

Naming and Shaming: Human Rights Accountability in Security Council Resolution 1960 (2010) on Women, Peace and Security

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Abstract

This paper provides a critical analysis of the United Nations (UN) Security Council's 'naming and shaming' provision in operative paragraph 3 of Security Council resolution 1960 (2010), arguing this is a counterproductive development in the contemporary collective security approach to women, peace and security. Resolution 1960, the fifth Security Council resolution on women, peace and security, significantly extends the Council's approach to challenging sexual violence in armed conflict through the development of global indicators and accountability mechanisms. This article offers an explanation of the terminology and context of resolution 1960 with a particular focus on operative paragraph 3. The article then shifts to review the value of the operative paragraph 3 naming and shaming provision. I argue against feminist activism that seeks to develop accountability mechanisms for non-state actors in isolation from strategies to prevent violence and suggest the need to promote, instead, strategies that increase women's participation in the delivery of justice mechanisms locally and globally. Additionally, the effectiveness of any list produced in the context of such naming and shaming will be undermined by the combination of a potential conflict of interests for humanitarian workers and the potential for mislabelling non-state actors, particularly members of armed groups, as responsible for sexual violence in armed conflict without paying appropriate attention to established due process and the rule of law. As such, the Security Council's current shift towards global indicators and accountability mechanisms will be unable to end sexual violence and gender-based human rights abuses by non-state actors in situations on the Council's agenda. I conclude that the impact of resolution 1960 operative paragraph 3 will be minimal: promoting neither women's rights nor peace nor security and with the potential to reduce incentives for armed groups to be active participants in the creation of peace.

Keywords: armed groups; gender justice; human rights protections; law and violence; mechanisms against perpetrators of sexual violence in armed conflict; women's participation

In December 2010, in operative paragraph 3 of Security Council resolution 1960 (2010), the United Nations (UN) Security Council requested that the

Secretary-General compile detailed information on those suspected of committing or being responsible for patterns of sexual violence in armed conflict.¹ Operative paragraph 3 has been described as a ‘naming and shaming’ process (UN, IANWGE, 2011: p. 11), a part of the Security Council’s wider agenda to increase accountability and enforcement mechanisms under the 1325 framework on women, peace and security.² This article considers how the naming and shaming procedure is different to the process of listing under the Security Council’s sanctions committees, analyses operative paragraph 3 in detail, and considers the policy limitations of naming and shaming tactics. I consider the consequences of operative paragraph 3 for humanitarian actors working in situations that are on the Security Council’s agenda as well as for non-state actors, such as members and leaders of armed groups, who may be distanced from the peace process as a result of operative paragraph 3’s implementation. I conclude that, while challenging impunity for sexual violence during armed conflict is vital, any strategy aimed at enhancing accountability must comply with basic human rights law if it is to produce appropriate consequences. Ultimately the paper raises questions about the viability of the naming and shaming strategy, as this is a process that ignores the views of women in target communities and ignores the past experiences of human rights practitioners working in situations that are on the Security Council’s agenda. As a mechanism for challenging the impunity of armed groups identified as perpetrators of sexual violence, the naming and shaming process is likely to have minimal impact.

I conclude that the naming and shaming provision in Security Council resolution 1960 is unsatisfactory from a feminist perspective, due to the selective feminist politics it reflects; from a human rights perspective, where an assumption of due diligence to human rights standards in Council processes is deemed important and is missing from resolution 1960; and from the perspective of human rights practitioners, particularly those working in conflict and post-conflict situations, as the naming and shaming process insufficiently addresses the conflict of interests that practitioners experience when they are exposed to knowledge of human rights abuses, including sexual violence within communities. These concerns combine to demonstrate the limited model of justice presented within the resolution 1960 naming and shaming process, raising questions with regard to future strategies for human rights practitioners and for feminist actors who have access to the Security Council.

The background to the feminist perspectives explored in this paper is derived from tensions apparent in contemporary Western feminist thinking that appears to have led many of the Security Council developments on women, peace and security. Feminist approaches to international law develop a range of models including structural bias feminism ([Charlesworth](#)

1 Security Council resolution 1960 (2010), adopted 16 December 2010.

2 Security Council resolution 1325 (2000), adopted 30 October 2000.

and Chinkin, 2000), post-colonial feminisms (Kapur, 2005), women's rights approaches (Amnesty International, 2004), governance feminism (Mackinnon, 2006a, 2006b), transnational feminist approaches (Braidotti, 1992), and gender analysis (Stemple, 2009). Differences exist, with approaches reflecting regional and local differences as well as, at times, differences between academic feminisms and activist approaches. However, the strength of feminist knowledges is often the interchange between the range of sites feminism emerges from, and transnational feminist approaches specifically engage this aspect of feminist methods – where feminist thinking is perceived as born of an understanding of women's differences across cultures, class, communities and institutional settings, allowing feminism to become a dialogue that transcends the limitations of translation across communities. In the words of Braidotti: 'differences become the stuff communication is made of, instead of acting as dividers. No such process is possible, however, without the willingness to ask the question of how we differ amongst ourselves as female feminists' (1992: 10). In this paper, I draw on this understanding of feminist thinking as bridging difference through attention to dissimilarities rather than attempting to project universal truths about women. I situate the paper as one that is reflective of structural bias feminism, where the basic structures of the international system are perceived as reflecting a bias of powerful and elite actors, and a form of transnational feminism, attentive to the spectrum of feminist thinking and particularly concerned with the absence of post-colonial and non-Western feminist approaches within contemporary institutional approaches to women, peace and security.

While feminist thinking and activism encompasses this array of approaches and methods, contemporary institutional pick-up of feminist agendas has fairly consistently addressed a very specific approach within Western feminism. This approach has been labelled subordination feminism by Kapur (2005), and governance feminism, in the context of international criminal law developments, by Halley (2009).

