Robust Peacekeeping, Gender and the Protection of Civilians

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1. The Use of Force and Robust Peacekeeping

International attention that was focused on the authorisation of the use of force by the Security Council in Libya during 2011 demonstrated the manner in which force and peacekeeping are segregated in public consciousness. Yet increasingly the line between peacekeeping and force is blurred in the work of the Security Council without review or assessment of the merits or limitations of this development. Robust peacekeeping, the name given to authorisations of force within a peacekeeping mission, is also a site where the Security Council’s agenda on women, peace and security is a prominent feature. For example, as the Security Council, and much of the Western world, debated the merits of intervention into Libya on the grounds of a responsibility to protect civilians in February 2011,¹ the use of force as robust peacekeeping in the Democratic Republic of the Congo (DRC) less than twelve months prior to the Libya authorisation received considerably less analysis from international media and international legal scholars.² While the Security Council’s authorisation of Chapter VII force garnered attention in Western states and media, the Council’s increasing development of robust peacekeeping – that is the incorporation of an

¹ SC Res. 1373 (17 March 2011) in the preamble, which states: ‘Reiterating the responsibility of the Libyan authorities to protect the Libyan population and reaffirming that parties to armed conflicts bear the primary responsibility to take all feasible steps to ensure the protection of civilians’.
² SC Res. 1925 (28 May 2010) which, amongst other things, authorises the creation of a Rapid Reaction Force in the DRC; also see SC Res. 2098 (28 March 2013) which, among other things, authorises an ‘Intervention Brigade’, both of these tactical components of the mission are authorised to use force, para. 9.
enforcement component into peacekeeping operations – is less frequently enters our debates and discussions.\(^3\) This is despite the questionable framing and enlargement of the Security Council’s role in the creation of robust peacekeeping mandates.

In this article I centre on robust peacekeeping to explore the role of force in peacekeeping and the role of the rule of law in the authorisation of force by the Security Council, alongside the Security Council’s approach to ‘gender perspectives’ in Chapter VII forces. The construction of the ‘civilian’ through gendered narratives produced by and through the Security Council’s agenda on women, peace and security is an increasingly important component of the twenty-first century propensity of the Council towards humanitarian force, either as Chapter VII action, as was authorised in Libya in 2011, or as robust peacekeeping, as examined in this paper. Increasingly the Security Council’s references to civilians and their protection are entwined with, and I argue bolstered by, narratives on apprehending the perpetrators of sexual and gendered based violence in conflict and post-conflict states.\(^4\)

In contemplating the Security Council’s discourse on the protection of civilians within conflict communities, it is useful to reflect on soldier/peacekeeper motivations. Prior to the creation of Article 2(4) and the prohibition on the use of force in the UN Charter, arguably nationalism both justified the killing of others and propelled a soldier forward toward possible death. In the absence of nationalism as a cause, peacekeeping and humanitarian causes invoke narratives of the cosmopolitan order to sustain the commitment of soldiers.\(^5\)

Beyond nebulous ideals of cosmopolitan and the pursuit of democratic goods, robust

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\(^3\) China Mieville, ‘Multilateralism as Terror: International Law, Haiti and Imperialism’ (2008) 19 *Finnish Yearbook of International Law*, 63-92, (on Haiti), who suggests this is also a reflection of imperialist legacies that shape international law.

\(^4\) For example, see: SC Res. 2098 (28 March 2013), para. 11 and 12 (1).

peacekeeping functions through a narrative of civilian as victim rather than active participant within conflict communities. The civilian as victim must, further, be a victim of/vulnerable to the direct threat of extreme violence of which sexual violence becomes a standard trope. The risks of displacement and health risks that communities more readily negotiate throughout conflict are not deployed to justify robust peacekeeping and the use of force, or to mobilise international support. To ask a peacekeeper to kill is to ask a peacekeeper to face the possibility of his or her vulnerability to being killed. To do so the Security Council must deploy a cause that justifies killing and the threat of being killed. In constructing the sexual and bodily vulnerability of civilians, the Security Council is able to sustain the logic of force within its mandates and to effectively mobilise soldiering as robust peacekeeping.

However, analysis of the Security Council’s discourse on sexual violence is to see how UN peacekeepers are encouraged to use force to protect women (and men) from sexual violence yet this approach denies women and men in civilian ‘protected’ communities sufficient protection from peacekeepers. Sexual crimes and violence, exploitation and abuse, racist behaviour and cultural insensitivity have all been documented as accompanying peacekeeping communities. In this paper, I argue that the Security Council would benefit from internal rather than external projections of the rule of law in the context of robust peacekeeping. Integral to a rule of law approach is the treatment of all subjects as equal before the law: UN personnel and non-state actors, women and men in peacekeeping, military and post-conflict communities.

