

FEMINIST APPROACHES TO INTERNATIONAL LAW

“THE FIRST FEMINIST WAR IN ALL OF HISTORY”: EPISTEMIC SHIFTS AND
RELINQUISHING THE MISSION TO RESCUE THE “OTHER WOMAN”*Ratna Kapur**

Rescuing the “other woman” has been an intractable feature of international and human rights legal interventions. This rescue narrative configures the “other woman,” invariably third world or from the Global South, as left behind in the movement toward progress and modernity. Part of the solution envisages the rescue and incorporation of the “other woman” into liberal rights discourse—the teleological endpoint of emancipation. Third World Approaches to International Law (TWAAIL) and postcolonial feminist critiques have exposed the racial and civilizational discourses that shape these rescue missions and the epistemic violence they engender. Using the example of the military invasion and occupation of Afghanistan from 2001–2021, I demonstrate how these discourses persist in contemporary women’s human rights agendas and the carceral and securitized logics that they serve. I discuss the need to delink rights from rescue missions and the epistemic shifts required to move the critique in a meaningful and productive direction.

Launch of the Gender Liberation War

In October 2001, the United States and its allies launched a military operation to topple the Taliban regime in Afghanistan. The invasion was in revenge for the attacks and deaths America suffered on 9/11, though the stated grounds were collective self-defense under the UN Charter. Women’s human rights were co-opted into servicing the newly declared “war on terror” and providing the veneer of righteous legality to the invasion. Armed with the tools of gender equality, countering sexual violence, and the UN Security Council resolutions on women, peace, and security (WPS),¹ the military invasion was in part justified as a mission to rescue Afghan women from the Taliban’s violent and misogynist rule, including its burqa mandates. In August 2021, the chaotic military withdrawal of U.S.-led coalition forces from Afghanistan unleashed pandemonium in the country. The Taliban was restored to power and the burqa was back.

In 1996, the U.S.-based Feminist Majority Foundation became one of the first groups to draw attention to the erosion of women’s rights in Afghanistan through its “Campaign to Stop Gender Apartheid in Afghanistan.”² The campaign was built around negative media images and stereotypes of Muslim women as oppressed by authoritarian and violent Muslim men. The Foundation subsequently became a lead player in garnering support for women’s

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¹ The first UN Security Council resolution, [1325](#) (2000), was followed by [1820](#) (2008); [1888](#) (2009); [1889](#) (2009); [1960](#) (2010); [2106](#) (2013); [2122](#) (2013); [2242](#) (2015); [2467](#) (2019); and [2493](#) (2019).

² Feminist Majority Foundation, [Stop Gender Apartheid in Afghanistan](#) (June 24, 2022).

46 human rights as a justification for the 2001 military intervention in Afghanistan, from the Hollywood glitterati to
 47 political heavyweights, as well as feminist icon, Gloria Steinem. Described as the “first feminist war in all of his-
 48 tory,” the military intervention was saturated with the rhetoric of gender liberation, presented as a gentle civilizing
 49 mission and a better option for the natives than submission to Taliban rule that would leave the country, in par-
 50 ticular its minorities and women, worse off.³

51 The commitments to Afghan women came at a time when the international legal community was increasingly
 52 recognizing women’s rights as human rights in international law. This recognition gradually converged primarily on
 53 combatting sexual violence in conflict combined with intervention strategies aligned to the carceral state, securi-
 54 tization as well as criminal law.⁴ The focus on sexual violence has been largely framed within and advanced by
 55 liberal and dominance feminist agendas in the Global North.⁵ These agendas understand women’s oppression
 56 primarily as a result of male sexual domination and female sexual subordination. This understanding operates
 57 along cultural, racial, and religious divides that represent the “other man” as dangerous and primitive, and the
 58 “other woman” in need of rescue by a racially and civilizationally superior white, Western savior. It played out
 59 in the context of feminist interventions in Afghanistan on behalf of Afghan women, specifically in relation to
 60 the veil as well as pursuit of the WPS agenda.