Kapur's analysis of subordination feminism characterizes the work of feminist legal reformers, such as Mackinnon, as risking gender and cultural essentialism, so that '[b]y not remaining sufficiently attentive to cultural and historical specificities, gender essentialism constructed through a VAW [violence against women] discourse has prompted state actors, non-state actors and donors to embrace universalising strategies in responding to human rights violations against women' (2005: 106). The consequence of a quest for universal rules of application across communities (in this example, across conflict and post-conflict communities) is, on the one hand, to entrench the acts of 'other' cultures as the space where grave sexual violence occurs – rather than in our own communities – and, on the other hand, to deny the range of sexual harm that occurs and the range of responses, crossing social, economic, cultural and political agendas, required to challenge sexual

violence. The universalizing agenda projects a distinction between women to be saved (non-white, non-Western women) and those whose formal equality in international institutions is the primary goal. This entrenches an agent/victim dichotomy in institutional feminist outcomes.

For Halley, governance feminism represents a late twentieth century phenomenon found in United States (US) lobby and interest groups that have increasingly gained access to power; this has been projected outward onto foreign policy agendas that are specifically informed by a narrow view of feminist politics that is closely associated with a specific strand of radical feminism in the 1990s that centred on sexual harm and sexual vulnerability as the locus of discrimination against women. Scholars such as [Engle \(2005\)](#) have criticized the failure of governance feminism to see the economic components of gendered disadvantage within communities. In the naming and shaming process initiated under Security Council resolution 1960 a similar concern with female sexual vulnerability permeates the approach, consequently ignoring the intersectionality of gender within communities.

I am interested in Kapur's challenge to subordination feminism and how consequent race essentialism is prevalent in feminist activism organized in this fashion, as well as the institutional developments that stem from subordination feminism. I identify operative paragraph 3 of Security Council resolution 1960 as representative of subordination feminism – emphasizing women as victims and dismissing difference amongst and between women. I explore how this further manifests a form of class and race essentialism in contemporary approaches to women, peace and security.

The widespread occurrence of sexual violence during conflict and in post-conflict communities is well documented by scholars, non-governmental organizations (NGOs) and in UN literature ([Amnesty International, 2004](#)). In 2011, the UN Special Rapporteur on violence against women reported:

Conflict and post-conflict situations often exacerbate an environment of violence against women including through sexual violence, trafficking and forced prostitution. The double bind of sexual violence is enacted against them because of one disempowered aspect of their social location, i.e. ethnic group, class position, education level, religious beliefs, or other facets of their identity – as well as their gendered position. Thus the victims are not only abused by one set of ideological-based practices – a group's desire to humiliate and destroy their enemy – but by the inequality inherent with their own group's cultural ideologies of gender and women's bodies. (UN, Human Rights Council, 2011: para. 88)

As knowledge of sexual violence across the spectrum has been evidenced and theorized in the past two decades, international institutions have directed attention toward legal responses. The work of the Special Rapporteur on

violence against women, as seen in the quote above, now reflects a position where the complexity of identity is recommended as leading future approaches, so that understanding of the intersectional discrimination within communities that contributes to violence, including sexual violence, against women is seen as central to developing future institutional approaches. Actual legal responses, however, emerge in a range of forums and are less able to reflect the intersectionality promoted by the Special Rapporteur. For UN peacekeeping and peace enforcement personnel, codes of conduct dictate a zero tolerance of sexual relations for active personnel, an attempt by the United Nations to ensure a suppression of sexual exploitation and abuse perpetrated by UN personnel (Otto, 2007). For non-UN actors within conflict situations, a combination of human rights, international humanitarian law, international criminal law, and collective security initiatives attempt to challenge impunity for acts of sexual violence that occur within conflict communities. This recognition of sexual violence within conflict and post-conflict communities has been reflected in jurisprudence (in international criminal courts and tribunals), best practices and soft law that increasingly alert military attention to the need to challenge traditional attitudes toward military complicity in sexual violence. As a consequence, the naming and shaming process I discuss in this paper is one element of a larger focus and recognition of the developing understanding of the spectrum of violent sexual crimes that accompany nearly all, if not all, situations of armed conflict.

The focus by the Security Council, in its resolutions on women, peace and security, on sexual violence in armed conflict separates the sexual violence experienced by women in armed conflict from that experienced by women in non-conflict settings – despite the failure of legal structures, globally, to adequately address either. This entrenches a view of non-Western women in conflict communities as specifically vulnerable sexual beings and denies the role of gender norms in perpetuating discrimination and harm against Western women. This entrenches non-Western women as ‘victims’ in the global governance structure and empowers first world women as ‘gender experts’ with the agency and knowledge to express opinions and to act. At the same time the prevalence of sexual violence, rape, and sexual exploitation and abuse in non-conflict communities remains the internal concern of states and outside direct international scrutiny. This has a role in ‘othering’ sexual violence during conflict rather than acknowledging the nexus between harmful understandings of gender difference that contribute to the prevalence of, and impunity for, sexual violence globally in both conflict and non-conflict communities. Consequently, the developed and sophisticated understanding of local conflicts, of the impact of sexual violence on conflict-ridden communities, and of non-Western women’s autonomy is undermined by the approach of high-profile Western gender experts who gain agency through the construction of victims of sexual violence in armed conflict as the ‘other’ women who the international system must set about

saving. While the emergence of sites for gender experts to speak is a welcome and necessary element of the contemporary international institutional structure, the consequential empowerment of these, predominantly female, actors increasingly distances UN gender experts from the experiences of women without access to international forums. This adds class essentialism to the race essentialism identified in Kapur's subordination feminism, and parallels Chimni's recognition of a transnational capitalist class, comprised of elites from the Global South as well as powerful states (Chimni, 2009: 59). What is undermined and forgotten in the Security Council's approach, as a consequence, are the long histories of alternative feminist theorizing in both Western and non-Western communities.

To arrest this development I draw on Crenshaw's model of intersectionality in my discussion, below. Intersectionality requires gender analysis that is mindful of other sites of exclusion, including race, ethnicity and class. In Crenshaw's words: 'Intersectionality simply came from the idea that if you're standing in the path of multiple forms of exclusion, you are likely to get hit by both' (Interview in Thomas, 2004: 2). In contemporary Security Council developments on women a failure to recognize the value of intersectional analysis has allowed limited views on gender, which reinforce rather than challenge gender stereotypes, to emerge as the dominant institutional model in the beginning of the twenty-first century. The report of the Special Rapporteur on violence against women, published in 2011, represents an important institutional shift toward recognition of the intersectional elements of discrimination and harm, but such human rights mechanisms within the United Nations represent a site of institutional narratives that have long seen and accommodated broader understandings of the complexity of human rights concerns. The cross-institutional fertilization of these broader understandings, for example within the Security Council, has occurred less often, as is demonstrated in the following discussion.