Robust peacekeeping is defined as ‘the use of force by a United Nations peacekeeping operation at the tactical level, with authorisation of the Security Council, to defend its mandate against spoilers whose activities pose a threat to civilians or risk undermining the
peace processes. Robust peacekeeping, in part, functions similarly to humanitarian interventions under the Responsibility to Protect doctrine, as the protection of civilians provides the trigger for the escalated Security Council involvement in a matter otherwise internal to a State. While humanitarian interventions have tended to be authorised to protect civilians from government forces (as in Kosovo, Libya) robust peacekeeping operations are, by definition, with the tacit or express approval of the state and the force is (primarily) directed at non-state actors. The combination of an existing peacekeeping mandate and the consent of the host state obscure the visibility of robust peacekeeping operations, in contrast to authorisations of humanitarian interventions which have attracted international debate. Despite the lesser attention, robust peacekeeping may have increased effectiveness and, to a degree, local legitimacy. This is due to the existing UN presence via the peacekeeping mission and the capacity, therefore, of the authorisation of force to be tailored to the conditions on the ground. In addition, the support of the host state provides significant support for robust peacekeeping, where local infrastructure, conditions and knowledge can be used to supplement the authorisation of force.

In the peacekeeping mission in the DRC, MONUC, was established under Security Council resolution 1279 (1999). In May 2010 MONUC was replaced and re-named, MONUSCO, via Security Council resolution 1925. The MONUSCO remit included, in Operative Paragraph 4, the creation of a rapid reaction force. Subsequently, in a resolution in 2013, the Security Council authorised an ‘Intervention Brigade’ with responsibility for ‘neutralizing armed

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8 SC Res. 1925 (28 May 2010), para. 4. ‘Authorizes MONUSCO, while concentrating its military forces in the east of the country, to keep a reserve force capable of redeploying rapidly elsewhere in the country’.

9 SC Res. 2098 (28 March 2013).
groups’ and ‘contributing to reducing the threat posed by armed groups to state authority and civilian security in eastern DRC’ while also making ‘space for stabilization activities’. The resolution also asserts that this does not create a precedent or prejudice the agreed principles of peacekeeping. This aspect of the resolution clearly establishes this as robust peacekeeping operation rather than one of peace enforcement. Furthermore, in elaborating the role of the Intervention Brigade in subsequent paragraphs the mandate is configured as primarily centred on the protection of civilians, including with respect to prevention and response to conflict-related sexual violence.

The Security Council’s incorporation of sexual violence within robust peacekeeping mandates raises questions regarding the link between Security Council decisions to authorise the use of force and accountability in peacekeeping, particularly robust peacekeeping. The women, peace and security agenda within the Council’s work assists the discourse on the need for forceful protection of civilians through the location of an identifiable category of civilians, usually peopled by women and children, to justify the use of force in humanitarian crises and post-conflict spaces. To do otherwise, and see young people and women as active participants working to both continue and/or halt conflict within their community would unravel the authorisation use of force central to robust peacekeeping mandates. To demonstrate this point, I begin by looking at the relationship between force and sexual violence in armed conflict, particularly the Security Council’s move toward the perception that widespread and systematic sexual violence may function as a trigger for the authorisation of force. I follow this with an analysis of Security Council accountability structures for perpetrators of sexual violence in armed conflict as well as analysis of the emergence of ‘gender perspectives’ in Security Council resolutions. The final section of the text analyses

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10 SC Res. 2098 (28 March 2013), para. 9.
12 SC Res. 2098 (28 March 2013), para. 12 (a) (i).
13 SC Res. 2098 (28 March 2013), para. 12 (a) (iii).
these debates in light of a very basic articulation of the rule of law,\footnote{For a modern articulation, see: Lord Bingham’s speech 16th November 2006, at the Centre for Public Law, University of Cambridge, where he concludes: ‘the individual . . . accepts the constraints imposed by laws properly made because of the benefits which, on balance, they confer. The state for its part accepts that it may not do, at home or abroad, all that it has the power to do but only that which laws binding upon it authorise it to do.’ See: \url{http://www.cpl.law.cam.ac.uk/past_activities/the_rule_of_law_text_transcript.php} (last accessed February 2014).} contrasting this with international legal discussions of legitimacy in relation to the use of force.

