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From the Spectacular to the Everyday: International Law, Violence and the Agenda for Women, Peace and Security

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Experiencing Violence

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The views expressed in the publication are those of the authors and are not necessarily endorsed by the British Academy, but are commended as contributing to public debate.

From the spectacular to the everyday: international law, violence and the Agenda for Women Peace and Security

Christine Chinkin

Introduction

The British Academy's series of events on Violence has prompted me to think about the role and representation of violence in my discipline of public international law. Reducing the incidence of violence is notionally central to contemporary international law. Founded in the shadow of the extreme violence of World War II, the maintenance of international peace and security through the regulation of inter-state violence was made the primary purpose of the United Nations (UN) Charter (UN Charter, article 1 (1)). World War II also brought to the fore the importance of individual freedom from state violence, which was asserted as a further purpose of the new Organisation: human rights for all without discrimination on the grounds of race, sex, language or religion (UN Charter, article 1 (3)). In addition to the Charter, in 1949 the laws of war, or International Humanitarian Law (IHL), were supplemented by the adoption of the fourth Geneva Convention on protection of civilians in armed conflict.

Seventy-five years later specialised regimes relating to human rights and international criminal law have evolved alongside IHL for the prevention of and protection against violence. Lobbying and campaigning by women activists have focused attention on violence that is committed against women in conflict and in non-conflict situations. The former has attained a heightened profile through the Security Council's agenda on Women Peace and Security (WPS) that commenced in 2000 with the adoption of resolution 1325 and has been furthered through nine subsequent resolutions. The resolutions do not operate in an international legal vacuum; they reference and draw on all three legal regimes – IHL, international criminal law and human rights.

This article looks at the conceptions of violence within WPS and thus within these diverse international legal regimes as they relate to women and girls. It first examines the regulation of inter-state violence, both legal recourse to the use of force and constraints upon the means and methods of warfare. It then outlines how state obligations to prevent and punish violence against women were brought into human rights law in the early 1990s, primarily by the UN Committee on the Elimination of Discrimination against Women (CEDAW Committee).¹ The WPS resolutions are then summarised, focusing on provisions for the prevention of and protection from conflict-affected sexual violence against women and girls. The article explores some of the tensions created by different understandings of and approaches to addressing violence within international law. One such tension is that between the objectives of

Christine Chinkin FBA. This work has been supported through the 'Gendered Peace' project, funded by the European Research Council (ERC) under the European Union's Horizon 2020 research and innovation programme (Grant agreement No. 786494).

¹ The Committee is established under the Convention on Elimination of All Forms of Discrimination against Women (CEDAW), 1979, article 17, as the monitoring body of that Convention.

women's peace and human rights activists and the formulation of the WPS agenda by the Security Council, a hierarchical and patriarchal institution that reduces women's experiences of conflict to sexual violence that disrupts international peace and security. Another is the disparity between the Security Council's militaristic approach and that of the CEDAW Committee in its recommendations on violence against women. The latter – a human rights treaty body – understands violence against women as encompassing much more than sexual violence and as rooted in everyday inequalities and the social subordination of women. For the Committee, the spectacular – armed conflict and the sexual violence within it – and the everyday – for instance domestic violence, 'normal' rape – are not distinct phenomena but are linked in a continuum of violence.² Consequently efforts to combat all violence against women should address societal inequalities and structural violence, which in turn would enhance the prospects for peaceful societies. Such a holistic understanding is impeded by the international institutional divide between responsibility for security (Security Council) and for social justice, including human rights (General Assembly, Human Rights Council). The article concludes with some reflections on how these tensions are exacerbated by the current push-back against human rights and the misuse of a gender ideology that feeds further violence.

Regulation of violence in international law

Jus ad bellum

The preamble to the UN Charter expresses the determination 'to save succeeding generations from the scourge of war'. The Organisation's primary purpose is 'to maintain international peace and security, ... take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression³ or other breaches of the peace' (UN Charter, article 1). Accordingly, a central objective of the contemporary international legal system is the regulation of when states may legally resort to violence (the *jus ad bellum*), which, without defining it as such, is understood within the Charter as inter-state conflict. The primary responsibility for the maintenance of international peace between states is bestowed upon the Security Council (UN Charter, article 24), which is the cornerstone of the collective security system established in 1945. The Charter does not directly speak of 'violence' although it is the backdrop to many provisions. These include article 1 relating to peace and security and article 39 as the trigger for Security Council enforcement action involving the use of force.⁴ The Charter prohibits states from using or threatening 'force' in their international relations (UN Charter, article 2 (4)). Since, however, they retain the inherent right to respond with 'measures' in individual or collective self-defence to an 'armed attack' (UN Charter, article 51), violent conflict is not necessarily illegal under international law. Justification for the use of armed violence is regularly sought in these terms by all parties in an armed conflict.