Kapur challenges strategies for legal reform that centre on women as a monolithic category. She identifies a failure to attend to women's different needs and approaches as 'a slippery slope where it can easily slide into the essentialist and prioritising category of gender' (2005: 104). Kapur recommends political engagement with peripheral subjects, where the needs of those with the least access to institutional practices define the strategies for legal reform and political engagement. However, such an approach must avoid 'arrogant perceptions' about who the peripheral subject is and how the peripheral subject experiences the world. In terms of the contemporary approach by the Security Council to women, peace and security, intersectional analysis and attention to peripheral subjects requires recognition of the agency and action of women within conflict and post-conflict communities, and listening to their perceptions and needs, to build future reforms. This approach is distinct from resolutions that identify women in conflict as victims of sexual abuse and that fail to recognize the role that all women, whether

victims of sexual violence or other types of violence, play both in conflicts and in their resolution. This understanding of feminist politics and debates informs my analysis of operative paragraph 3.

Operative Paragraph 3: The Framework for Naming and Shaming

In 2000 the Security Council issued resolution 1325, for the first time addressing women, peace and security as a component of the Security Council agenda. Resolution 1325 (2000) has been supplemented by four subsequent resolutions on women, peace and security: resolution 1820 (2008),³ resolution 1888 (2009),⁴ resolution 1889 (2009),⁵ and resolution 1960 (2010). Feminist analysis of the resolutions on women, peace and security has been critical of the Security Council's approach, including challenging the underlying feminist tensions that these resolutions are situated within (Heathcote, 2011) and the implicit endorsement of war contained in them. That is, none of the Security Council resolutions on women, peace and security challenges the use of military force as the central enforcement mechanism available to the Council or the use of predominantly military personnel in Security Council missions (Cohn, 2008; Whitworth, 2004).

One of the criticisms of the earlier resolutions on women, peace and security has been the lack of accountability for sexual violence in armed conflict and/or gender-based crimes (Otto, 2010; Shepherd, 2008). The Secretary-General, in his 2009 report to the Council on the 1325 framework, found:

There is . . . an urgent need for a dedicated monitoring mechanism and a clear, continuous and comprehensive system to review progress and feedback of lessons learned from the implementation of Security Council resolution 1325 (2000). The Council would enhance enormously the implementation of the resolution were it to establish such a mechanism. (UN, Security Council, 2009: para. 82)

This led to a push for UN member states to compile National Action Plans on the implementation of resolution 1325 and for the Security Council to move toward a model of global indicators for measuring implementation of the 1325 regime.⁶ The global indicators have been used by the Secretary-General to measure the implementation of the 1325 framework in his 2011 report on women, peace and security. In this context, Security Council resolution 1960 represented an attempt by the Council

3 Security Council resolution 1820 (2008), adopted 19 June 2008.

4 Security Council resolution 1888 (2009), adopted 30 September 2009.

5 Security Council resolution 1889 (2009), adopted 5 October 2009.

6 However, note the criticism of the move to National Action Plans as it appears to have diverted member state attention away from concrete actions to implement 1325 goals, as the focus has centred on the production of the reports that constitute National Action Plans (see the finding 'national action planning is delaying actual action', Anderlini, 2010: 4).

to address the accountability gap in the prior resolutions on women, peace and security.

Security Council resolution 1960 proposed to strengthen the accountability mechanisms through a range of measures that compel all states to monitor, prosecute and respond to crimes of sexual violence in armed conflict and post-conflict communities. This includes directions for the listing and de-listing of individuals under the named (targeted) sanctions regime (operative paragraph 4), calls for parties to conflicts to develop specific commitments to combat sexual violence (operative paragraph 5), and the continuation and strengthening of the policy of zero tolerance on sexual exploitation and abuse by UN peacekeeping and humanitarian personnel (operative paragraph 16), as well as the continued monitoring and reporting from the Secretary-General of the actions of state parties, armed groups and UN actors in line with earlier resolutions (operative paragraphs 8, 9, 11, 14, and 17). Resolution 1960 also welcomes the development of scenario-based training materials for peacekeepers (operative paragraph 11), welcomes the work of gender advisers (operative paragraph 10), and invites the continued briefings of the Special Representative on Sexual Violence in Conflict (operative paragraph 17). Unique to resolution 1960 were the naming and shaming provision in operative paragraph 3 and the call contained in operative paragraph 5 for specific commitments from parties to conflict to combat sexual violence.

The directive contained in operative paragraph 5 is unusual in that it addresses non-state actors, requesting parties to an armed conflict to make time-bound commitments and orders through chains of command. Implementation of this will be difficult to measure, except where the parties to an armed conflict are states; however, this does create an important normative expectation on the strategies of armed groups that seek to claim the right to govern in the future. That is, the requirement that groups may be held accountable for breaches of international law in the process of gaining power is well established in international law, and this aspect of resolution 1960 specifically incorporates strategies to combat sexual violence as a requirement that may have retrospective purchase if that group should have future legal status as a government (Crawford, 2002: 116).

Operative paragraph 3, in contrast, is directed at the Secretary-General and:

Encourages the Secretary-General to include in his annual reports submitted pursuant to resolutions 1820 (2008) and 1888 (2009) detailed information on parties to armed conflict that are credibly suspected of committing or being responsible for acts of rape or other forms of sexual violence, and to list in an annex to these annual reports the parties that are credibly suspected of committing or being responsible for patterns of rape and other forms of sexual violence in situations of

armed conflict on the Security Council agenda; *expresses* its intention to use this list as a basis for more focused UN engagement with those parties, including, as appropriate, measures in accordance with the procedures of the relevant sanctions committees. (*italics in original*)

This paragraph establishes, alongside the listing regime for targeted sanctions, a ‘naming and shaming’ process whereby individual names are submitted by the Secretary-General to the Security Council. Sanctions regimes are addressed at states and increasingly incorporate checks and balances to ensure they comply with legal expectations concerned with due process. The naming and shaming process is directed at non-state actors and leaves off review mechanisms, such as the appointment of an ombudsperson now incorporated into the targeted sanctions process. I analyse the purpose and possible consequences, as well as policy limitations, of this new process in the following section. In this section I identify the process established by operative paragraph 3.