61 *Gender Unveiled*

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 63 The military invasion of Afghanistan and its feminist promoters reproduced and built upon two pervasive
 64 tropes of Islam—as fundamentalist and as despotic; and Muslim women as victims of brown men.⁶ These tropes
 65 served to justify the military intervention in Afghanistan by liberal democratic countries and echoed the mission to
 66 save Afghan women from the veil that was part of nineteenth and twentieth century colonial feminist discourse.⁷
 67 The twinning of Islamic fundamentalism and female victimization continues to inform the postcolonial present,
 68 epitomized by responses to Islamic dress, amongst other practices, by feminists across the political spectrum. The
 69 Islamic veil bans in France have been upheld by the European Court of Human Rights.⁸ The veil has fueled ongo-
 70 ing political controversies in several other European countries as well as in the Global South, including India,
 71 Morocco, and Sri Lanka.⁹ Each controversy rehearses the binary of the barbaric and the civilized, racial and reli-
 72 gious superiority and inferiority. Even when institutional frameworks have been supportive of women’s right to
 73 wear the veil, the disdain for the practice remains evident. For example, in October 2018, the Human Rights
 74 Committee declared the French ban on the burqa violated a woman’s right to religious freedom, while emphatically
 75 stating that their finding was not an endorsement of a custom, which “many on the Committee . . . regard as a form
 76 of oppression against women.”¹⁰

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 79 ³ Suzy Hansen, *Bush Is an Idiot, but He Was Right About Saddam*, SALON (Mar. 22, 2003) (interview with Paul Berman).

80 ⁴ Elizabeth Bernstein, *Militarized Humanitarianism Meets Carceral Feminism: The Politics of Sex, Rights, and Freedom in Contemporary*
 81 *Antitrafficking Campaigns*, 36 SIGNS 45 (2010).

82 ⁵ Vasuki Nesiiah, *TWAIL: Feminist Perspectives on Conflict*, VÖLKERRECHTSBLOG (Mar. 19, 2022); Ratna Kapur, *Gender, Sovereignty and the Rise of*
 83 *the Sexual Security Regime in International Law and Postcolonial India*, 14 MELB. J. INT’L L. 1 (2013).

84 ⁶ Saba Mahmood & Charles Hirschkind, *Feminism, the Taliban, and Politics of Counter-Insurgency*, 75 ANTHROPOLOGICAL Q. 339 (2002); Ratna
 85 Kapur, *Un-veiling Women’s Rights in the “War on Terrorism,”* 9 DUKE J. GENDER L. & POL’Y (2002).

86 ⁷ LILA ABU-LUGHOD, *DO MUSLIM WOMEN NEED SAVING?* (2013).

87 ⁸ *S.A.S v. France*, App. No. 43835/11, Judgment (Eur. Ct. Hum. Rts. July 1, 2014).

88 ⁹ The veil is used here generically to include its various manifestations—the hijab, jilbab, abaya, niqab, burqa, and chador.

89 ¹⁰ Human Rights Committee Press Release, *France: Banning the Hijab Violated Two Muslim Women’s Freedom of Religion – UN*
 90 *Experts* (Oct. 23, 2018).

91 The Muslim as “other” and claims of their treatment of women as primitive and oppressive raise a host of con-
 92 cerns. One of these is that the veil has become symbolic of what liberals and human rights advocates consider
 93 problematic and reflective of the misogyny and primitiveness ascribed to Islam, specifically Muslim men. Images
 94 of Afghan women unveiling with the arrival of the U.S. troops at the beginning of the U.S.-led invasion of
 95 Afghanistan were read as indicative of the Indigenous woman’s joy at the prospect of emancipation by liberal sav-
 96 iors. What is consciously occluded by this image of emancipation is the context within which the women are baring
 97 their faces: the devastation wreaked by the war in Afghanistan, the regrouping and reestablishment of the Taliban,
 98 and the complex politics of nationalism that attach to the signifier of the veil in Afghanistan and elsewhere. In
 99 addition, the burqa, or at least the opposition to it, reinforces a very specific understanding of the legitimate sub-
 100 ject: one who is individual, self-willed, sexually autonomous, embodied, and *unveiled*.