2 Cynthia Cockburn (2004), 'The Continuum of Violence: A Gender Perspective on War and Peace', in Wenona Giles and Jennifer Hyndman eds, *Sites of Violence: Gender and Conflict Zones* (University of California Press), p.24.

3 Aggression – 'the most serious and dangerous form of the illegal use of force' – is defined by the UN General Assembly with respect to inter-state aggression (UN GA resolution 3314 (XXIX)) and as an international crime incurring individual criminal responsibility by the Rome Statute of the International Criminal Court, 1998, article 8 *bis*. Neither definition uses the word 'violence'.

4 Article 42 authorises the Council to take 'such action ... as may be necessary to maintain or restore international peace and security.' That this may involve force is implicit in the wording of article 41 which allows for action 'not involving the use of armed force'.

International Humanitarian Law: *jus in bello*

International law also imposes constraints upon parties in their conduct of international and non-international armed conflict through IHL, the laws of war or *jus in bello*. IHL is largely contained within the pre-World War II Hague Regulations,⁵ the four post-World War II Geneva Conventions⁶ and the two Additional Protocols adopted in 1977.⁷ Violence imbues these detailed regulations for the conduct of conflict but the only context in which it is made explicit is when it is directed against individuals, through such acts as murder, mutilation, cruel treatment and torture. For instance, article 3, common to all four Geneva Conventions and which alone in the 1949 Conventions regulates non-international armed conflict, prohibits ‘violence to life and person’ against all persons protected by that article. Similarly, the fourth Geneva Convention on the protection of civilians in armed conflict provides that ‘protected persons ... shall be protected especially against all acts of violence’ (Geneva IV, article 27).

In the 1977 Protocols an ‘attack’ is defined as an act of ‘violence against the adversary, whether in offence or in defence’ (Protocol I, article 49). Attacks against the civilian population are prohibited, especially ‘[a]cts or threats of violence the primary purpose of which is to spread terror’ whether in international (Protocol I, article 51 (2)) or non-international armed conflict (Protocol II article 13 (2)). In both forms of conflict there are fundamental guarantees that include the absolute prohibition of ‘violence to the life, health, or physical or mental well-being of persons’, when or wherever committed or by whom. (Protocol I, article 75 (2); Protocol II, article 4 (2) (a)). Violence is thus denoted as the physical acts that are committed directly against persons contrary to the laws, leaving the overall, macro-level violence of war as the context, justified as military necessity. The latter violence is thus impliedly accepted and legitimated as the normal course of warfare,⁸ while the former is presented as exceptional, capable of being prevented and carried out by perpetrators who are liable to prosecution.

The fourth Geneva Convention addresses acts committed in conflict against women and girls, which had been barely mentioned in the earlier instruments. These acts are not described as forms of violence. Article 27 refers to attacks on women’s honour rather than to the physical and mental violence of rape and other forms of sexual assault.⁹ In Additional Protocol II the language of honour is replaced by that requiring women to be treated as the objects of ‘special respect’, but again the inherent violence of ‘rape, forced prostitution and any other form of indecent assault’ is not remarked.

5 Laws and Customs of War on Land (Hague IV), The Hague, 18 October 1907.

6 Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field; Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea; Convention relative to the Treatment of Prisoners of War, Convention relative to the Protection of Civilian Persons in Time of War, all of 12 August 1949.

7 Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Additional Protocol I), 8 June 1977; Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Additional Protocol II), 8 June 1977.

8 Chris Jochnick and Roger Normand (1994), ‘The Legitimation of Violence: A Critical History of the Laws of War’, 35 *Harvard International Law Journal* p.49.