Operative Paragraph 3 and the 1325 Framework on Women, Peace and Security

Operative paragraph 3 of Security Council resolution 1960 commences with reference to the two prior Security Council resolutions: 1820 (2008) and 1888 (2009) on women, peace and security. These two resolutions focus on sexual violence in armed conflict (resolution 1820) and post-conflict communities (resolution 1888) in contrast to the wider approach of the remaining resolutions on women, peace and security (resolution 1325 (2000) and resolution 1889 (2009)). Resolution 1325 includes provisions that identify the need for challenging impunity around sexual violence perpetrated during armed conflict; identifies the need for education and financial initiatives, and calls for the increased participation of women in post-conflict processes to transform the relationship between women, peace and security. Resolution 1889 identifies the spectrum of social practices that need to develop gender perspectives to arrest and change attitudes or behaviours that limit women’s participation, health and security in post-conflict and armed conflict situations. Both resolution 1325 and resolution 1889 identify the nexus between women’s agency and women’s need for protection, inferring that women’s protection via law can be counterproductive if women are not also given access to community forums, leadership and decision-making structures, locally, nationally, regionally and internationally. Resolution 1889 also initiated the Security Council’s call to the Secretary-General for global indicators to assess state and global initiatives in response to the 1325 framework.

In 2009 the Secretary-General, in his report on women, peace and security, identified four categories where armed conflict impacts on women and girls: sexual violence, security and access to social services, political

participation, and education (UN, Security Council, 2009: paras 9–24). The report states:

For women and girls, these situations are particularly grave, frequently involving sexual and physical harm as well as social, economic and political disempowerment... [i]n adopting 1325 (2000), the Security Council called upon Member States, the United Nations system, parties to conflict and all other relevant actors to adopt a gender perspective that would take into account the special needs of women during conflict prevention, conflict resolution and peacebuilding. (2009: paras 6 and 5)

The magnitude of this project, identified by resolutions 1325 (2000) and 1889 (2009) and in the Secretary-General's reports, is considerably refined in resolutions 1820 (2008), 1888 (2009) and 1960 (2010) which, first, focus primarily on sexual violence in armed conflict and, second, increasingly target the identification of the perpetrators of sexual violence committed during armed conflict. The progression toward monitoring, listing and sanctions for perpetrators in resolution 1960 gives the appearance of sexual violence against women as the most significant gender-based crime in post-conflict communities and situations of armed conflict, denies the complexity of military relationships with the production of gendered values within states and cultures, and fails to challenge the nexus between armed conflict and women's insecurity.

This is not representative of approaches apparent in the contributions of women writing, living or acting within communities on the Security Council agenda. A 2010 study of women in six countries with peacekeeping forces found that 'the message of "women build peace" is transformative, empowering, and can gain traction, yet it is the least common message conveyed by many UNSCR 1325 advocates' (Anderlini, 2010: 5). The very different set of findings in that study, built on a methodology that spoke with and listened to 'women in conflict zones to capture their voices and experiences regarding the actual and potential relevance and impact of UNSCR 1325 and related activities in their countries', identifies 16 key findings that are centred on women's participation and women's exclusion from transitional justice processes (ibid: 3–6). On the issues of sexual violence within conflict and post-conflict communities the report finds 'a need for grassroots mobilization to address security issues and tackle SGBV [sexual and gender-based violence] as early conflict and violence prevention' (ibid: 5). These findings contrast with the limited view of resolution 1960's attempt to isolate sexual violence in conflict from strategies to prevent and to resolve conflict. It will be through listening to women who have experienced post-1325 peacebuilding initiatives that this limitation is overcome, rather than through top-down attempts to name perpetrators.

The larger story of women's participation and insecurity in armed conflict is found in a range of studies. Al-Ali and Pratt (2009) have demonstrated how the arrival of Western militaries in Iraq in 2003 had a detrimental impact on women's daily security, particularly economic, social and health rights. Studies from NGOs and academics also demonstrate how the spectrum of gender-based violence – domestic violence, sexual exploitation and abuse, and honour crimes – as well as women's economic vulnerability are also part of the story of women's insecurity in armed conflict and post-conflict communities (Amnesty International, 2004; Cockburn and Zarkov (eds), 2002). The scholarship and activism of many women within local communities that have suffered or are suffering due to conflict identify the nexus between women's participation and challenging gender-based violence. For example, the women's coalition, Global Network of Women Peacebuilders (GNWP), in an open letter to the Security Council in response to Security Council resolution 1960 and its targets in naming, listing and directing sanctions toward perpetrators of sexual violence in armed conflict argued:

These issues of women's participation, of prevention of violence and reduction of weapons cannot be left out of any resolution on women and peace and security. Reference to the full implementation of SCR 1325 must be substantively integral to any subsequent resolutions of the Security Council on women. (GNWP, 2011)⁷

This view is further emphasized in the Secretary-General's 2010 report on women, peace and security that reflects on the Global Open Day for Women where conversations identified three common priorities: 'increased political empowerment . . . , the creation of a safe and secure environment . . . , and the allocation of greater financial resources' (UN, Security Council, 2010: para. 62). In 2011 the Secretary-General has returned to this theme and emphasized again:

Council discussions of this topic focus mainly on gender mainstreaming in peacekeeping missions, compliance with my zero-tolerance policy on sexual exploitation and abuse and the protection of women and girls from sexual violence. More attention needs to be paid to women's roles in conflict prevention, to all human rights violations against women and girls and to issues of long-term prevention and participation. (UN, Security Council, 2011a: para. 8)

In July 2011, the Colombian Minister for Foreign Affairs encapsulated this sentiment in her response to Security Council resolution 1998 (2011) on children and armed conflict, adopted on 12 July, in which the Council developed

⁷ Also see under the heading Prevention in the Secretary-General's 2010 report on women, peace and security (UN, Security Council, 2010: paras 35–9).

naming and shaming provisions relating to targeted attacks on schools and hospitals: she ‘stressed that prevention and cooperation policies were more effective than finger-pointing’ (UN, Security Council, 2011a). This development in resolution 1998 also highlights the role of developments with the Council’s women, peace and security agenda in influencing other aspects of Security Council practice. While feminist strategies may be focused on challenging impunity for acts of sexual violence within armed conflict, these developments have wider implications and meaning that need to be gauged in analysing their value.

