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Between the Margins and the Mainstream: The Case of Women's Rights

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The Limits of Human Rights

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CHAPTER

13 Between the Margins and the Mainstream: The Case of Women's Rights

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Abstract

This chapter investigates the conceptual limits of the field of women's rights. It identifies two main currents of activity in the field: the elaboration of human rights standards, particularly through the UN Convention on the Elimination of All Forms of Discrimination against Women of 1979; and the development of the 'Women, Peace and Security' agenda by the UN Security Council since 2000. Both areas are limited in their understandings of the diverse lives of women. The chapter argues that campaigns for the recognition of women's rights shuttle between the mainstream and the margins of international law and that the structural bases of women's disadvantage remain obscured in both locations.

Keywords: [women's rights](#), [Convention on the Elimination of all Forms of Discrimination Against Women \(CEDAW\)](#), [UN Security Council's Women, Peace and Security Agenda](#), [violence against women](#)

Subject: [Public International Law](#), [Human Rights and Immigration](#)

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I. Introduction

The area of women's rights is one of the most contested in the field of human rights. Women's groups have struggled over the past century for legal recognition and guarantee of their rights. From the earliest days of international institutional organization, women have targeted the international arena as a site of emancipation.¹ Despite normative successes, limits—both theoretical and practical—have quickly emerged in each apparent step forward, generating campaigns for further developments. This process has created a complex geography of actors, sites, and mechanisms that now co-exist, with overlapping agendas and unclear conceptual linkages between them.

Over the past century, two major strands of activity have emerged in international regimes for the protection of women: one developed through human rights institutions, the second through the United Nations Security Council. This chapter first charts this landscape and its conceptual limits. It describes how

campaigns for recognition of women's rights oscillate between preferring specialist institutions for women, with the risk of marginalization, on the one hand and insisting that mainstream, or apparently general, international institutions recognize women's lives on the other. This movement between the margins and the mainstream has both progressive and conservative elements, but the structural bases of women's disadvantage rarely attract attention.

II. The Human Rights Field

The first strand commenced with the formal international articulation of the prohibition of discrimination on the basis of sex in the UN Charter in 1945.² This was reaffirmed in the International Bill of Human Rights,³ but these provisions had little impact in mainstream jurisprudence or practice. From its outset, the UN human rights system was supplemented by the work of the UN Commission on the Status of Women (CSW). CSW was created because women delegates in the Sub-Commission on Women of the Commission on Human Rights demanded separate status as they feared their concerns would be subsumed by the Commission, an early illustration of the tension between specialist domains and general institutions.⁴ CSW drafted treaties dealing with specific issues of women's rights: on the political status of women,⁵ the nationality of married women,⁶ and the age of marriage.⁷ Other treaty regimes protected women in specific contexts, such as against rape in armed conflict,⁸ trafficking,⁹ and in the workplace.¹⁰

The lack of impact of the general prohibition on sex discrimination and the restricted subject matter of the specialized treaties prompted the adoption by the UN General Assembly of the Declaration on the Elimination of Discrimination against Women in 1967,¹¹ which recognized the continuing 'considerable discrimination against women'.¹² This was followed in 1979 by the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).¹³ The Convention emerged from the UN Decade for Women (1975–85). The Decade was marked by deep tensions between women from different political and economic systems. For example, women activists from the Eastern bloc located the source of women's disadvantage in the free market economy, while American women's groups focused on inequality of opportunity within capitalism.¹⁴ For their part, women from the Global South regarded the continuing effects of colonial domination and economic disparity with the North as critical factors in their situation. The Convention shows traces of these tensions,¹⁵ but does not resolve them. It contains a broad definition of discrimination,¹⁶ and requires states to take legal and other measures to ensure the practical realization of the principle of sex equality.¹⁷ The treaty covers a range of areas in public and private life where state parties must work to eliminate discrimination against women and requires 'appropriate measures' for the 'full development and advancement of women'.¹⁸ In drafting the Convention, the CSW drew upon the expertise of its members, mainly women delegates, but followed the structure of the mainstream human rights treaties, especially in the creation of an expert, independent monitoring committee.

As of September 2019, the Convention had 189 states parties. Despite almost universal state participation in the treaty, its effectiveness has been undermined by states' reluctance to implement it, manifested for example through far-reaching reservations.¹⁹ Monitoring of the Convention was initially limited to state reporting; in 1999, adoption of an Optional Protocol introduced an inquiry procedure and provided for individual communications with respect to those states that accepted the Protocol.²⁰ These procedures have allowed the Committee on the Elimination of Discrimination against Women (CEDAW Committee) to develop jurisprudence in specific contexts, albeit in a small number of cases.²¹

The norms of the Convention have been developed both through the Convention's specialist monitoring body and through mainstream institutions. Since its inception in 1982, the Committee has been active in interpreting the treaty as a 'dynamic instrument',²² primarily through its General Recommendations. Although the Convention has no provision on violence, the CEDAW Committee has interpreted it to

encompass gender-based violence against women and girls as a form of discrimination within Article 1 and asserted states' obligations to address such violence whether committed by state or non-state actors.²³ It has recognized the potential limits of the idea of 'sex-based' discrimination, explaining that this also encompasses discrimination based on the 'socially constructed identities, attributes and roles for women and men', which is 'gender-based discrimination'.²⁴ The Committee has also acknowledged women's diversity and the inextricable linkage of sex and gender-based discrimination against women with other factors that adversely affect women's access to rights 'such as race, ethnicity, religion or belief, health, status, age, class, caste, and sexual orientation and gender identity'.²⁵

The work of the CEDAW Committee has appeared marginal to the mainstream human rights institutions. The initial meeting place of the CEDAW Committee in New York and Vienna, serviced by the UN Division for the Advancement of Women rather than the Human Rights Division, kept it physically apart from the other human rights treaty bodies. In 2008 meetings of the CEDAW Committee moved to Geneva and, like the other treaty bodies, it came within the Office of the High Commissioner for Human Rights (OHCHR). The human rights treaty bodies at first paid little attention to the prohibition of sex-based discrimination within their texts, perhaps thinking that the existence of the CEDAW Committee reduced their responsibility for addressing issues relating to women. The adoption of the policy of gender mainstreaming throughout UN activities, as urged by the Vienna Programme for Action and Beijing Platform for Action,²⁶ had little immediate impact on human rights law,²⁷ until the adoption of General Comment no. 28 by the UN Human Rights Committee in 2000²⁸ and General Comment no. 16 by the UN Committee on Economic, Social and Cultural Rights in 2005.²⁹ Other treaty bodies and special procedures have adopted similar statements.³⁰ The overall take-up of gender mainstreaming by human rights bodies has been, however, patchy and inconsistent.³¹