101 Filtered through gender equality discourse, the political logic that insists on disrobing the Muslim woman con-
 102 tinues to perpetuate the colonial fantasy that this single, essential act of unveiling will ensure her liberation from the
 103 oppressive men and oppressive practices of her oppressive culture. The problem is that the rallying cry for invad-
 104 ing Afghanistan mobilized the pervasive negative assumptions ascribed to the veil as an oppressive and subordi-
 105 nating practice of religious Islam toward women and gender equality espoused as the antidote.¹¹

106 The imposition of the veil in Afghanistan and elsewhere clearly violates women’s right to choose—and this right
 107 must be protected. Afghan women who speak out against these prescriptions have been accused of collaborating
 108 with the West’s oppression of their own culture, and subject to reprisals, including death. Similarly, in Iran, women
 109 who have rightly defied mandatory veiling by the state, have been subject to fines, imprisonment, and even vio-
 110 lence. However, my argument is that neither opposition to *nor* support for the veil address a crucial aspect: the
 111 claiming of the veil as a *self-chosen* instrument of freedom by the practitioner. This choice is not based on false
 112 consciousness, subordination, or belligerent refusal to comply with the dictates of liberal secular rights. For
 113 such committed practitioners, “the veil” is not what they simply opt to wear—a garment that can be donned
 114 or removed as required. It is an expression of subjectivity that involves a relationship between the veil and the
 115 wearer’s inner disposition, piety, and inward journey to greater self-awareness in all areas of life.¹² For such prac-
 116 titioners, this inward journey is intimately connected to generating peace. It is this epistemic aspect of the practice
 117 that remains elusive and outside the grasp of liberal individualism and renders the practitioners literally and socially
 118 inscrutable. From this perspective, mandates against the veil are experienced as techniques of epistemicide—that
 119 is, the extinguishment of non-liberal knowledge, including understandings of subjectivity that do not comport with
 120 liberal individualism on which human rights are based. Her choice is exercised not only outside of the normative
 121 prescriptions of gender equality, but also outside the epistemic universe of human rights and its limited concep-
 122 tions of freedom. And it is this aspect that produces such anxiety within the human rights dispensation and per-
 123 ceived at times as a profoundly sinister threat to the human rights project that regards itself as the one most capable
 124 of emancipating the disenfranchised and un-free.

125 *Gender, Conflict, and Securitized Peace*

127 The WPS resolutions adopted from October 2000 were hailed as a significant feminist achievement. This suc-
 128 cess included intervening at the pinnacle of undemocratic power in the UN—the Security Council. This body,
 129 authorized to launch war, ironically in the name of the rule of law and democracy, harnessed the WPS agenda
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133 ¹¹ JOAN WALLACH SCOTT, [THE POLITICS OF THE VEIL](#) (2007); Sherene Razack, [A Site/Sight We Cannot Bear: The Racial/Spatial Politics of](#)
 134 [Banning the Muslim Woman’s Niqab](#), 30 CANADIAN J. WOMEN & L. 169 (2018).

135 ¹² SABA MAHMOOD, [POLITICS OF PIETY: THE ISLAMIC REVIVAL AND THE FEMINIST SUBJECT](#) (2011).