Additionally, resolutions 1820 (2008) and 1888 (2009) emerged during the US presidency of the Security Council, as did resolution 1960. The relevance of this is evidenced in the very different approaches of resolution 1888 and resolution 1889 (2009), drafted only five days apart, the first under the Obama administration’s first term as the Council’s President with Hillary Clinton as Chair, and the second under Viet Nam’s subsequent presidency. Resolution 1888 mirrors the approach of resolution 1820, drafted and issued by the Bush administration while in the President’s chair at the Security Council with Condoleezza Rice taking the lead in that debate. The similarity between the Bush and Obama administration’s approach to women’s issues and the focus on sexual violence in armed conflict and post-conflict settings in these resolutions demonstrates the pull of governance feminism in post-millennium US politics. Specific forms of female vulnerability and liberal rights approaches associated with the post-liberal state re-emerge in international institutions. In contrast, the Viet Nam-sponsored resolution, 1889, focuses on the combination of social and economic inequalities that contribute to women’s insecurity, demonstrating a different set of goals for moving the 1325 framework forward. It is not only feminist scholarship and activism, then, which must embrace understandings of difference: institutional differences also require overt attention to build legal norms that reflect the spectrum of global approaches.

As such, the reference to resolutions 1820 (2008) and 1888 (2009) in operative paragraph 3 of Security Council resolution 1960 is significant. This connects the naming and shaming process initiated under resolution 1960 to a specific agenda within the Council under the women, peace and security framework and more recently in the protection of children under resolution 1998 (2011). This is an agenda that has, significantly, been developed via the US presidency of the Security Council and reflects a narrow view of feminist politics that is currently prevalent in mainstream US feminist activism and scholarship (see Halley, 2009). Labelled as governance feminism, this approach also incorporates Kapur’s race essentialism associated with subordination feminism. This narrowing of the Security Council agenda on women, peace and security is not reflective of the wider institutional approach found in global women’s activism, Secretary-General’s reports, or Security Council resolutions 1325 (2000) and 1889 (2009). This is a specific approach of a

mainstream strand of Western feminist thinking that has been attached to the work of the Security Council on women, peace and security as though this is representative of a uniform, or universal, model of feminist thinking. However, careful analysis of the 1325 framework demonstrates that not only is this a partial reflection of feminist thinking, this is only part of the Security Council agenda on women, peace and security. Significantly, Security Council resolution 1325 begins with a wider platform of feminist politics and the Secretary-General's reports since 2008 have consistently challenged a narrowing of 1325 to the challenging of sexual violence without attention to participation and prevention strategies.

Reading the Text of Operative Paragraph 3

After the reference to Security Council resolutions 1820 (2008) and 1888 (2009), operative paragraph 3 requests that the Secretary-General collate detailed information on parties to armed conflict that are 'credibly suspected of committing or being responsible for acts of rape or other forms of sexual violence'. This is followed by a demand for a list that further identifies 'parties that are credibly suspected of committing or being responsible for *patterns* of rape and other forms of sexual violence in situations of armed conflict on the Security Council agenda' (emphasis added). Three components are therefore crucial to understanding the naming and shaming process. One, operative paragraph 3 requests detailed information on individuals suspected of committing or being responsible for individual acts of sexual violence, including rape. I will refer to this as 'detailed information' request/report in my discussion, below. Two, parties that are credibly suspected of committing or being responsible for *patterns* of rape should be listed in an annex to any 'detailed information' report. I will refer to this as the 'list' in my discussion, below. Three, the 'list' of those suspected of being responsible for patterns of sexual violence must be drawn from situations already on the Security Council's agenda – however, the drafting of operative paragraph 3 is unclear on whether 'detailed information' reports can only pertain to situations of armed conflict already on the Security Council agenda.

As such, operative paragraph 3 identifies two types of suspect that the Secretary-General is encouraged to name and shame via that Office's annual reports on women, peace and security. The first category of suspect centres on individuals 'credibly suspected' of being responsible for sexual violence, including rape. Whether this information can only be reported from situations of armed conflict already on the Council's agenda is not clear. The second category of suspect are more likely to be groups, or those with command authority within a group, and, rather than responsibility for individual acts of sexual violence, including rape, the second element of operative paragraph 3 is for the naming and shaming of those responsible for patterns of sexual violence, including rape. The 'pattern' terminology was

previously used by the Secretary-General in a 2010 report on children and armed conflict where the notion of a pattern is described as:

a pattern denotes a ‘methodical plan’, ‘a system’ and a collectivity of victims. It is a ‘multiple commission of acts’ which, as such, excludes a single, isolated incident or the random conduct of an individual acting alone and presumes intentional, wilful conduct. (UN, [General Assembly and Security Council, 2010](#): para. 175)

Operative paragraph 3 encourages the supply of ‘detailed information’ on individual perpetrators and intends that the ‘list’ of those suspected of being responsible for patterns of sexual violence be used for a basis for future United Nations engagement. The resolution then specifically identifies the work of the sanctions committees as a site where both the ‘list’ and the ‘detailed information’ may be useful for further measures. It is not clear, however, what will be the exact relationship between the ‘list’, the ‘detailed information’ and the existing sanctions committees. As the measure for listing or detailed information is that an individual be ‘credibly suspected’, this highlights the already problematic evidentiary standards and lack of transparency that the Security Council has previously attempted to address through the appointment of an ombudsperson to review sanctions lists.

The sum of operative paragraph 3 is new territory for the Security Council. The idea that those credibly suspected of sexual violence in armed conflict can be named and therefore shamed presents a curious development that appears to assume some form of criminal process yet, at the same time, rejects existing legal structures and human rights provisions on the rights of the accused. The level of evidence required for an individual to be credibly suspected is not addressed by the Security Council or the Secretary-General and does not appear to be formulated with standard protections for individuals accused of criminal offences that protect both those accused and the justice system itself from wrongful accusations. It is not apparent in resolution 1960 that the production of ‘lists’ of credible suspects and ‘detailed information’ on credible suspects would function as a prelude to future prosecutions, or if the very process of naming and shaming constitutes the end goal. Either way it is imperative that the Security Council, and/or the Secretary-General, assess the tests and balances required before any individual is named and shamed via the process provided for in operative paragraph 3.