9 Geneva IV, article 27: ‘Women shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault.’

International Human Rights Law

IHL is applicable in armed conflict while international human rights law regulates state behaviour towards individuals within the state's territory and jurisdiction in peacetime.¹⁰ The UN human rights treaties do not conceptualise violence against persons but prohibit specific forms of arbitrary state behaviour such as deprivation of life, torture and cruel, inhuman and degrading treatment and slavery.¹¹ Violence against women when committed by non-state actors did not come within this regulatory framework. This held true even through the adoption of CEDAW in 1979, despite the condemnation of discrimination against women 'by any person, organisation or enterprise' (CEDAW, article 2 (e)). In 1992 women's rights organisations that argued that this exclusion diminished the relevance of human rights law for women¹² found an ally in the CEDAW Committee. In its General Recommendation 19 the Committee recognised gender-based violence as a form of discrimination within article 1 of CEDAW and defined it as violence that occurs disproportionately against women and is 'directed at a woman because she is a woman'.¹³ The Committee explained that states may be held responsible for 'private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation'. It recommended that states parties 'take appropriate and effective measures to overcome all forms of gender-based violence, whether by public or private act'.¹⁴ The following year (1993) the General Assembly addressed violence against women, labelling it not only as a form of discrimination but also as 'a manifestation of historically unequal power relations between men and women, ... and ... one of the crucial social mechanisms by which women are forced into a subordinate position compared with men'.¹⁵ This articulation of the structural violence of gender inequalities was an important step towards bringing violence against individual women within the international legal framework and redressing its long-standing silence in this regard.

In the 1990s as gender-based violence against women was entering human rights law, the wars in the former Yugoslavia brought media and popular attention to the prevalence of sexual violence being used against civilians as a form of sexual slavery, contributing to displacement and ethnic cleansing. It was becoming apparent that in the context of gender-based and sexual violence the legal distinction between that committed in international and non-international armed conflict (the domain of IHL) and that occurring outside conflict (the domain of human rights) was at odds with reality and weakened protection. In its General Recommendation 19 the CEDAW Committee recognised the vulnerabilities that conflict creates for women in that it often leads to 'increased prostitution, trafficking and sexual assault and requires specific protective and punitive measures.' And the Committee's horizontal application of human rights law through states' positive due diligence obligations with respect to acts committed by non-state actors had evident relevance to situations of armed conflict, especially those 'new wars' involving non-state armed forces and militia. IHL and human rights law were brought together in the assertion at the 1993 World Conference on Human Rights in Vienna that 'violations of the human rights of women in situations of armed conflict are violations of

¹⁰ This classic distinction between IHL and human rights law has become blurred with assertions of the continued applicability of the latter during conflict. E.g. CEDAW Committee, General Recommendation No. 28 on the core obligations of States parties under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women, CEDAW/C/GC/28, 2010, para 11: 'The obligations of States parties do not cease in periods of armed conflict.'

¹¹ E.g. International Covenant on Civil and Political Rights, 1966, articles 6, 7, 8. 'Violence' is mentioned only in article 20 (2): 'Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.'

¹² Charlotte Bunch (1990), 'Women's Rights as Human Rights: Toward a Re-Vision of Human Rights', 12 *Human Rights Quarterly* p.486.

¹³ CEDAW Committee, General Recommendation No. 19: Violence against women, 11th session, 1992, para. 6.

¹⁴ *Ibid.*, at para. 9.

¹⁵ UN GA resolution 48/104, 20 December 1993, Declaration on Elimination of Violence against Women.

the fundamental principles of international human rights and humanitarian law, requiring ... a particularly effective response.¹⁶ This formulation challenged the traditional binary between the two legal regimes: IHL – the laws of war – and international human rights law, applicable to what might be called ‘everyday’ violations in so-called peacetime. At the fourth World Conference on Women in 1995 this disruption to long-established legal categorisation continued through the assertions that violence against women constitutes ‘an obstacle to the achievement of the objectives of equality, development and peace’¹⁷ and that ‘acts of violence against women include violation of the human rights of women in situations of armed conflict, in particular murder, systematic rape, sexual slavery and forced pregnancy.’¹⁸

The wars in the former Yugoslavia and the 1994 genocide in Rwanda led to developments in international criminal law. The evolving jurisprudence of the newly established *ad hoc* international criminal tribunals for the former Yugoslavia (ICTY) and Rwanda (ICTR) affirmed crimes of sexual violence as war crimes, crimes against humanity and potentially genocidal. And in 1998, again after intensive lobbying, the Rome Statute to the International Criminal Court spelled out that when the other legal conditions are satisfied ