security Council's work comes with no guarantees that this will not be seen as precedent for other spaces of expansion or that the histories of imperialism and great power privilege will not continue to filter into the policies of these post-millennium initiatives. In fact, larger feminist scholarship on the women, peace and security agenda highlights the impact of specific feminist agendas in the framing of the resolutions and the legitimacy gained to the Security Council through this work. The western-centred feminist history that is produced through the Security Council resolutions on women, peace and security continues a narrative of feminist theory as a static approach epitomised by liberal feminist reforms; that have been accused of a form of victim feminism and that, in the international arena, rely on the non-western woman to be constructed as vulnerable other to be saved by western/feminist policy. This not only misrepresents the transnational, diverse spaces that feminist debates evolve within and through, this ultimately leads to the limited empowerment of elite women through international institutions without attention to the intersection of gender with other sites of power within a community, including the international community.

Closer examination of the provisions on the combating of conflict-related sexual violence and the halt of illicit trade in natural resources further demonstrates that a concern for women's rights or gender equality is not the primary goal behind Security Council initiatives. Rather than promoting Security Council action in response to specific agendas, analysis needs to centre on the consequences of broadening force mandates, the long term outcomes of military force – including robust peacekeeping – on both the communities where force is deployed and the communities who send military actors abroad to participate in United Nations missions and to explore fully what it means to have Security Council power expand unchecked.

An early siting of gender equality alongside Chapter VII acts was articulated by the Security Council in 1999, prior to the creation of the women, peace and security resolutions, in a resolution on the policies of the Taliban in Afghanistan recognising a need for the end to discrimination against women and girls in Afghanistan while also establishing a targeted sanctions regime.⁶⁶ At this point, the language of the Convention on the Elimination of Discrimination against Women is used.⁶⁷ More recently, after the creation of the corpus of women, peace and security resolutions the CEDAW Committee has begun to reference the 1325 framework.⁶⁸ Within that framework both the potential to mobilise force to save women from widespread and systematic sexual violence and the means through which the Security Council sees its role in regulating conflict related sexual violence is a central component. Three of the resolutions on women, peace and security identify the willingness of the Security Council to use necessary steps to combat widescale and systematic sexual

⁶⁶ SC Res 1267 (1999) preamble.

⁶⁷ Convention on the Elimination of All Forms of Discrimination against Women New York, 18 December 1979

⁶⁸ CEDAW, General Recommendation #30, UN Doc. CEDAW/C/GC/30(18th October 2013).

violence.⁶⁹ In addition, it is important to note the positioning of conflict related sexual violence as within the protection of civilians mandate for robust peacekeeping.

Through the inclusion of sexual violence as part of the mandate for robust peacekeeping and as a component of the protection of civilians, the Council signals the potential for force to be mobilised to halt widespread and systematic sexual violence. However, important understandings of sexual violence in armed conflict are submerged in the appearance of a military solution to a complex social and cultural issue. That sexual violence in armed conflict can be both opportunistic and/ or a targeted attack and might be both, that it is a heavily gendered crime that disproportionately affects women although men are also subject to this form of violence, that transgendered and intersex people are also attacked, that sexual violence is perpetrated by UN soldiers, national militaries and non-state actors and that military actors, with negative sexual cultures, are unlikely to see the ‘threat’ of sexual violence to a community as one they should respond to with military force are all invisible in a narrative that centres on protection via military force. Yet the Security Council has increasingly moved toward the mobilisation of force under the guise of protecting women, as civilians and as at risk of sexual violence, but not gender-based violence. If military force is unlikely to be the solution to conflict-related sexual violence we need to ask why this has been such a central component of the Security Council’s women, peace and security agenda. Part of the answer to this type of question lies in the additional measures the Security Council

⁶⁹ SC Res 1820, 1888 and 1960, joint para. one. In each of these resolutions the text states that the Security Council ‘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’. This text is ultimately ambiguous with regard to whether Chapter VII force might be authorised as a result. For extended discussion, see: Heathcote, Gina, ‘Feminist Politics and the Use of Force: Theorising Feminist Action and Security Council Resolution 1325’ 11 (2011) *Socio-legal Review*, 7.

has established to respond to conflict-related sexual violence which centre primarily on the provision of prosecution processes and/ or sanctions regimes. Like the use of force, the capacity of prosecutions to challenge and halt the perpetration of crimes of sexual violence is questionable. Instead it seems the linkage between measures in response to conflict related sexual violence, targeted sanctions and the authorisation of military force by the Security Council might be more correctly understood as a mechanism that at once underscores the vulnerability of women in conflict, in particular the construction of women's specific bodily vulnerability alongside the expansion of the Security Council's remit. That the end of conflict-related sexual violence is not the key goal of these strategies is best demonstrated by the UN's own weak initiatives to regulate sexual violence, sexual exploitation and abuse perpetrated by either national or international forces, or to hold states accountable for failures to discipline or sanction their personnel.

Similarly the initiatives to target the funds that support conflict that emerge from the illicit trade in natural resources, such as the ivory trade in the DRC, has an expanded regime of sanctions, as well as now understood within the Security Council resolutions as constituting a threat to international peace and security.⁷⁰ Yet the focus here is not the protection of elephants, rather the end of the flow of funds from illegal trade in ivory to conflict zones. This distinction is important as it illuminates a misunderstanding deeply embedded in feminist advocacy within the collective security arena: the Council's primary work is about collective action not women's livelihoods. That is, the sexual violence resolutions and the

⁷⁰ See: Peters, Anne, 'Novel Practice of the Security Council: Wildlife Poaching and Trafficking as a Threat to the Peace' EJIL TALK! February 12th 2014, available online at: <http://www.ejiltalk.org/novel-practice-of-the-security-council-wildlife-poaching-and-trafficking-as-a-threat-to-the-peace/#more-10362> (last accessed February 2014).

women, peace and security framework ultimately do not prioritise gender equality, gender perspectives or even women's rights rather they exist to enhance the work of the Security Council as an international institution with the capacity to authorise the use of military force. Since 2008 the expansion of force mandates by the Security Council can be linked to the expansion of the women, peace and security agenda and its larger positioning within the protection of civilians focus. Both the enlarged forms of force, such as robust peacekeeping, and the plethora of women, peace and security resolutions now in existence can be tracked from 2008.

Ultimately, the authorisation of military force requires normative underpinning to assemble support from international actors, soldiers and Member states: throughout this article I have examined the role that the Security Council's thematic resolutions crossover from their placement within general resolutions to complement and justify the development of a broad agenda around sanctions and the use of force. Within this agenda, the women, peace and security framework functions to complement the protection of civilians agenda. Under narratives of humanitarian intervention and the responsibility to protect the saving strangers narrative has been raised as a questionable grounds for international interventions as it often functions as a smokescreen for the deployment of larger political goals. The protection of civilians framework and its nexus to force has not received the level of scrutiny that the responsibility to protect has received yet the authorisation of force to protect civilians is of equal concern to the Security Council's use of the responsibility to protect authorisations.

In addition the blurring between peace enforcement, robust peacekeeping and the authorisation of force should trigger a space to think concretely about the expansion of Security Council powers and the role that feminist lobbying and strategy have played in

underpinning these developments. At this point it seems useful to recall the words of Simone Weil in her analysis of the poem the Iliad,

But nothing the peoples of Europe have produced is worth the first known poem that appeared among them. Perhaps they will rediscover the epic genius, when they learn that there is no refuge from fate, learn not to admire force, nor to hate the enemy, nor to scorn the unfortunate. How soon this will happen is another question.⁷¹

Weil's thesis, that force destroys and transforms both its perpetrators and victims, 'vanquished and victors'⁷² identifies the arrogance of those who use force for what they believe to be just causes and the impossibility of deploying force in moderation.⁷³ Robust peacekeeping, as a time limited and strategic deployment of military units suggests that the contemporary work of the Security Council has engaged in precisely this type of justified, moderate deployment of force even as history tells us military units are not the precision weapon this strategy would require. In the words of Weil, 'force is as pitiless to the man who possesses it, or think he does, as it is to its victims; the second it crushes, the first it intoxicates'.⁷⁴ The protection of women and children and elephants is not the rationale for the use of force and the use of force will not protect civilians, or elephants, as force begets force and denies the real spaces of agency, engagement and need that happen within civilian communities where conflict rages. To find the components of peace local actors, local

⁷¹ Weil, Simone, 'The Iliad, or the Poem of Force', in Weil, S., and Bespaloff, R., *War and the Iliad*, New York Review Book, 2003, at 37.

⁷² *Ibid.*, at 32.

⁷³ *Ibid.*, at 20.

⁷⁴ *Ibid.*, at 11.

initiatives and local economic needs must be addressed before or instead of the deployment of elite military corps to the region.

It remains true that the role of international institutions has been transformed in the post-Cold War period and again after the millennium, yet feminist scholarship on the work of international institutions, in particular with reference to the legitimacy of law-making and expansions of authority, has been rare. The consequence has been a willingness from feminist scholars to engage international institutions as a space of transformative gender politics and gender-focused law reform. The acceptance by (some) international institutions of the need for gender sensitive law reform, most prominently the UN Security Council, has become a signal of the ‘acceptance’ of gender perspectives within the mainstream of international law. This has reduced the possibility for feminist dialogue on the risks of working through international institutions, given the structural and embedded understandings of gender within those institutions. Consequently, the co-optation of some feminist ideas within international institutions illuminates the dangers of endorsing and legitimating institutions without an additional project of challenging the institution itself as gendered.⁷⁵ To this end this article has asserted that the authority of Security Council to authorise new measures short of force, and new forms of force, is bolstered by the potential legitimacy the women, peace and security framework, as well as the protection of civilians mantra, deploy through the pursuit of a widening of authority that is ultimately be counterproductive from a feminist perspective and a feminist politics of peace.⁷⁶

⁷⁵ Otto, D, 'The Security Council's Alliance of Gender Legitimacy' in H. Charlesworth, J. Coicaud (ed), *Fault Lines of International Legitimacy* (2010) 239-275.

⁷⁶ See: Heathcote, G, 'A Feminist Perspective on the Law on the Use of Force' in Weller, M., *The Oxford Handbook on the Law on the Use of Force*, OUP, 2015