136 to service the security order.¹³ This has been achieved in two ways. First, by building on the powerful “grip” of
137 sexual violence in conflict, which has overridden other feminist agendas.¹⁴ This focus on sexual violence has been
138 pursued primarily within a criminal justice and carceral framework. Second, in the post-9/11 world, the WPS
139 agenda has been deployed in the context of counterterrorism operations in the name of women’s protection.¹⁵

140 In Afghanistan, the WPS agenda was co-opted by the North Atlantic Treaty Organization and the war on terror
141 partly to justify the military invasion of Afghanistan. Implementation included: the appointment of an extensive
142 army of high-level gender advisers, gender experts, and deployment of all-women military units to troubled prov-
143 inces; training women in police, security, and army operations; and providing gender awareness training to civilian
144 and military teams. The militarization and securitization of gender and femininity through these techniques moved
145 away from the focus on peace.

146 At one level, the WPS resolutions drew attention to women’s agency, shifting the discourse away from being
147 represented exclusively as victims in and of war. Deploying women in security and law enforcement operations
148 demonstrated that they can be the same as men. At the same time, these interventions did not disrupt assumptions
149 in the resolutions about women as natural peacebuilders, more inclined to peace than violence.¹⁶ And this agency
150 continued to operate along a racial and civilizational divide, being invariably aligned with the liberal white savior.
151 Thus, in seeking to transform women’s lives and reconceptualize gender, the WPS agenda simultaneously rein-
152 scribed the racial, cultural, and sexual divides that have continued to inform the rescue narratives.

153 In Afghanistan, violence against women is largely attributed to the Taliban rule and improvement in women’s
154 condition to the subsequent intervention by Western powers. The Taliban is a brutal and violent force. Even skept-
155 ics of Western feminist interventions might be sympathetic given the Taliban’s atrocious practices toward women.
156 At the same time, rallying around the campaign to save Afghan women from the Taliban is constructed against the
157 complete silence over the role of Western powers in creating the appalling conditions in which Afghan women live
158 coupled with the pervasive racist and imperialist representation of Islam more generally as a monolithic, dogmatic,
159 and deeply conservative force that invariably subordinates women.

160 Peace is a concept that has its own genealogy in a space like Afghanistan and elsewhere. It is not an invention of
161 the liberal West shaped on the anvil of the Security Council and exported to Afghanistan partly through trickle-
162 down feminism and military interventions. There are diverse articulations about feminism and peace within and
163 amongst Muslim women more generally. All of these cannot be read through the reductive notion of resistance to
164 the West.¹⁷ Some offer practices of peace that include the ethics of *adab* (etiquette, respect, and humaneness) that
165 enable (non-violent) negotiations with others who are strangers. These practices need to be integrated into fem-
166 inist conversations for cultivating humanity—or *insaniyat*—and seeing the human in others. Transformation hap-
167 pens when we work with compassion and recognize the human in the Other. There has been little space for
168 exploration of these alternative understandings of peace and how they might frame the conversation on
169 human rights and feminist interventions in the lives of others.

171 ¹³ Dianne Otto, *Women, Peace and Security: A Critical Analysis of the Security Council’s Vision* (LSE Centre for Women, Peace and Security
172 Paper Series 1/2016, 2016).

173 ¹⁴ KAREN ENGLE, [THE GRIP OF SEXUAL VIOLENCE IN CONFLICT: FEMINIST INTERVENTIONS IN INTERNATIONAL LAW](#) (2020); Vasuki Nesiah,
174 *Gender and Forms of Conflict: The Moral Hazards of Dating the Security Council*, in [THE OXFORD HANDBOOK OF GENDER AND CONFLICT](#) 288, 288
175 (Fionnuala Ní Aoláin, Naomi Cahn, Dina Francesca Haynes & Mahla Valji eds., 2018).

176 ¹⁵ Jayne Huckerby & Margaret Satterthwaite, *Introduction*, in [GENDER, NATIONAL SECURITY, AND COUNTER-TERRORISM](#) 1 (Margaret
177 Satterthwaite & Jayne Huckerby eds., 2015).

178 ¹⁶ See especially SC Res. 1889, *supra* note 1; SC Res. 1820, *supra* note 1 (2008).