UN institutions have supplemented the normative regime for the protection of women's rights. For example, despite the tensions between women described above, women activists largely found common cause in seeking recognition of violence against women as a violation of human rights. Significant success was achieved in the early 1990s through the World Conference on Human Rights in Vienna, adoption of the General Assembly Declaration on Elimination of Violence against Women³² and mandating the Special Rapporteur on Violence against Women—the first human rights special procedure to be focused exclusively on women's rights.³³ Tensions re-emerged at the Fourth World Conference on Women, held in 1995 in Beijing, where feminization of poverty was the primary concern of women from the Global South and there were sharp divisions over inclusion of any reference to sexual orientation.³⁴ The Declaration and Platform for Action identified twelve critical areas of concern for women's rights, including women and poverty, violence against women, human rights of women and, as discussed below, women and armed conflict. In the decades since Beijing other UN institutions have continued to address violence against women,³⁵ and non-discrimination against of LGBTI persons has slowly entered the lexicon.³⁶

Regional institutions have also played a significant role in extending the scope of women's human rights through interpretation of their general human rights treaties³⁷ and through the adoption of specialist ones. Both the Inter-American human rights system and the Council of Europe have adopted specific treaties dealing with violence against women,³⁸ and the African Union has adopted a Protocol to the African Charter on Human and Peoples' Rights dealing with the rights of women and more generally addressing the gaps in CEDAW for application throughout Africa.³⁹

This account of the development of the international protection of women's human rights illustrates the to and fro between the margins—the specialist women's bodies and instruments—and the mainstream international institutional work. But this complex landscape has clear limits. Many of the relevant instruments are legally non-binding, and regional treaties are geographically restricted. At a normative level, CEDAW's broad notion of equality—extending to both equality of treatment and equality of outcome—is limited conceptually by its general requirement of a male comparator. In other words, the Convention's

standard of equality is that of male lives and experience. This account of equality thus excludes human rights violations that have no counterpart in men's lives, such as women's reproductive rights.⁴⁰ Another normative limitation is that the exclusive focus on the categories of men and women emphasizes the significance of biological sex and heterosexual relations. Further, women's rights are frequently seen as in opposition to other rights, such as those to property, to freedom of movement, the right to a fair trial, or to religious freedom.

Attempts to guarantee women's human rights also encounter resistance in arguments that women's equality is destructive to societal structures. For example, the UN Human Rights Council has debated the relationship of human rights and 'the traditional values of humankind'.⁴¹ This agenda item was promoted by Russia, responding to its own declining population and high rate of family breakdown. It has been supported by the Russian Orthodox Church, which blames these phenomena on the women's and gay rights movements.⁴² Other socially conservative movements such as pro-life groups in the United States have similarly lent support. Human rights non-governmental organizations (NGOs) have in contrast contributed significant critique to the traditional values debate in the Human Rights Council.⁴³ These issues have polarized the Council, essentially putting Western European states and some allies in opposition to Russia, other Eastern European states, and states with large Muslim populations. Debates have continued over several years, expert workshops have convened and studies have been prepared on the content of 'traditional values of humankind' and on the relationship between individual responsibilities and state obligations and between individual and family rights. In 2012 a report from the Human Rights Council's Advisory Council noted that, while some traditional values were the foundation for human rights, others justified discrimination and subordination. The report emphasized the primacy of international human rights standards.⁴⁴

In another line of thinking that potentially limits women's human rights, the Council has adopted resolutions each year since 2014 on the protection of the family, calling on states to adopt 'family-friendly laws and policies'.⁴⁵ The family is presented as 'the fundamental group of society and the natural environment for the growth and well-being of all its members'.⁴⁶ The resolutions also refer repeatedly to the 'increasing vulnerabilities' of the family unit, implying that the family is endangered by the recognition of the rights of women, of same sex couples, and of sexual and gender minorities. In other words, the traditional patriarchal family unit requires protection from challenges to its structure. These resolutions do not define the concept of a family, but their use of the term 'the family', rather than the plural form 'families', has been understood as a code for 'traditional' family groups, specifically those formed by heterosexual couples.⁴⁷ This impression is reinforced by the image of the family as a 'natural' phenomenon and as a guardian of the social fabric, playing a crucial role in the preservation of cultural identity, tradition, morals, heritage and the values system of society'.⁴⁸ These resolutions contrast with a 2016 report from the Office of the High Commissioner for Human Rights,⁴⁹ which endorses a broad notion of family, including those of same-sex couples⁵⁰ and elaborates the human rights attaching to individuals within a family, particularly to equality.⁵¹

One of the problems in promoting the protection of the family in human rights institutions is that it implies that the preservation of the family is more important than respecting the human rights of individuals within the family. For example, it could undermine the claims of women and girls to equal rights to property and inheritance. The CEDAW Committee and special procedures of the Human Rights Council, particularly the Special Rapporteur on Violence against Women, have over the past decades emphasized the family as a site of violence against women.⁵² Protection of the family can thus obscure the way that it promotes certain pathologies in power relationships. A 2015 resolution of the Human Rights Council refers briefly and generally to the principle of equality between women and men and respect for the human rights of all family members,⁵³ but it gives much greater priority to maintenance and support for the family. It indeed assumes that protection of the family will promote the human rights of its members.⁵⁴

The protection of the family initiative illustrates the intensity of the politics over the assertion of universal human rights on the one hand and the claims of tradition and culture on the other. The latter are especially limiting factors in the case of women's human rights. The backlash against women's rights was a major reason for the decision not to hold a 'Beijing plus 20' conference in 2015. It is evident also in the 2017 United States' reinstatement and expansion of the 'global gag' rule which precludes overseas funding for organizations that provide counselling about abortion, or advocate the liberalization of abortion laws.⁵⁵ Human rights is a public discourse regulating relationships between the state and individuals, while for many women, their lives and experience of rights (or their violations) still rest in the private domain. Even where women participate in public life, their enjoyment of rights may be curtailed⁵⁶ in the private sphere, for instance through domestic or intimate partner violence. Resurgence of the notion of the primacy of the family represents a privatizing of rights that threatens the provision for equality within the family in CEDAW Article 16.