2. Sexual Violence as a Trigger for the Use of Force

In this section I consider the Security Council’s regulation of sexual violence in armed conflict and peacekeeping to draw conclusions about the deployment of robust peacekeeping and the authorisation of the use of force. I demonstrate the continuum of Security Council accountability as well as the usefulness of gender as analytical tool to expose bias and shortcomings in existing legal arrangements.

The Security Council has produced seven resolutions under its women, peace and security agenda, as well as developing text on gender issues within country-specific resolutions. The first of these resolutions, 1325,\footnote{SC Res. 1325 (October 31 2000).} was drafted in 2000 and the most recent, resolution 2122, in October 2013.\footnote{SC Res. 2122 (October 18 2013).} Four of the Council’s resolutions focus specifically on sexual violence within armed conflict and these three resolutions, 1820,\footnote{SC Res. 1820 (June 18 2008).} 1888,\footnote{SC Res. 1888 (October 29 2009).} 1960\footnote{SC Res. 1960 (December 16 2010).} and 2106,\footnote{SC Res. 2106 (June 24 2013).} all attach the Council’s activities to combat sexual violence with the use of force. That is, in paragraph one of each of these four resolutions the Council identifies systematic and widespread sexual violence as exacerbating conflict and as potentially impeding the maintenance of international peace and security. The Council’s choice of language in this
thrice repeated paragraph implicitly invokes Chapter VII action, specifically the use of force, as a potential means to halt widespread and systematic sexual violence in conflict regions. In identifying sexual violence as impeding international peace and security and following this with the intention to ‘where necessary, adopt appropriate steps to address widespread and systematic sexual violence’ the Council replicates its language that it has, in practice, used to authorise the use of force which is euphemistically referred to as ‘all means necessary’ in Chapter VII resolutions. When paired with the robust peacekeeping, such as the authorisation of the Intervention Brigade in the DRC which also signals sexual and gender-based violence as a component of the authorisation of tactical force to protect civilians, the linkage between force and the regulation of sexual violence demands further attention and analysis.

The construction of victim narratives via women as survivors of sexual violence at the hands of local men in conflict scenarios becomes a vital component of the construction the authorisation of force in peacekeeping missions. The Security Council’s production of knowledge on force and its production of knowledge on sexual violence are usually kept separate and deal with different aspects of conflict – one (force) is the ultimate and last resort enforcement mechanism that focuses on the actions of states while the other (regulation of sexual violence) is centred on individual responsibility. At the same time through joint paragraph one of Resolutions 1820, 1888 and 1960, the Council moved toward the perception that widespread and systematic sexual violence could justify the use of force. While it might be unlikely that this would occur as a straightforward Chapter VII authorisation it is

22 The most recent resolution: SC Res. 2106 (24 Jun 2013), para. 1 alters the wording of the three prior resolutions so that the Security Council emphasises the need to take ‘effective steps to prevent and respond to such acts’ and ‘stresses women’s participation as essential to any prevention and protection response’.
23 However, see: Roisin Burke, ’Attribution of Responsibility: Sexual Abuse and Exploitation and Effective Control of Blue Helmets’ (2012) 16 (1) Journal of International Peacekeeping, 1-46.
not unlikely or unfeasible that a robust peacekeeping resolution could trigger the use of force on the grounds of a threat of sexual or gender based violence within a community.

In the DRC, relatively recent examples of sexual violence in the conflict illustrate the problems, and risks, of the development of authorisation for force linked to the prevention of sexual violence. Between July 30th, 2010, and August 2nd, 2010, Mayi Mayi Cheka fighters embarked on a campaign of systematic sexual violence in Luvungi and surrounding villages in the North Kivu Province in the DRC. Subsequently 242 individuals from Luvungi and a further 260 from surrounding villages were recorded by humanitarian medical personnel in the region as requiring treatment for sexual assaults and related injuries. Although these acts were brought to the Security Council’s attention it was not until a month after the attacks that the nearby UN forces re-commenced patrols and increased their visibility in Luvungi and surrounding villages. The leader of the Mayi Mayi Cheka group responsible for the Luvungi attacks was subsequently arrested by UN peacekeepers in October 2010.

In January 2011, in Fizi in the South Kivu province in the DRC, after a CNDP General was shot in a bar fight, CNDP soldiers, integrated into the national army in 2009, embarked on a series of revenge attacks on the local community that resulted in 60 serious sexual attacks. After the attacks, Lt. Col. Mutware Kabibi, a high ranking officer in the Congolese army, was tried and found guilty of leading the attacks. Although UN peacekeeping personnel did not respond to the

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26 These figures vary across reports, the Final Report from the OHCHR (ibid.) found over 387 civilians had suffered sexual violence during these attacks.