Previously, the Security Council has taken the time to highlight that it does not have a policing function and thus targeted sanctions resolutions are ultimately ‘preventative in nature and not reliant upon criminal standards set out under national law’ (resolution 1904 (2009): Preamble).⁸ While this

8 Resolution 1904 (2009), adopted 17 December 2009, on threats to international peace and security caused by terrorist acts.

statement was issued by the Security Council in relation to the strengthening of processes around the regime for naming individuals and groups to be subjected to sanctions, it is important to consider this in light of operative paragraph 3 of resolution 1960, as it helps us assess the purpose of the naming and shaming process. However, ultimately this is not clear – if the Security Council has no policing function (as established under resolution 1904) then the purpose of operative paragraph 3 lies in the potential shame attached to individuals listed under either the ‘list’ or ‘detailed information’ process. The audience that the ‘list’ is projected at then becomes important. Resolution 1960 refers to the ‘list’ and ‘detailed information’ as resources for future UN engagement – however, this is not elaborated upon. There is, of course, the potential that the ‘list’ and ‘detailed information’ become a resource for future prosecutorial action under the International Criminal Court (although this would suggest a policing role for the Security Council), or for future named sanctions under the Security Council targeted sanctions regime. However, as both of these processes already have separate procedures for listing and investigating it is difficult to imagine what role a list of ‘credible suspects’ might add. Both the sanctions regime and the International Criminal Court structure represent sites where a lack of transparency in how lists are obtained has had the potential to frustrate processes for either post-conflict reconstruction or prosecution of individuals (Clark, 2008). It is important, then, that the listing and detailed information be developed with a clearer purpose than is currently apparent from operative paragraph 3.

While operative paragraph 3 is not explicit in terms of the potential targets that the ‘naming and shaming’ process may be used to identify, the absence of a reference to state parties indicates that the provision has been developed to challenge the behaviour of non-state actors, particularly armed groups that use sexual violence as a tactic in armed conflict. This ignores the complicity of states and governments in the failure to prevent, the failure to prosecute, and in the commission of sexual violence in all states. Resolution 1960 maintains the double standard where UN military actors are perceived as successfully regulated through zero-tolerance policies on sexual exploitation and abuse while non-UN, non-state actors can be named and shamed for sexual violence without reflection on the imperialist distinctions that inform such an approach.

Furthermore, the manner in which armed groups have specifically used women’s participation within their internal structures as a means to demonstrate their own legitimacy may be undermined by this approach. For example, in conflicts in Uganda and Aceh non-state actors promoted the participation of female actors to demonstrate their legitimacy, while in Liberia the role of women’s activism in shaping the responses of non-state groups toward peace processes is well known (Anderlini, 2010: 44). Women’s NGOs have also demonstrated success in communicating and facilitating access to non-state actors during conflict in a manner that is often

inaccessible to UN organizations (*ibid*). The assumption, then, implicit in operative paragraph 3 of Security Council resolution 1960 that the relationship between non-state actors and women is one of negative consequences for women ignores the very important role of women's participation that armed groups might seek to use to enhance their own legitimacy as actors in conflict resolution; it also ignores the role of women's NGOs as important actors with access to both local and international actors. That women already work with armed groups to facilitate peace and to move communities away from violence needs to be supported and recognized by the Security Council. The construction of women as victims of armed groups and not as participants within those groups, as well as participants in negotiating forums, demonstrates the subordination feminism that informs resolution 1960.

Additionally, the reference to credibly suspected persons raises potential conflicts of interest for those working in situations on the Security Council's agenda. The expulsion of humanitarian workers from Darfur after the International Criminal Court arrest warrant for Omar Al-Bashir had been issued demonstrated the vulnerability of humanitarian actors who 'are in a position to relate events and may even witness or be direct victims of serious violations' (La Rosa, 2006: 169). While the International Criminal Court has a ruling of absolute testimony immunity for humanitarian workers, Security Council resolution 1960's naming and shaming lists and detailed reports are not posited as legal processes with similar checks and balances. How individuals that are 'credibly suspected' will be identified opens up the vulnerability of humanitarian actors who may be the first or only actors in a position to document widespread or systematic sexual violence. This was certainly the case in 2010 when attacks on villages in the Democratic Republic of the Congo (DRC) were initially documented by international medical personnel working in the Walikale region of North Kivu.

Additionally, that patterns of sexual violence/rape are relevant, as well as individual acts of sexual violence/rape, raises questions on how the two components will function together. There is no elaboration within resolution 1960 as to the difference between the 'list' (for perpetrators credibly suspected of individual acts of sexual violence) and the 'detailed information' (for individuals credibly suspected of responsibility for patterns of sexual violence).

These discussions highlight underlying structural and policy issues that manifest in a naming and shaming policy; I address these fully in the next section.

Feminist Activism, Human Rights Law and the Role of the Security Council

The processes that operative paragraph 3 describes appear in the text of Security Council resolution 1960 as neutral strategies for identifying perpetrators of sexual violence in armed conflict. The cross-coverage of individual

perpetrators and those with command responsibility seems reasonably wide-ranging and responsive to feminist challenges to the 1325 framework for a prior failure to incorporate accountability mechanisms. Despite this appearance, operative paragraph 3 of resolution 1960 is unsatisfactory when considered from a human rights perspective, through the lens of intersectional feminist approaches, or through the experiences of humanitarian actors working in situations on the Security Council's agenda. In addition, the resolution represents a foray into the development of legal processes that expands the remit of the Security Council in a manner that, if unchecked, may ultimately be detrimental to women's rights.

Rights of the Accused and Human Rights Law

From the perspective of human rights law the use of the terminology 'credibly suspected' persons is untravelled territory and gives no indication of attention by the Council to accepted due processes for the identification and investigation of suspected criminal actors. International human rights law protects individuals from unfair and unproven accusations through processes that guarantee the rights of accused persons and thus the integrity of the legal system. The Security Council's approach to the listing of suspected terrorists for the purposes of targeted sanctions has been challenged in a range of national and regional courts as well as through the UN Human Rights Council as a violation of the International Covenant on Civil and Political Rights ([Security Council Report, 2011: 35–8](#)).