Both the traditional values and protection of the family initiatives are in tension with Article 5(a) CEDAW which requires states '[t]o modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women'. Article 5 is based on the recognition that women cannot enjoy their rights unless such practices are eliminated. The CEDAW Committee has applied Article 5 as a tool for enhancing equality, seeking to make more concrete its somewhat abstract wording.⁵⁶ The Human Rights Council initiatives also undermine the reiteration by the Beijing Platform for Action of the human rights of women and the girl child as 'an inalienable, integral and indivisible part of universal human rights' and that states should 'prohibit and eliminate' any 'harmful aspect of certain traditional, customary or modern practices that violates the rights of women'.⁵⁷

III. Women, Peace, and Security

A second strand of relevant international activity relates to women in times of conflict, whether during or after hostilities. This concern goes back at least to the Women's International Congress in 1915.⁵⁸ CEDAW General Recommendation no. 19 on violence against women, adopted in 1992, had noted that 'wars, armed conflicts and the occupation of territories often lead to increased prostitution, trafficking in women and sexual assault of women, ... requir[ing] specific protective and punitive measures', but otherwise had not addressed the applicability of the Convention to situations of armed conflict.⁵⁹ In 1995 at the Beijing Conference this issue became one of the Critical Areas of Concern and states and international bodies were called upon to '[i]ncrease the participation of women in conflict resolution at decision-making levels and protect women living in situations of armed and other conflicts or under foreign occupation'.⁶⁰

The levels of widespread and systematic sexual violence against women in the conflicts arising out of the break-up of the former Yugoslavia (1992–95) had highlighted the issue, as did the sexual violence that was integral to the genocide in Rwanda in 1994. The failure to take account of the Beijing Platform's recommendation with respect to the participation of women in peace processes in the negotiations at Dayton in 1995 spurred further attention to women and armed conflict. This time women's groups directed their activism towards the UN body responsible for the maintenance of international peace and security—the Security Council—rather than the human rights system, thereby targeting the most powerful mainstream institution within the UN. The adoption of Security Council Resolution 1325⁶¹ in October 2000 launched what has become known as the 'Women, Peace and Security' (WPS) agenda, and, since that time, the Council has become an important forum for the development of normative standards with respect to women in armed conflict.

Resolution 1325 drew attention, first, to women's participation in peace processes and, second, to the inclusion of a 'gender perspective',⁶² in all efforts for the maintenance and promotion of peace and security.⁶³ The first aspect urged greater participation and representation of women in all stages of conflict prevention, management, and resolution. The second defined a gender perspective as taking account of the 'special needs of women and girls' in post-conflict processes and state-building. The Resolution also called for compliance with existing international humanitarian and human rights law and for the protection of women and girls 'from gender-based violence, particularly rape and other forms of sexual abuse' and an end to impunity by prosecuting genocide, war crimes, and crimes against humanity, including sexual violence.

Security Council Resolution 1325 was the first time that the Council had formally considered an issue relating specifically to women, and it set a new standard for the Security Council, UN member states and the United Nations system as a whole.⁶⁴ It has been followed by seven further resolutions,⁶⁵ which have inconsistently elaborated the terms of Resolution 1325.⁶⁶ Taken together, the eight resolutions formulate the four themes or 'pillars' of WPS: women's participation and representation in the resolution of conflict, in pertinent decision-making, in peace operations and in key positions; protection of women from conflict-related violence, especially sexual violence; prevention of sexual and gender-based violence in armed conflict and, although somewhat more ambiguously, of conflict itself; and relief and recovery. Responding to incidents of sexual exploitation by peacekeepers, the Security Council has also instituted a 'zero tolerance' policy of sexual exploitation and abuse in all UN peacekeeping operations.⁶⁷ Despite the claim that the WPS agenda is a human rights project,⁶⁸ the WPS resolutions make minimal use of human rights concepts. For example, Resolution 2122 (2013) categorizes medical, legal, psychosocial, and livelihood matters in the language of 'services', rather than as women's entitlements to economic and social rights.

The Security Council uses the notion of gender in an indiscriminate manner in the WPS agenda. For instance, in Resolution 1325 alone we find the terms 'gender perspective', 'gender component', 'gender-sensitive training', 'gender-based violence', 'gender considerations', 'gender dimensions of peace processes', and 'gender mainstreaming'. Unlike the CEDAW Committee,⁶⁹ the Security Council offers no explanation of the idea of gender but apparently equates 'gender' with women. Indeed, men are only mentioned in Resolution 1325 in the context of disarmament where 'all those involved' were encouraged to consider the different needs of female and male ex-combatants'. Men are implicitly portrayed as perpetrators of sexual violence, or as protecting women against other men's commission of such crimes. In later resolutions men appear 'as partners in promoting women's participation in the prevention and resolution of armed conflict',⁷⁰ but in only two resolutions is the phenomenon of sexual violence against men and boys recognized.⁷¹ The Council here displays no understanding of the relational aspect of gender⁷² or indeed of any theory of gender.⁷³

The WPS resolutions have prompted considerable institutional activity, including training programmes and a plethora of policies, action plans, and guidelines.⁷⁴ Many UN member states have adopted national action plans on the implementation of resolution 1325.⁷⁵ In addition, the CEDAW Committee has asserted the continued application of the Convention in armed conflict⁷⁶ and that the Security Council's WPS agenda must be read and implemented in the framework of the CEDAW and its Optional Protocol.⁷⁷ The Security Council references the Convention throughout the WPS resolution but does not engage with its provisions.⁷⁸ Within the practice of the Security Council, the WPS agenda remains compartmentalized and on the margins of the Council's work. While Resolution 2242 (2015) expressed the Council's intention to incorporate WPS more systematically in its work and its decision 'to integrate women, peace and security concerns' in its country-specific situations,⁷⁹ this has yet to materialize. More generally, the promise of the WPS agenda is not matched by political will for implementation. In 2015 a Global Study on Resolution 1325 stated that

‘[t]hough there is a great deal of rhetoric supporting women, peace and security, funding for programmes and processes remains abysmally low across all areas of the agenda’.⁸⁰

The WPS agenda is also limited in its conceptual scope. First, many of the WPS resolutions present the major harm for women caught up in conflict as sexual violence. Concentration on women as victims of crimes of sexual violence obscures the many other ways in which women experience armed conflict, such as the disappearance of male family members, displacement, and the destruction of property and food sources for women who are the primary carers within family and community. While some language refers to the ‘full range of threats and human rights violations and abuses’⁸¹ that women face in armed conflict, it does not provide any detail of the locations, manifestations, and consequences of such abuses. This contrasts with the human rights approach of the CEDAW Committee in its General Recommendation no. 30. The focus on sexual violence also assumes that women are innately vulnerable,⁸² rather than—as is recognized by General Recommendation no. 30—made vulnerable ↴ by circumstances such as economic hardship and structural disadvantage. The assumption of vulnerability is exacerbated by references to the omnibus category of ‘women-and-children’.