27 National Congress for the Defence of the People (French: Congrès national pour la défense du peuple).

threat or actual attacks in either the 2010 or 2011 attacks, both resulted in trials and convictions, the latter in the innovative mobile court process. Lt Col Mutware is currently serving a twenty year prison sentence. In both cases the prosecutions focused on commanding officers rather than individual perpetrators.²⁹ I return to this aspect of the prosecutions for sexual violence committed in the DRC in the following section. In both cases the UN might also have deployed the Rapid Reaction Force to deal with the threat before it materialised into harm. One month prior to the first set of attacks, in Kivu, Security Resolution 1925 had transformed MONUC (also accused of perpetrating sexual abuse in the DRC³⁰) from a peacekeeping operation to a robust peacekeeping operation, MONUSCO, authorised to use all mean necessary (force) to protect civilians and to protect the peace. Operative Paragraph Four of Resolution 1925 further authorises MONUSCO to maintain a reserve force capable of rapid redeployment elsewhere in the DRC.

Although MONUSCO has chosen not to use force to halt the threat of or to halt actual sexual violence, it is clear that the Security Council has constructed the Rapid Reaction Force, the women, peace and security mandate and the more recent Intervention Brigade, with the capacity for the use of force, as robust peacekeeping, in precisely this type of scenario. The selective deployment of MONUSCO’s Rapid Reaction Force demonstrates the indifferent attitude of militaries to sexual violence. Understanding military perceptions of the harm of sexual violence is further understood when the difference consequences for perpetrators of sexual violence are reviewed: a task I take up in the next section. Prior to considering individual and institutional accountability mechanisms for sexual violence crimes, linkage between robust peacekeeping, the rule of law and the Council’s women, peace and security agenda can be highlighted. Although I have been critical and am concerned by MONUSCO’s failure to react to systematic sexual violence in the DRC, the call for force as a counter -response to sexual violence remains a problematic one and illuminates the failure of the Council, and its subsidiary bodies, to apply internal checks to appease rule of law criteria. As such developments in the Security Council to authorise force in response to changing and clearer

understandings of the nature of conflict, as robust peacekeeping can be seen to be, as well as accountability of the Council for the construction and deployment of robust peacekeeping forces remain unchecked and untouched by any conception of the rule of law.

What I demonstrate in the next section is, first, that even as the Council develops this agenda the deployment of force to halt sexual or gender-based violence remains an unlikely military strategy; second, that the use of force to halt widespread and systematic sexual violence demonstrates the flaw of seeking more rather than less authorisation for the use of force via a women, peace and security agenda and, third, the authorisation of force depends on and reinforces the representation of women in conflict as victims of sexual violence. This argument attaches to discussions on the rule of law as it demonstrates the poverty of imposing and strengthening rule of law initiatives within post-conflict states while the Council itself insufficiently applies rule of law standards to its own decision making, agendas and action.

3. Individual and Institutional Accountability for Sexual Violence in Armed Conflict

Within Security Council resolutions there remains a distinction between sexual violence in armed conflict and sexual exploitation and abuse; leading to different treatment in terms of labelling and consequences for perpetrators.

Sexual Exploitation has been defined as: ‘Any actual or attempted abuse of a position of vulnerability, differential power or trust, for sexual purposes, including but not limited to, profiting monetarily, socially or politically from the sexual exploitation of another’\textsuperscript{31}

Sexual Abuse is defined as ‘the actual or threatened physical intrusion of a sexual nature, whether by force, or under equal or coercive conditions’. \textsuperscript{32} Collectively sexual exploitation

\textsuperscript{31} Taken from CrorinnaCsaky No-one to Turn to: the Under Reporting of Child Sexual Exploitation and abuse by Aid Workers and Peacekeepers (United Kingdom, Save the Children Report 2008), see: http://www.un.org/en/pseataskforce/docs/no_one_to_turn_under_reporting_of_child_sea_by_aid_workers.pdf (last accessed February 2014).
and abuse is referenced in the United Nations to describe violations by UN personnel and the UN has repeatedly articulated a policy of zero tolerance for sexual exploitation and abuse committed by UN personnel, both civilian and military. The UN peacekeeping website describes this as meaning:

UN rules forbid sexual relations with prostitutes and with any persons under 18, and strongly discourage relations with beneficiaries of assistance (those that are receiving assistance food, housing, aid, etc... as a result of a conflict, natural disaster or other humanitarian crisis, or in a development setting).