Ultimately this led to the refining of the listing and de-listing process for targeted sanctions against terrorist actors, including the appointment of an ombudsperson with powers to review listings and de-listings under the sanctions regimes established by the Security Council. Similar models have been developed in the construction of the targeted sanctions processes for actors within specific conflicts – including targeted sanctions against actors responsible for widespread or systematic sexual violence in conflict. However, the sanctions process addresses states, and it is states that must implement processes to halt impunity for acts committed within their territory or acts committed by actors moving through or residing in their territory. In contrast, the operative paragraph 3 process addresses the Secretary-General and UN agencies, given the reference to this as a naming and shaming provision, with the goal of influencing the actions of non-state actors in situations on the Security Council's agenda. Yet it is difficult to understand the reasoning behind this approach: primarily because the category of credible suspects remains a non-legal one with no clear checks to protect persons from erroneous listings.

It is also difficult to gauge where and how such actors might experience shame at being named in a 'list' or 'detailed information' report produced primarily for actors working within the United Nations. In the detailed information report, for example, the target is those responsible for patterns of

sexual violence in situations on the Council's agenda. This infers an attempt to arrest the use of widespread or systematic sexual violence when used as a tactic during armed conflict. Yet this is a tactic that works in part because the brutality of the actors responsible is already well known within targeted communities. This undermines any potential shame perpetrators might experience from wider knowledge of their complicity in acts of sexual violence.

Halting impunity, then, must focus on the strengthening of judicial and policing processes, empowering local actors, including women and girls, and facilitating prosecutions within the communities where such violations occur. This is a strategy that is not clearly facilitated through a naming and shaming of perpetrators via the United Nations, in a set of processes undermined precisely through the failure to attend to established human rights procedures that guarantee the rule of law.

The lack of human rights protections offered to non-state actors who appear to be the target of the naming and shaming process must also be contrasted with the continued impunity enjoyed by UN personnel, and particularly military personnel from the Council's permanent members. Status of Forces Agreements, established in advance of operations by the United States, have permitted US actors immunity from prosecution and permitted the sexual violence of Security Council permanent member military forces to remain outside of international legal scrutiny. As operative paragraph 3 does not address member states, there remains no compulsion for these standards challenging sexual violence to infiltrate Western militaries. Indeed, as mentioned above, UN peacekeeping operations remain regulated by zero-tolerance codes against the – less grave – offence of sexual exploitation and abuse, rather than by any mechanism for acknowledging acts of sexual violence perpetrated by UN military actors in peacekeeping and enforcement operations. The failure of due process for armed members of non-state groups is contextualized beside a failure of process per se for attending to the sexual violence of UN-authorized forces and peacekeeping actors (Cryer, 2001: 4).

Subordination Feminism: Women as Victims, Men as Perpetrators

Not only is Security Council resolution 1960 out of kilter with reports of the Secretary-General and with resolution 1325 (2000), it does not reflect the contributions of women living in conflict or post-conflict communities. Women living in situations on the Security Council's agenda already participate in conflict, conflict prevention processes and conflict resolution, just as women participate in military action and resistance movements. However, the contemporary strategy from the Security Council on women, peace and security fails to incorporate the demands of women who participate within local communities and, in the resolutions on sexual violence, represents non-Western women as perpetual victims of sexual violence during armed conflict. Operative paragraph 3 demonstrates the dangers of this primarily

Western feminist approach. While gender experts continue to appear in UN missions and UN policy bodies, states are increasingly required to document perpetrators and to document their own strategies rather than act to prevent violence. Furthermore, the focus of the Security Council framework on women, peace and security, while ostensibly developing ‘gender perspectives’, continually turns on the recognition of violence by men against women. A small yet significant number of victims of sexual violence committed during armed conflict are men and boys, and when attention is paid to those incarcerated during armed conflict the prevalence of sexual violence against men is very high. To develop a gender perspective, the Council must shift from the position of regarding women as victims and men as perpetrators, as this fails to identify the spectrum of gender-based violence and entrenches an essentialized view of women as victims in the work of the Council (Stemple, 2009).

The breadth of transnational feminist approaches and transnational women’s contributions, including the resounding role of intersectional methods as a means to challenge multiple power imbalances within and across communities, remains muted in the Council’s response. This leaves the Security Council as a vehicle for Western liberal feminist demands with goals that underpin the liberal legal model, denying the plural legal world we inhabit. The naming and shaming provision is particularly alarming as it endorses a liberal feminist approach while concurrently permitting a lapsed liberal understanding of due process when the assumed perpetrator is a non-Western actor. Whether titled subordination feminism (Kapur, 2005) or governance feminism (Halley, 2009), the knitted-in race and class essentialism of the sexual violence agenda is limited in its capacity to halt violence. Subordination feminist approaches also fail to create productive legal spaces for challenging acknowledged structural bias in the contemporary international legal system and thus overlook the breadth of feminist possibilities.

Operative Paragraph 3, Peace Processes and the Protection of Human Rights Actors

Beyond the readings of operative paragraph 3 offered by human rights and feminist approaches, the paragraph can also be challenged when the processes it initiates are explored within the context of actual situations on the Security Council agenda. Two key consequences can be highlighted: the potential of operative paragraph 3 to undermine peace processes, and its potential to compromise the position of humanitarian actors working in situations on the Security Council agenda.

Naming and shaming potentially undermines peace processes, as it pushes armed groups out of dialogues. There seems little incentive for armed groups to participate in the resolution of conflict if they are aware of being cited on ‘lists’ or ‘detailed information’ reports as credible suspects at the United Nations. This can be contrasted with the Mobile Gender Justice Courts in

the DRC (see [Open Society Justice Initiative, 2011](#)). Although it is only early in the life of the Mobile Gender Justice Courts, these courts build on the local model of using mobile courts to administer justice in the interior of the DRC, but have developed with a specific component to try gender crimes as well as coordinated mass attacks. As local institutions engaging with and hearing the stories of harm within the communities where harm has occurred, they have been recorded as having a restorative, deterrent and punitive impact within DRC villages. This mirrors the good practices of other gender-focused tribunals, such as the Tokyo Women's Tribunal where the emphasis was on the recording of harms over the punishment of perpetrators ([Chinkin, 2001](#)). While it may be too early to judge the effectiveness of the Mobile Gender Justice Courts, they alert us to the possibilities of law as a process of conversation within a community.