Emphasis on sexual violence against women also obscures men’s experience of such violence in conflict. This is an aspect of the role that gender plays in violence during conflict, which depends on particular constructions of femininity and masculinity.⁸³ There is comparatively little research and information on sexual and gender-based violence against men and boys, a gap that has been emphasized in recent discussions of conflict-related violence.⁸⁴

Other manifestations of women’s assumed victimhood include that women can never freely consent to sexual relationships with particular categories of people in periods of conflict and post-conflict. The projection of women as vulnerable rather than as active agents is illustrated in the UN Secretary-General’s policy of ‘zero tolerance’ towards sexual relationships between UN peacekeepers and local people in conflict situations.⁸⁵ Dianne Otto has argued that this policy gives insufficient attention to ‘the grinding poverty or the poorly resourced charity-based models of aid that produce economies of survival sex’, diverting attention from the politics of social justice in order to ‘save the UN’s humanitarianism from scandal. It makes the survival of the “victims” it claims to protect even more precarious’.⁸⁶

A second limit of the WPS agenda is its instrumentalization of women. The agenda urges increased participation and representation of women in policy and decision-making in all phases of armed conflict, redressing to some extent the image of women solely as victims. It offers no rationale but appears to be based on the pervasive view that women are simply ‘good at peace’.⁸⁷ UN documentation now points to evidence of the greater durability of peace agreements when women have been involved in their negotiation.⁸⁸ Women’s participation is thus not promoted as an issue of equality, but rather as in the service of international peace ↴ and security.⁸⁹ Further, the WPS agenda addresses conflict and immediate post-conflict periods, but does not look beyond this. For example, it does not engage with the evidence that women frequently lose the foothold in the public sphere that they have acquired during times of conflict once a level of stability returns.

Third, the promise of security contained in the rubric of ‘women, peace, and security’ is limited by the Security Council’s traditional understanding of security which centres on state security rather than human security. The Global Study and Security Council WPS Resolutions 2242 (2015) and 2467 (2019) acknowledge contemporary security challenges, especially those of violent extremism and terrorism. For most women, however, these are not their major security concerns, which remain situations such as poverty, violence, and displacement.

A fourth, and related, limit is the co-option of the WPS agenda into the Security Council’s security agenda, in particular its linkage with the ‘Countering Violent Extremism’ agenda. This is made explicit in Resolution

the greater integration by Member States and the United Nations of their agendas on women, peace and security, counter-terrorism and countering-violent extremism which can be conducive to terrorism, requests the Counter-Terrorism Committee (CTC) and the Counter-Terrorism Committee Executive Directorate (CTED) to integrate gender as a cross-cutting issue throughout the activities within their respective mandates, including within country specific assessments and reports, recommendations made to Member States, facilitating technical assistance to Member States, and briefings to the Council, encourages the CTC and CTED to hold further consultations with women and women's organizations to help inform their work, and further encourages the Counter-Terrorism Implementation Task Force (CTITF) to take the same approach in activities within its mandate.

While this integration gives WPS greater political prominence, the price for this is potential submersion of the WPS agenda when state security interests are deemed to be at stake.⁹⁰

The political nature of the WPS agenda thus constrains its scope conceptually. Although women have gained access to what appears as the heartland of international institutional power, they have been quickly

relegated to its margins: the inclusion of women is justified either as furthering some other objective of the Council, or on the basis of women's 'special needs'. Indeed, the WPS agenda has bestowed considerable legitimacy on the Security Council by offering a veneer of attention to the human rights of half the world's population. The Security Council pays little attention however to the diversity of women: they are either victims, handmaidens of peace, or potential participants in UN peace operations. Women have thus been brought into the Security Council on the institution's terms, which do not offer any consideration of what might constitute security for women. For instance, the WPS resolutions do not address structural inequalities or drivers of violence such as the arms trade⁹¹ or, more generally, militarism. The WPS resolutions accept military action as the ultimate protection for women in conflict and indeed promote the inclusion of greater numbers of women in UN military and police contingents.⁹²

IV. Conclusion

In this chapter we have described the diversification of international regimes for the protection of women's human rights and the shutting between various margins and mainstreams. There appears to be an unruly array of agendas for women's rights, implicating many different types of legal standards, instruments, and institutions. Specialist regimes promote focused attention to women's lives, but allow the mainstream to proceed undisturbed: human rights remain men's rights and women's rights become issues of development⁹³ or 'special cases' in light of women's 'special needs'. When women's human rights are mainstreamed, as in the WPS agenda, they quickly lose their bite. This can occur through their focus on only fragments of women's lives and experiences, or by being co-opted into serving other political agendas, or simply by being ignored or overlooked. Despite all the activity, there is little attention given to the structural causes of human rights abuses against women. The movement between the areas of human rights and WPS shows that the locations of both margins and mainstream are fluid, changing, and contingent. Indeed, there are locations at which margins and mainstream meet, merge, and separate again.

The oscillation between the margins and the mainstream is echoed in debates in the feminist international legal literature about whether feminist scholars should aim for the margins or the centre of the discipline. The margin is often understood as the place we want to leave behind as we head for the centre, the mainstream, where, it is assumed, power resides and all the action takes place. However, the periphery also

has its pleasures and virtues. It can be an attractive vantage point, offering a sense of adventure, of originality, of solidarity with the (often vaguely defined) oppressed against those with power.

Feminist scholarship pays attention to the locations of power within a society. Power is often dispersed and is not always concentrated in a centre. Patriarchal power exists at the level of the state, but it also shapes local communities and family relationships. Power is thus best understood as a network, operating in complex and inconsistent ways.⁹⁴ For this reason, although international women's groups have long campaigned for enhanced legal regulation,⁹⁵ one might conclude that international law will always be an imperfect tool to unravel patriarchal power and will be most effective when it is woven with other forms of regulation and influence.

Bibliography

- Baetens F, 'International Congress of Women (1915)' in Wolfrum R (ed.), *Max Planck Encyclopedia of Public International Law* (Oxford University Press 2010) 455
[Google Scholar](#) [WorldCat](#) [COPAC](#)
- Charlesworth H, 'Are Women Peaceful? Reflections on the Role of Women in Peace-Building' (2008) 16 *Feminist Legal Studies* 347
[Google Scholar](#) [WorldCat](#)
- Charlesworth H and Chinkin C, 'The New United Nations "Gender Architecture": A Room with a View?' (2013) 17 *Max Planck Yearbook of United Nations Law* 1
[Google Scholar](#) [WorldCat](#)
- Charlesworth H and Chinkin C, 'An Alien's Review of Women and Armed Conflict' in Stephens S and Babie P (eds), *Imagining Law: Essays in Conversation with Judith Gardam* (University of Adelaide Press 2016) 171
[Google Scholar](#) [WorldCat](#) [COPAC](#)
- Chinkin C, 'Gender and Economic, Social, and Cultural Rights' in Riedel E, Giacca G, and Golay C (eds), *Economic, Social and Cultural Rights in International Law: Contemporary Issues and Challenges* (Oxford University Press 2014) 134
[Google Scholar](#) [WorldCat](#) [COPAC](#)
- Connors J, 'Article 28: Reservations' in Freeman MA, Chinkin C, and Rudolf B (eds), *The UN Convention on the Elimination of All Forms of Discrimination against Women: A Commentary* (Oxford University Press 2012) 565
[Google Scholar](#) [WorldCat](#) [COPAC](#)
- Edwards A, 'Displacement, Statelessness and Questions of Gender Equality and the Convention on the Elimination of All Forms of Discrimination against Women' (2009) 4 *United Nations High Commissioner for Refugees Background Paper* 2009/02
<https://www2.ohchr.org/english/bodies/cedaw/docs/unhcr_cedaw_background_paper4.pdf> accessed 31 January 2019
[WorldCat](#)
- Fraser A, 'Becoming Human: The Origins and Development of Women's Human Rights' (1999) 21 *Human Rights Quarterly* 853
[Google Scholar](#) [WorldCat](#)
- Gallagher A, 'Ending the Marginalization: Strategies for Incorporating Women into the United Nations Human Rights System' (1997) 19 *Human Rights Quarterly* 283
[Google Scholar](#) [WorldCat](#)
- Ghodsee K, 'Revisiting the United Nations Decade for Women: Brief Reflections on Feminism, Capitalism and Cold War Politics in the Early Years of the International Women's Movement' (2010) 33 *Women's Studies International Forum* 3
[Google Scholar](#) [WorldCat](#)
- Gunew S, 'Feminist Knowledge: Critique and Construct' in Gunew S (ed.), *Feminist Knowledge: Critique and Construct* (Routledge 1990) 13
[Google Scholar](#) [WorldCat](#) [COPAC](#)
- Hudson N, *Gender, Human Security and the United Nations: Security Language as a Political Framework for Women* (Routledge 2009)
[Google Scholar](#) [WorldCat](#) [Google Preview](#) [WorldCat](#) [COPAC](#)
- Kirby P and Shepherd L, 'Reintroducing Women, Peace and Security' (2016) 92 *International Affairs* 249
[Google Scholar](#) [WorldCat](#)
- Kouvo S, 'The United Nations and Gender Mainstreaming: Limits and Possibilities' in Buss D and Manji A (eds), *International Law: Modern Feminist Approaches* (Hart Publishing 2005) 237

1	Arvonne Fraser, 'Becoming Human: The Origins and Development of Women's Human Rights' (1999) 21 <i>Human Rights Quarterly</i> 853.
2	Charter of the United Nations (adopted 26 June 1945, entered into force 24 October 1945), Articles 1(3), 55, 56.
3	Universal Declaration of Human Rights, GA Res. 217 A (III) (10 December 1948) [1948-49] UN Yearbook 535, Article 2; International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171, Article 2(1) (hereafter ICCPR); International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3, Article 2(2) (hereafter ICESCR).
4	Hilka Pietilä, <i>The Unfinished Story of Women and the United Nations</i> (United Nations Non-Governmental Liaison Service 2007) 13.
5	Convention on the Political Rights of Women (adopted 31 March 1953, entered into force 7 July 1954) 193 UNTS 135.
6	Convention on the Nationality of Married Women (adopted 20 February 1957, entered into force 11 August 1958) 309 UNTS 65.
7	Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages (adopted 10 December 1962, entered into force 9 December 1964) 521 UNTS 231.
8	Convention relative to the Protection of Civilian Persons in Time of War (Geneva Convention IV) (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 287, Article 27; Additional Protocol to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Additional Protocol I) (adopted 8 June 1977, entered into force 7 December 1978) 1125 UNTS 3, Article 76.
9	See Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (adopted 21 March 1950, entered into force 25 July 1951) 96 UNTS 271, which consolidated earlier treaties.
10	See, e.g., Convention concerning Equal Remuneration for Men and Women Workers for Work of Equal Value (adopted 29

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Stoeckl K, *The Russian Orthodox Church and Human Rights* (Routledge 2014) 4

[Google Scholar](#) [WorldCat](#) [COPAC](#)

Sivakumaran S, 'Sexual Violence against Men in Armed Conflict' (2007) 18 *European Journal of International Law* 253

[Google Scholar](#) [WorldCat](#)

Scott J, 'Gender: A Useful Category of Historical Analysis' (1986) 91 *American Historical Review* 1053

[Google Scholar](#) [WorldCat](#) [COPAC](#)

Pietilä H, *The Unfinished Story of Women and the United Nations* (United Nations Non-Governmental Liaison Service 2007)

[Google Scholar](#) [WorldCat](#)

Otto D, 'The Exile of Inclusion: Reflections on Gender Issues in International Law over the Last Decade' (2009) 10 *Melbourne Journal of International Law* 11

[Google Scholar](#) [WorldCat](#) [COPAC](#)

Otto D, 'Making Sense of Zero Tolerance Policies in Peacekeeping Sexual Economies' in Munro VE and Stychin CF (eds), *Sexuality and the Law: Feminist Engagements* (Glasshouse Press 2007) 259

[Google Scholar](#) [WorldCat](#) [COPAC](#)