In the work of the Council, sexual violence has been the terminology used for the development of mechanisms to deal with perpetrators of sexual abuse within an armed conflict or post conflict community, the separate term of ‘sexual exploitation and abuse’ has been developed and deployed by the Council in reference to the acts of UN personnel while working on a UN mission. For example, the most recent women, peace and security resolution centred on sexual violence includes, in paragraph fifteen, a request for ‘the Secretary-General to continue and strengthen efforts to implement the policy of zero tolerance on sexual exploitation and abuse by United Nations personnel and urges concerned Member States to ensure full accountability, including prosecutions, in cases of such conduct involving their nationals’. The focus of the remainder of the resolution is on sexual violence and appears to be directed at the parties to a conflict, rather than UN personnel.

Similarly, in Resolution 1960, the focus throughout is sexual violence where the Council reaffirms its intention to use necessary measures to address widespread and systematic sexual violence, re-iterates the need for the Secretary-General to list parties responsible for sexual

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32 Ibid.
34 SC Res.2106 (June 242013), para. 15.
violence during armed conflict and reiterates its intention to develop targeted sanctions against those responsible for sexual violence. In Operative Paragraph Sixteen, however, the Council focuses on sexual exploitation and abuse which it requests of the Secretary-General continued ‘efforts to implement the policy of zero tolerance on sexual exploitation and abuse by United Nations peacekeeping and humanitarian personnel’. The consequences and responsibility for sexual violence perpetrated by UN peacekeeping and humanitarian personnel is not addressed in this Resolution, or any prior resolution of the Council.

The sexual exploitation and abuse threshold, while created to expand the nature of abuses UN personnel could be found accountable for, in effect creates a two-tier structure of sexual abuses within armed conflict and post-conflict communities. This is evidenced through the different culpability attributed to local perpetrators, where sanctions, potential criminal charges and even the use of force may be the international response while UN personnel are dealt with via internal national military disciplinary structures, often meaning little more than being sent home from the mission. This is evidenced in the DRC violence, described above, as well as the Security Council sanctions listing regime where individual responsibility is bypassed for the pursuit of commanding officer responsibility for sexual violence. Within UN missions, command responsibility for acts of sexual violence, or sexual exploitation and abuse, committed by UN personnel is not pursued. Instead individual perpetrators often have their peacekeeping service terminated and the matter is dealt with via internal national military structures.

It is possible to distinguish between the two sets of crimes identifying, for example, local perpetrators of sexual violence in conflict zones are often responsible for widespread and systematic attacks thus invoking superior orders and command responsibility while the

internal disciplining structures of UN missions seeks to project sexual exploitation and abuse and sexual violence perpetrated by UN personnel as not a policy or ‘weapon’ deployed by UN personnel and certainly not commanding officers. However, the failure to recognise the omissions to act in halting sexual violations of UN troops implicitly adds to the failure of those same commanding officers to respond to the threat, from foreign, local or rogue forces, of sexual violence. International law acknowledges omissions to act as incurring international responsibility of a state so that the often disturbing reports of peacekeeper complicity in sexual abuse, exploitation and violence in conflict communities suggests at the very least a turning of a blind eye by military hierarchies. Yet the MONUC troops, who were in part replaced by MONUSCO due to persistent scandals involving sexual crimes committed by UN personnel, and the post-You Tube identification of peacekeeping sexual attacks in Haiti has continually attracted individual responsibility rather command or institutional responsibility. The failure of the UN to pursue and regulate sexual violence as a crime that the institution itself must take measures to arrest creates cultures of tolerance rather than regulation.

As such, the attempt to develop a Security Council agenda on sexual exploitation and abuse has resulted in lesser consequences for UN personnel and a renaming of sexual violence as sexual exploitation and abuse. While the terminology of sexual exploitation and abuse may have been strategically developed to include more abuses within military disciplinary procedures, this wider term has in fact watered down the offence to one of disciplinary rather than of a criminal nature. This has had the further effect of permitting sexual exploitation and abuse within peacekeeping communities to be regarded as the wayward behaviours of a handful of actors as opposed to being labelled a continuing, global problematic of military sexual cultures. I would add the Security Council’s persistent identification of women in post-conflict and transitional communities as sexually vulnerable rather than as active,
community participants, awaiting the consultation of peacekeepers, fails to disrupt out of date understandings of post-conflict spaces, of gender and of sexuality.