179 ¹⁷ Azza Karam, *Religion, Women and Peaceful Revolution: Perspectives from the Arab Middle East*, in [WOMEN AND PEACE IN THE ISLAMIC WORLD:
180 GENDER, AGENCY AND INFLUENCE](#) 246 (Yasmin Saikia & Chad Haines eds., 2015).

181 *Alternative Lifeworlds, Epistemic Shifts, Realigning Feminist Agendas*

182 The binary of liberal and illiberal, civilized and uncivilized, and savior and victim persisted even in the aftermath
 183 of the chaotic departure from Afghanistan in August 2021. Women's rights advocates, amongst others, scrambled
 184 about to assess the impact of the debacle. They promptly considered how *they* could intervene (again) in the chaos
 185 to both save the Afghan woman and reinstall the project of women's human rights. The continued marginalization
 186 of Afghan women, combined with the outrage over the ravages of occupation as well as the reinstallation of the
 187 Taliban, have generated deep suspicion and distrust.¹⁸ These outcomes prompt a need for serious reflection on the
 188 harms resulting from women's human rights agendas and their collaboration with rescue missions.

189 TWAAIL and postcolonial feminist critiques have interrogated the perceived gains of feminism within the insti-
 190 tutional human rights complex. The panoply of more rights, resolutions, and liberal imperialist chest thumping,
 191 have not perceptibly led to more liberation for women in Afghanistan and elsewhere, at least not in the form envis-
 192 aged by their saviors. As demonstrated, they have had both regulatory as well as disempowering and exclusionary
 193 effects. At the same time, the epistemic violence produced through the advancement of liberal imperial endeavors
 194 in the name of women's rights have assumed knowledge about the "other woman" without doing the hard work of
 195 knowing her.

196 The future of feminist approaches to international law and human rights needs to take feminist critiques in a
 197 productive direction by seriously engaging with, learning from, and drawing upon alternative knowledge available
 198 in non-liberal spaces.¹⁹ This includes knowledge specifically related to understandings of gender, subjectivity, and
 199 peace that challenge the rescue narratives which continue to haunt women's human rights interventions. This does
 200 not mean searching for the pure non-Western authentic native subject, nor supplicating those, including the
 201 Taliban, who denounce feminism, gender equality, and other women's rights as Western and enmeshed in the colo-
 202 nial legacies. Non-liberal intellectual and philosophical traditions have articulated understandings of subjectivity
 203 and peace beyond the liberal imperial episteme and liberal individualism that human rights enfold, while also refut-
 204 ing cultural relativist, violent, and nationalist orthodoxies that oppose human rights.

205 *Conclusion*

206 Crises and immediacy in the form of threats by tanks or tyrants cannot be a reason for foregoing consideration
 207 of non-liberal registers. The argument in this Article is twofold: first it points to the need to engage with non-liberal
 208 alternative epistemes, which remain central to questions of governance. They sharpen our critical vision and bring
 209 clarity to the issues of rights violation of the disenfranchised where intervention is sought. Second, reducing the
 210 worst forms of human suffering and cruelty and addressing immediate needs obscures how these very interven-
 211 tions may produce suffering and extinguish other lifeworlds and ways of being. The future of feminist approaches
 212 to international law and human rights law rests partly in developing the capacity to listen and learn from unfamiliar,
 213 non-liberal knowledge systems—ones that can shape and transform prevalent and problematic perceptions of the
 214 "other woman." Being open to understanding that there is something to be learnt about how to be human in the
 215 world and flourish in lifeworlds that are not completely aligned with the logic of pro- and anti-feminist or human
 216 rights positions is non-negotiable if feminism is to remain relevant in the field of international law and human
 217 rights.

218 ¹⁸ RAWA, [RAWA Statement on 20th Anniversary of the Occupation of Afghanistan by US/NATO](#) (Oct. 7, 2021).

219 ¹⁹ RATNA KAPUR, [GENDER, ALTERITY AND HUMAN RIGHTS: FREEDOM IN A FISHBOWL](#) (2018).