Otto D, 'Lesbians? Not in My Country. Sexual Orientation at the Beijing World Conference on Women' (1995) 20 *Alternative Law Journal* 288

[Google Scholar](#) [WorldCat](#) [COPAC](#)

Lewis C, 'Systematic Silencing: Addressing Sexual Violence against Men and Boys in Armed Conflict and its Aftermath' in Heathcote G and Otto D (eds), *Rethinking Peacekeeping, Gender Equality and Collective Security* (Palgrave 2014) 203

[Google Scholar](#) [WorldCat](#) [COPAC](#)

- June 1951, entered into force 23 May 1953) 165 UNTS 304; Convention concerning Discrimination in respect of Employment and Occupation (adopted 25 June 1958, entered into force 15 June 1960) 362 UNTS 31. These are included in the International Labour Organisation's eight fundamental conventions.
- 11 Declaration on the Elimination of Discrimination against Women, GA Res. 2263 (XXII) (7 November 1967) (hereafter Declaration on the Elimination of Discrimination against Women).
- 12 Ibid, preamble.
- 13 Convention on the Elimination of All Forms of Discrimination against Women (adopted 18 December 1979, entered into force 3 September 1981) 1249 UNTS 13 (hereafter CEDAW).
- 14 See Kristen Ghodsee, 'Revisiting the United Nations Decade for Women: Brief Reflections on Feminism, Capitalism and Cold War Politics in the Early Years of the International Women's Movement' (2010) 33 Women's Studies International Forum 3.
- 15 See, e.g., CEDAW (n. 13), whose preamble references to the new international economic order.
- 16 Ibid, Article 1.
- 17 Ibid, Article 2.
- 18 Ibid, Article 3.
- 19 Jane Connor, 'Article 28: Reservations' in Marsha A Freeman, Christine Chinkin, and Beate Rudolf (eds), *The UN Convention on the Elimination of All Forms of Discrimination against Women: A Commentary* (Oxford University Press 2012) 565.
- 20 Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (adopted 10 December 1999, entered into force 22 December 2000) 2131 UNTS 83.
- 21 See Alice Edwards, 'Displacement, Statelessness and Questions of Gender Equality and the Convention on the Elimination of All Forms of Discrimination against Women' (2009) United Nations High Commissioner for Refugees Background Paper <https://www2.ohchr.org/english/bodies/cedaw/docs/unhcr_cedaw_background_paper4.pdf> accessed 31 January 2019.
- 22 UN Committee on the Elimination of Discrimination against Women (hereafter CEDAW Committee) General Recommendation no. 28, 'Core obligations of States parties (art 2)'; CEDAW/C/GC/28, para. 2 (hereafter CEDAW Committee General Recommendation no. 28).
- 23 CEDAW Committee General Recommendation no. 19, 'Violence against women' HRI\GEN\1\Rev.1, para. 7 (hereafter CEDAW Committee General Recommendation no. 19).
- 24 CEDAW Committee General Recommendation no. 28 (n. 22) para. 5.
- 25 Ibid, para. 18.
- 26 Vienna Declaration and Programme for Action, A/CONF.157/23 (25 June 1993) part II, para. 37; Beijing Declaration and Platform for Action, A/CONF.177/20 (15 September 1995) para. 221 (hereafter Beijing Declaration and Platform for Action).
- 27 Anne Gallagher, 'Ending the Marginalization: Strategies for Incorporating Women into the United Nations Human Rights System' (1997) 19 Human Rights Quarterly 283; for a critique of the policy of gender mainstreaming see Sari Kouvo, 'The United Nations and Gender Mainstreaming: Limits and Possibilities' in Doris Buss and Ambreena Manji (eds), *International Law: Modern Feminist Approaches* (Hart Publishing 2005) 237.
- 28 HR Committee (ICCPR) General Comment no. 28, 'The Equality of Rights Between Men and Women (art 3)' CPCR/C/21/Rev.1/Add.10.
- 29 Committee on Economic, Social and Cultural Rights (ICESCR) General Comment no. 16, 'The equal right of men and women to the enjoyment of all economic, social and cultural rights (art 3)' E/C.12/2005/4.
- 30 See, e.g., Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Manfred Nowak), 'Strengthening the protection of women from torture' A/HRC/7/3 (15 January 2008); see also Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Méndez), 'Gender perspectives on torture and other cruel, inhuman and degrading treatment or punishment' A/HRC/31/57 (5 January 2016).
- 31 Christine Chinkin, 'Gender and Economic, Social, and Cultural Rights' in Eibe Riedel, Giles Giacca, and Christoph Goley (eds), *Economic, Social and Cultural Rights in International Law: Contemporary Issues and Challenges* (Oxford University Press 2014) 134.
- 32 Declaration on the Elimination of Violence against Women, GA Res. 48/104 (20 December 2003).
- 33 The special rapporteur on violence against women, its causes and consequences was originally mandated by Commission on Human Rights Res. 1994/45 (4 March 1994) E/CN.4/RES/1995/86.
- 34 For discussion of the 'trade-off' leading to erasure of sexual orientation see Dianne Otto, 'Lesbians? Not in My Country. Sexual Orientation at the Beijing World Conference on Women' (1995) 20 Alternative Law Journal 288.
- 35 See, e.g., Commission on the Status of Women, UN Economic and Social Council, 'Agreed Conclusions: The Elimination and Prevention of All Forms of Violence against Women and Girls' E/CN.6/2013/L.5 (19 March 2013); HR Council Res.,

- 'Accelerating efforts to eliminate violence against women: preventing and responding to violence against women and girls, including indigenous women and girls' A/HRC/RES/32/19 (30 June 2016).
- 36 See, e.g., CEDAW Committee General Recommendation no. 28 (n. 22) para. 18; CEDAW Committee General Recommendation no. 35, Updating General Recommendation no. 19, 'Gender-based violence against women' CEDAW/C/GC/35, para. 12.
- 37 For example, the European and Inter-American human rights courts have interpreted provisions of the European Convention on Human Rights and Fundamental Freedoms and Inter-American Convention on Human Rights, respectively, as applying to rape and domestic violence. Cases include *MC v. Bulgaria*, App. No. 39272/98, 4 December 2003; *Opuz v. Turkey*, App. No. 33401/02, 9 June 2009; *González v. Mexico (Cotton Field)*, Inter-American Court of Human Rights Series C no. 205, 16 November 2009.
- 38 Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Pará) (adopted 6 September 1994, entered into force 5 March 1995) 33 ILM 1534; Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention) (adopted 11 May 2011, entered into force 1 August 2014) CETS no. 210.
- 39 Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) (adopted 11 July 2003, entered into force 25 November 2005) CAB/LEG/66.6 integrates a prohibition on violence against women throughout.
- 40 We have discussed this in greater detail in Hilary Charlesworth and Christine Chinkin, 'The New United Nations "Gender Architecture": A Room with a View?' (2013) 17 Max Planck Yearbook of United Nations Law 1.
- 41 See, e.g., HR Council Res., 'Promoting human rights and fundamental freedoms through a better understanding of traditional values of humankind' A/HRC/Res/12/21 (12 October 2009) (hereafter HR Council Res. 12/21).
- 42 See Kristina Stoeckl, *The Russian Orthodox Church and Human Rights* (Routledge 2014) 109. HR Council Res. 12/21 (n. 41).
- 43 HR Council, 'Summary of Information from States Members of the United Nations and Other Relevant Stakeholders on Best Practices in the Application of Traditional Values while Promoting and Protecting Human Rights and Upholding Human Dignity: Report of the United Nations High Commissioner for Human Rights' A/HRC/24/22 (17 June 2013). These groups included Article 19, ARC International, and the International Service for Human Rights.
- 44 HR Council, 'Study of the Human Rights Council Advisory Committee on Promoting Human Rights and Fundamental Freedoms through a Better Understanding of Traditional Values of Humankind' A/HRC/AC/22/71 (6 December 2012).
- 45 HR Council Res. 29/22, A/HRC/RES/29/22 (22 July 2015) (hereafter HR Council Res. 29/22); HR Council Res. 32/23, A/HRC/RES/32/23 (18 July 2016).
- 46 HR Council Res. 29/22 (n. 45), preamble.
- 47 Pooja Patel and Sarah Brooks, 'Protection of the Family Resolution Increases Vulnerabilities and Exacerbates Inequalities' (International Service for Human Rights, 19 June 2015) <<http://www.ishr.ch/news/protection-family-resolution-increases-vulnerabilities-and-exacerbates-inequalities>> accessed 31 January 2019⁵⁴.
- 48 HR Council Res. 29/22 (n. 45).
- 49 HR Council, 'Protection of the Family: Contribution of the Family to the Realization of the Right to an Adequate Standard of Living for its Members, particularly through its Role in Poverty Eradication and Achieving Sustainable Development' A/HRC/31/37 (29 January 2016) (hereafter HR Council, 'Protection of the Family').
- 50 Ibid, paras 24–7.
- 51 Ibid, paras 22–3, 28–47.
- 52 See, e.g., CEDAW Committee General Recommendation no. 19 (n. 23), especially para. 23; Report of the Special Rapporteur on Violence against Women, its Causes and Consequences (Yakin Ertürk), 'Intersections between Culture and Violence against Women' A/HRC/4/34 (17 January 2007); Report of the Special Rapporteur on Violence against Women, Its Causes and Consequences (Rashida Manjoo), 'Addendum; Mission to Afghanistan' A/HRC/29/27/Add.3 (12 May 2015) para. 13; see also HR Council, 'Report of the Working Group on the issue of discrimination against women in law and in practice' A/HRC/29/40 (2 April 2015).
- 53 HR Council Res. 29/22 (n. 45) paras 9, 14–15.
- 54 Ibid, para. 20.
- 55 President Donald J Trump, 'Presidential Memorandum Regarding the Mexico City Policy' (White House Office of the Press Secretary, 23 January 2017) <<http://www.whitehouse.gov/the-press-office/2017/01/23/presidential-memorandum-regarding-mexico-city-policy>> accessed 31 January 2019⁵⁵.
- 56 See, e.g., *Ms AT v. Hungary*, CEDAW Committee Comm. No. 2/2003, 26 January 2005; *Vertido v. The Philippines*, CEDAW Committee Comm. No. 18/2008, 16 July 2010; *RPB v. The Philippines*, CEDAW Committee Comm. No. 34/2011, 21 February 2014; *Angela González Carreño v. Spain*, CEDAW Committee Comm. No. 47/2012, 16 July 2014.
- 57 Beijing Declaration and Platform for Action (n. 26) paras 213, 216, 224.

58 Freya Baetens, 'International Congress of Women (1915)' in Rüdiger Wolfrum (ed.), *Max Planck Encyclopedia of Public International Law* (Oxford University Press 2010) 455.

59 This was clarified in CEDAW Committee General Recommendation no. 30, 'Women in conflict prevention, conflict and post-conflict situations' CEDAW/C/GC/30, especially para. 9 (hereafter CEDAW Committee General Recommendation no. 30).

60 Beijing Declaration and Platform for Action (n. 26), Strategic Objective E.1.

61 SC Res. 1325, S/RES/1325 (31 October 2000) (hereafter SC Res. 1325).

62 Ibid, preamble para. 8.

63 Ibid, preamble para. 5.

64 Natalie Hudson, *Gender, Human Security and the United Nations: Security Language as a Political Framework for Women* (Routledge 2009) 44.

65 SC Res. 1820, S/RES/1820 (19 June 2008) (hereafter SC Res. 1820); SC Res. 1888, S/RES/1888 (30 September 2009) (hereafter SC Res. 1888); SC Res. 1889, S/RES/1889 (5 October 2009); SC Res. 1960, S/RES/1960 (16 December 2010); SC Res. 2106, S/RES/2106 (24 June 2013) (hereafter SC Res. 2106); SC Res. 2122, S/RES/2122 (18 October 2013) (hereafter SC Res. 2122); SC Res. 2242, S/RES/2242 (13 October 2015) (hereafter SC Res. 2242).

66 See Paul Kirby and Laura Shepherd, 'Reintroducing Women, Peace and Security' (2016) 92 *International Affairs* 249.

67 'Letter Dated 24 March 2005 from the Secretary-General to the President of the General Assembly' A/59/710 (24 March 2005). The policy of zero tolerance was reaffirmed in SC Res. 1820 (n. 65); SC Res. 1888 (n. 65); SC Res. 1960, S/RES/1960 (16 December 2010); SC Res. 2106 (n. 65); SC Res. 2242 (n. 65); SC Res. 2272, S/RES/1325 (11 March 2016).