This institutionalised response seems to reflect the perspectives of Western military leadership who are yet to publicly or effectively challenge internal sexual cultures within militaries and the destructive gender expectations and abuses that co-exist with such attitudes.

4. The Role of ‘Gender Perspectives’

Through the creation of the seven resolutions on women, peace and security the Council has increasingly come adept at ‘gender perspectives’ to reference the range of initiatives it has described, activated and considered under the women, peace and security agenda. The role of gender within the Council’s texts, however, is not clear, although with an absence of attention to the construction of masculinity and femininity and the gendered experiences of conflict that both men and women encounter, gender perspectives, increasingly appears to refer to women’s perspectives. It is clear that the motivation behind the development of gender perspectives in the Council’s output is a desire to change and challenge understandings of security. Through the prioritising of women’s perspectives an implicit assumption of biological, cultural, social and natural difference marking women is incorporated into the Council’s work, playing out, at the same time, a history of gendered understandings of what it means to be a female human. Despite feminist scholarship, activism and institutional forms understanding and projecting a diversity of women’s experiences that define and understand gender as extraordinarily more complicated than ‘adding’ women’s ‘perspectives’ the shift to a legal (or quasi-legal) document such as a Security Council resolution trades the complicated, unfolding and diverse readings of gender into a very simple narrative where gender equals women.
Yet the emergence of the Security Council gender initiatives may lead to more authorisations of force, especially with regard to robust peacekeeping and the regulation of widespread and systematic sexual violence, while at the same time creating renewed opportunities for the crimes of peacekeepers to be insufficiently accounted for by individuals, states or the UN. The Mayi Mayi Cheka commander who was held responsible for the Luvungi attacks in 2010 and the CNPD General prosecuted for the Fizi attacks in 2011 can be contrasted with the UN procedures for responding to sexual exploitation and abuse and/or sexual violence by peacekeepers. For example, the Security Council’s withdrawal of 3000 UN personnel from Haiti in 2011 was largely reported as ‘misconduct’ by peacekeepers and follow up prosecutions to establish command or individual responsibility have not occurred, instead the UN has considered setting up a ‘peacekeeper blacklist’ to identify countries whose peacekeepers have been banned from missions.

5. Raising the Rule of Law

Robust peacekeeping as such becomes an important site for understanding the limited role for the rule of law in Security Council authorised force. Although the rule of law itself may be a contested concept, it is also an emergent feature of the Council’s own work, particularly in relation to the standards the Security Council elaborates for transitional and post-conflict communities to conform with. The Security Council has conducted debates on the rule of law since 2003 and Security Council resolutions and Secretary-General Reports regularly refer to the rule of law in relation to specific situations on the Council’s agenda. These outward projections of the rule of law as good governance and as global standards may be questioned;

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37 However, prior violence, involving Uruguayan personnel did result in five domestic prosecutions and an apology from the Head of State after video footage was released on the internet documenting specific attacks: http://www.aljazeera.com/news/africa/2012/05/20125115352816737.html (last accessed February 2014). The charges were disobeying orders and dereliction of duties.
38 See: http://www.google.com/hostednews/afp/article/ALeqM5iRBfNUL3nuxtniKzYEQMDdcLKXg?docId=CNG.b5165c4cb92821da2ef3a12fe90a2d6.e1 (last accessed February 2014).
however this is not the focus of this paper. Instead there are two aspects connected to the absence of the rule of law that I have brought out in this discussion and which adhere not to the transitional society but to the decision making structures of the Council itself.

First, the creation of the sexual violence trigger in paragraph one of Resolutions 1820, 1888 and 1960 demonstrates the lack of rule of law safeguards on decisions to use force or to advance force mandates as the background and consultation behind the creation of this new grounds for the use of force is does not have a procedure for checks and balances.

Second, peacekeeping accountability, especially with regard to sexual violence, subsumed under the sexual exploitation and abuse language, raises questions about the viability of robust peacekeeping initiatives if peacekeeping operations themselves are on the one hand, not responding to the threat of or actual sexual violence within post-conflict states and, on the other hand, if the accountability mechanisms within UN missions are insufficiently pre-empting and addressing sexual violence committed by peacekeeping personnel.

The issue of peacekeeper accountability within UN forces has been addressed elsewhere.39 What I have demonstrated in this paper is this lack of accountability extends from the action of peacekeeper personnel and their participation in egregious behaviour while deployed, including criminal acts of sexual violence and the lesser crime but also serious issue of sexual exploitation and abuse, and exists on a continuum with the failure of robust peacekeeping missions to respond to either the threat or actual crimes of sexual violence an aspect of robust peacekeeping that does not receive review, judicial or otherwise, and further to the decisions of the Council itself to authorise the use of force, including in situations of robust peacekeeping. Dicey’s very basic assertion that the rule of law incorporates the requirement that law be clearly articulated in advance, equality under the law and the right to judicial

39 Burke, ‘Attribution of Responsibility’, 1-46
review, the rule of law is not applied in decisions to extend the trigger to use force, the application of such force or the accountability of actors responsible for the deployment of force, including in robust peacekeeping situations.

6. Conclusions

Robust peacekeeping is not always sufficiently regarded or included in our discussions of the Security Council’s authorisation of the use of force. At the same time, robust peacekeeping has increasingly become the mechanism through which the Security Council authorises the use of force, bypassing the larger questions and challenges raised by its other early twenty-first century model humanitarian intervention and the responsibility to protect. Yet robust peacekeeping, like humanitarian interventions, are dependent on the identification of civilians in conflict regions that are often (implicitly and increasingly explicitly) gendered female and in need of protection. The particular focus on women as victims of sexual violence in conflict reinforces the need for the Council to save women, a discourse that invokes outmoded understandings of women’s honour and narrows the scope of international efforts to transform security through a gender lens.

While robust peacekeeping mandates may be preferable to humanitarian intervention because they are often able to provide a locally responsive mandate, have the co-operation of the host state and will be strategically limited in time and scope, the blurring of peacekeeping and peace enforcement has made the application of the accountability components of a rule of law type measure increasingly difficult. Decisions to deploy the ‘robust’ aspect of peacekeeping are not assessed or reviewed. As the responses to the systematic sexual violence attacks in the

40 Bingham, Speech 16th November 2006, University of Cambridge.
41 SC Res. 2098 (28 March 2013), para. 11 and 12 (1).
DRC in 2010 and 2011 demonstrate, military understandings of a ‘threat’ in the field continue to dismiss the threat of widespread and systematic sexual violence as appropriately dealt with through the deployment of Rapid Reaction Forces. At the same time the Council itself has opened up the possibility of the use of force to halt widespread and systematic sexual violence, although this widening of the notion of what constitutes a threat has also not been subject to due process, review or a clear set of decision-making processes. To add to these two aspects of robust peacekeeping understandings of the complicity of UN personnel in sexual violence, crimes that are usually regarded as disciplinary offences, raises questions about why the Council regards the sexual violence of non-state actors as justifying force but the sexual violence of its own actors as minor offences.

1. Accountability Failures and the Peacekeeping Continuum

Accountability failures within the Security Council, for example, with respect to the management and disciplining of peacekeeping personnel responsible for sexual violence need to be understood as functioning on a continuum that extends from the authorisation of the use of force through to the management of UN forces. As such a discrepancy continues where the Security Council invokes various terms prefaced by gender – equality, perspectives, balancing - in peacebuilding and post-conflict initiatives as mechanisms that assist transitional societies to demonstrate their commitment to the rule of law. That is, transitional societies are compelled by the Security Council to pay attention to gender equality, gender perspectives and gender balancing to help evidence the development of state structures that comply with the Council’s rule of law requirements. This indicates the Security Council’s recognition of the role of gender justice within the re-building and the reconstruction of institutions within a post-conflict state but does not sufficiently address the questions a gender perspective raises about the Council’s own working structures, decision-making spaces and agendas.
2. The Democratic Deficit in the Council

While other texts identify the democratic deficit\textsuperscript{43} in the Security Council I have tried to illustrate how the Council’s women, peace and security agenda is itself a limited democratic model. This happens in both a practical and a substantive manner, although there is crossover. At the level of practice, it is important to pay attention to which feminist voices/actors gain access to international institutional forums and how the diversity of feminist discussions can be a necessary causality due to the need for these actors to present themselves as in agreement. At the level of substance, the consequence is that important feminist understandings – for example, of the role of disarmament in a feminist politics of peace – of the diversity of interconnected issues in re-imagining security have not been welcomed by the Security Council. As a consequence the feminist ideas that shape the legal reform around women, peace and security become un-linked from wider feminist debates, tensions and dialogues. Furthermore, the Council is itself mis-representative of regional diversity or gender diversity limiting the production of resolutions and of action to a very narrow global mindset.