Furthermore, studies of the role of naming and shaming in domestic criminal justice processes demonstrate that the deterrence capacity of any naming and shaming strategy will be enhanced if local actors face legal consequences within their own community through legal forms that have meaning within that community space. Indeed, this is more likely to be a space where criminal actors do experience shame ([Braithwaite and Drahos, 2002](#)). This knowledge of what works and what is ineffective in terms of domestic criminal laws is increasingly important if the Security Council perceives its role as one of challenging perpetrators, such as through naming and shaming processes.

The naming and shaming process via operative paragraph 3 also has the potential to impact on humanitarian actors working in situations that are on the Council's agenda. While these actors may perceive themselves as neutral with humanitarian goals, their presence and privilege may locate them as potential sources for the naming of 'credible suspects', undermining local perceptions of the neutrality of foreign workers within a community. Creating a balance between neutrality for those working in situations on the Council's agenda and obtaining accountability for violations is inadequately addressed across the work of the Council. The source for the production of credible suspect lists and detailed information reports, again, appears to take the Council into a policing-type function – a role that in the past it has denied as being within its remit.

The Rule of Law and the Security Council

Since 2003, the Security Council has acknowledged criticisms of the developing practice of the organization through attention to the 'rule of law'. The Council acknowledges the role of the rule of law both within country-specific resolutions as well as addressing this as a thematic issue. The most recent Council debate on the rule of law occurred in November 2011. Prior to this debate the New York-based think tank Security Council Report noted: 'the Council is in the process of expanding the scope of due process rights it

affords individuals and entities affected by its sanctions' (2011: 3). However, the Council has consistently avoided assumption of a role under international law that circumscribes its power in any significant manner. When the Council develops new processes (such as the naming and shaming of credible suspects) it permits itself licence to develop international legal regulation while consistently avoiding any strong model of judicial review of its activities. This blurs the role of the Council and undermines the legitimacy of international law. Practices developed under the Security Council agenda, if left unchecked and unchallenged, have the potential to be deployed for other purposes. This unacknowledged consequence of the Council's extension of processes under the women, peace and security agenda requires consensus on what the Council's limits are before further extensions occur.

In addition, an underlying question exists about the purpose and role of punishment in our legal communities. It is unexpected that the Council now perceives itself as authorized to develop an extended regime for holding individuals accountable for criminal acts within conflict through naming and shaming processes. Braithwaite and Drahos' excellent analysis of naming and shaming, as well as zero-tolerance strategies within criminal law, identified that 'shaming by people the offender does not respect fails to induce shame. Indeed, the only shaming that induces shame is disapproval of the act by those who we respect very highly. Just respecting them a bit is not enough' (2002: 273). This research questions, then, the policy behind operative paragraph 3 leading us to ask what might be the value of the Secretary-General's 'lists' and 'detailed reports'. Other studies, however, note that the role of identifying perpetrators during armed conflict is more than a quest towards challenging impunity and equally plays a role in 'accountability at the transitional moment' (Ní Aoláin, 2009: 1059). For Ní Aoláin, the absence of gendered crimes in the narratives of conflicts is detrimental to transitional justice. Attention to sexual violence and rape during a conflict allows transitional strategies that are able to fully apprehend the importance of criminalizing gender violence in the new community arrangements, post conflict. Within this analysis, the value of operative paragraph 3 would be the recognition given by the international community to the gravity and shameful nature of sexual violence committed during armed conflict with a view to rebuilding communities that recognize and stigmatize violence against women, particularly sexual violence. However, Ní Aoláin goes on to identify the role the international community plays in perpetuating and constructing narratives that reproduce and replicate, rather than challenge, patriarchal constructions of gender. When read with feminist discourse on the narrow range of subordination feminism adapted into international instruments by powerful states, such as the United States, the dominant, limited view of sexual politics prevalent in some mainstream Western feminist dialogues demonstrates the manner in which this might be reproduced rather than challenged via the current Security Council approach to women, peace and

security and the emphasis on naming and shaming perpetrators of sexual violence in armed conflict.

Conclusion

As a response to feminist calls for accountability under Security Council resolution 1325 (2000), operative paragraph 3 of Security Council resolution 1960 appears to be a positive development; however, any accountability measures must also be accountable themselves. When operative paragraph 3, and, more generally, Security Council initiatives on women, peace and security, continue to emphasize sexual violence within conflict without attention to the myriad of feminist approaches to race and class, discrimination and privilege become embedded in the processes of accountability and threaten to undermine any effectiveness within the larger 1325 framework.

Consequently, there is a need to question the processes involved under operative paragraph 3. This includes attention to the rights of the accused or credibly suspected persons, and the need to encourage the resolution of conflict rather than prolonging conflict. This may be done more effectively through a balanced response to armed groups that acknowledges the necessity of their participation in securing long-term peace within a region. This would also involve recognition of the multiple sites of contact, negative and positive, between women and armed groups, as well as armed groups themselves being sites where women participate.

The most recent challenge to Security Council resolution 1960 comes from the Secretary-General's Office in 2011. In the 2011 report of the Secretary-General there is a return to the themes of resolution 1325 (2000), notably the relevance of prevention and the role of women's participation in combating all forms of gender discrimination and harm (UN, [Security Council, 2011b](#)). That the Security Council chose not to respond with a new resolution after the October 2011 debates on women, peace and security suggests some significant obstacles to the full implementation of resolution 1325. Without a renewed Security Council effort to respond to the need for recognition and support of women's participation at all stages of conflict resolution (including in the Council itself), the approach of resolution 1960 remains one that tilts the Council's agenda towards subordination feminism, that denies the intersection of race, class and gender in contemporary institutional approaches, and that does little to encourage the participation of non-state actors, particularly armed groups, in conflict resolution processes that build communities representative of all.

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