68 'It must not be forgotten that resolution 1325 was conceived of and lobbied for as a human rights resolution that would promote the rights of women in conflict situations', see United Nations Entity for Gender Equality and the Empowerment of Women (UN Women), *Preventing Conflict, Transforming Justice, Securing the Peace: A Global Study on the Implementation of Security Council Resolution 1325* (UN Women 2015) 15
<http://wps.unwomen.org/pdf/en/GlobalStudy_EN_Web.pdf> accessed 31 January 2019⁴¹ (hereafter UN Women, *Global Study*).

69 CEDAW Committee General Recommendation no. 28 (n. 22) para. 5.

70 SC Res. 2242 (n. 65) preamble.

71 SC Res. 2106 (n. 65) preamble: 'Noting with concern that sexual violence in armed conflict and post-conflict situations disproportionately affects women and girls, ... while also affecting men and boys'.

72 The CEDAW Committee has explained this relational aspect: 'The term "gender" refers to socially constructed identities, attributes and roles for women and men and society's social and cultural meaning for these biological differences resulting in hierarchical relationships between women and men and in the distribution of power and rights favouring men and disadvantaging women', see CEDAW Committee General Recommendation no. 28 (n. 22) para. 5.

73 Joan Scott, 'Gender: A Useful Category of Historical Analysis' (1986) 91 *American Historical Review* 1053.

74 UN Security Council, 'Women and Peace and Security: Report of the Secretary-General' S/2010/498 (28 September 2010) para. 122.

75 As of November 2018 there were seventy-nine national action plans, see PeaceWomen, 'Member States' (November 2018) <<http://www.peacewomen.org/member-states>> accessed 31 January 2019.

76 CEDAW Committee General Recommendation no. 30 (n. 59) para. 26.

77 For a comparison between the Security Council WPS agenda and CEDAW Committee General Recommendation no. 30, see Hilary Charlesworth and Christine Chinkin, 'An Alien's Review of Women and Armed Conflict' in Dale Stephens and Paul Babie (eds), *Imagining Law: Essays in Conversation with Judith Gardam* (University of Adelaide Press 2016) 171.

78 The United States has been a leading proponent of the WPS agenda but is not a party to the Convention.

79 SC Res. 2242 (n. 65) para. 5.

80 UN Women, *Global Study* (n. 68) 14.

81 See, e.g., SC Res. 2122 (n. 65).

82 See, e.g., SC Res. 2122 (n. 65) preamble, paras 6 and 7.

83 Sandesh Sivakumaran, 'Sexual Violence against Men in Armed Conflict' (2007) 18 *European Journal of International Law* 253; Chloe Lewis, 'Systematic Silencing: Addressing Sexual Violence against Men and Boys in Armed Conflict and its Aftermath' in Gina Heathcote and Dianne Otto (eds), *Rethinking Peacekeeping, Gender Equality and Collective Security* (Palgrave 2014) 203.

84 See, e.g., the UK Preventing Sexual Violence Initiative: G8 United Kingdom 2013, 'Declaration on Preventing Sexual Violence in Conflict' (UK Foreign and Commonwealth Office, 11 April 2013)
<https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/185008/G8_PSVI_Declaration_-_FINAL.pdf> accessed 31 January 2019. Then UN Special Representative for Sexual Violence in Conflict (Zainab Hawa

- Bangura) also called for better information on sexual violence against boys and men, see, e.g., the Annual Report for 2012 of the Secretary-General, 'Sexual Violence in Conflict' A/67/792-S/2013/149 (14 March 2013) para. 10.
- 85 UN Secretariat, 'Special Measures for Protection from Sexual Exploitation and Sexual Abuse' ST/SGB/2003/13 (9 October 2003).
- 86 Dianne Otto, 'Making Sense of Zero Tolerance Policies in Peacekeeping Sexual Economies' in Vanessa E Munro and Carl F Stychin (eds), *Sexuality and the Law: Feminist Engagements* (GlassHouse Press 2007) 259.
- 87 Hilary Charlesworth, 'Are Women Peaceful? Reflections on the Role of Women in Peace-Building' (2008) 16 *Feminist Legal Studies* 347.
- 88 UN Women, *Global Study* (n. 68) 41–4.
- 89 See, e.g., the Concept Note prepared by Italy and the United Kingdom for a UN Security Council Open Arria Meeting on Women, Peace and Security and Mediation: Permanent Mission of Italy to the UN and United Kingdom Mission to the UN, 'United Nations Security Council Open Arria Meeting on Women, Peace and Security and Mediation "Increasing the Participation of Women in Global Conflict Prevention and Mediation: Towards the Creation of a Mediterranean Women Mediators Network": Concept Note' (27 March 2017) <<http://www.peacewomen.org/sites/default/files/March27ArriaMeetingWPSandMediation-ConceptNote.pdf>> accessed 31 January 2019; see also Report of the Secretary-General, 'Special Measures for Protection from Sexual Exploitation and Abuse: A New Approach' A/71/818 (28 February 2017) para. 24.
- 90 See Dianne Otto, 'The Exile of Inclusion: Reflections on Gender Issues in International Law over the Last Decade' (2009) 10 *Melbourne Journal of International Law* 11.
- 91 SC Res. 2106 (n. 65) and SC Res. 2122 (n. 65) make preambular reference to the Arms Trade Treaty (adopted 3 June 2013, entered into force 24 December 2014) Article 7(4), which relates to exporting states taking into account the risk of arms being used to facilitate gender-based violence. SC Res. 2122 (n. 65) also noted the contribution the treaty can make to reducing conflict-related violence. The treaty addresses illegal arms trading but does not curtail legal trading.
- 92 See, e.g., SC Res. 2122 (n. 65) para. 9.
- 93 This is exemplified through the inclusion of gender equality as goal number five of the Sustainable Development Goals, see United Nations, 'Sustainable Development Goal 5: Achieve Gender Equality and Empower All Women and Girls' <<http://www.un.org/sustainabledevelopment/gender-equality/>> accessed 31 January 2019.
- 94 Sneja Gunew, 'Feminist Knowledge: Critique and Construct' in Sneja Gunew (ed.), *Feminist Knowledge: Critique and Construct* (Routledge 1990) 13, 23.
- 95 An example is the current campaign for a global treaty on violence against women. See Report of the Special Rapporteur on violence against women, its causes and consequences (Rashida Manjoo), 'Twenty years of developments within the United Nations and a reflection on the continuing challenges' A/HRC/26/38 (1 April 2014) para. 69.

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