3. Securing Legitimacy, whose Legitimacy?

Not only does this reinforce ‘benign’ and seemingly acceptable model of robust peacekeeping (i.e. designed to protect civilians, women and children, vulnerable groups and sexual violence victims) the use of force as robust peacekeeping bypasses the normative role of the General Assembly. As such, there is an urgent need to discuss the move toward the Security Council functioning as a quasi-legislative body that does not abide by a rule of law, precisely because

it is a political body (with legal implications to its decisions). The deployment of the gender perspectives or the women peace and security mantra appears to enhance the legitimacy of the Council but as the gender perspectives, flawed and partial as they might be, are only applied outwardly and not inwardly (i.e. the Security Council remains untouched) the distance between the Security Council and the rule of law is unfortunately widened in the post-1325 era.

4. The Gap between Legitimacy and the Rule of Law

At times the term legitimacy is used as equivalent to the term the rule of law. Understandings of legitimacy have produced volumes within the discipline of international law; however this is distinct from the rule of law. Indeed compliance with the rule of law may aid the production of institutional legitimacy. As the discussion here demonstrates, the Security Council’s initiatives on women, peace and security functions as a mechanism for legitimating the work of the Council, including the authorisation of the use of force, while downplaying the need for accountability in the authorisation, deployment and use of force.

In 1992, Franck wrote, with respect to the emergent right to democratic governance that ‘the key to solving these residual problems is . . . that older democracies should be the first to be volunteered to be monitored in the hope that this will lead to near-universal compliance.’ Two decades later we must demand the same application of standards to the Security Council. The deployment of rule of law criteria in transitional communities must be matched with the Security Council also developing checks and measures drawn from the rule of law rather than the pursuit of legitimacy through the enlargement of its own, unchecked agenda.

5. *Force without ‘womenandchildren’*?

To finish it seems time to ask what happens if we cease to look for ‘womenandchildren’ within conflict regions and cease with the category of civilians. That is, if we see women, children and civilians as agents actively producing both conflict and peace within their community we take away the justification for the use of force, either in humanitarian communities or in situations of robust peacekeeping. Calls for a humanitarian intervention into Syria in 2012 and 2013, as in Libya in 2011, require a discourse of civilians, womenandchildren, to justify the use of force. The alternative position, under international law, is to recognise incursions into State sovereignty and UN Security Council support for non-state actors in humanitarian crises, such as Libya. In situations of robust peacekeeping the identification of the risk women face in conflict zones not only fuels the authorisation of force it allows the military forces to disregard women in local communities as human beings who should be afforded not only sexual and bodily integrity but a stake in decision making processes.

In undertaking robust peacekeeping operations the Security Council deploys imagery of civilians to downplay the problems of the Security Council choosing to support the goals of specific States. This can result in the downplaying of the violations the State itself may be responsible for, as well as the absence of clear international law permitting the Security Council to support for the deployment of force to support governments against insurgent groups. In an era when we understand the power of media and cultural representations we must be cautious of a policy for force that seeks to triumph one group of ‘rebels’ challenging
state oppression (under humanitarian intervention narratives) while selectively outlawing others (in situations of robust peacekeeping).

The Security Council’s women, peace and security resolutions presents the conundrum that (in Otto’s words) ‘women’s participation may be used to advance military and institutional agendas while maintaining women’s marginality . . . [and] while enacting the formal performance of inclusivity’.\(^{46}\) We must extend this finding to think beyond the legitimacy of the Security Council secured by the women, peace and security framework to identify that the Security Council increasingly needs the women as victim narrative to justify the use of force, to justify the robust protection of civilians, robust peacekeeping and humanitarian interventions. The development of these narratives without attention to how the rules are decided, how they are adjudicated and how they are applied makes a mockery of the Security Council’s separate agenda on the rule of law in post-conflict States. In terms of gender, this paper demonstrates the ruptures between feminist thinking on gender as socially constructed discourse and security discourse that has been unable to avoid collapsing gender as a discourse into the category of women. In armed conflict this means:

> [m]ost women fight wars on two fronts, one for whatever the putative topic is and one simply for the right to speak, to have ideas, to be acknowledged to be in possession of facts and truths, to have value, to be a human being.\(^{47}\)

\(^{46}\) Dianne Otto ‘The Security Council’s Alliance of Gender Legitimacy: The Symbolic Capital of Resolution 1325’ in Hilary Charlesworth and Jean Marc Coicard (eds.), Faultlines of International Legitimacy (Cambridge University Press 2010), 239.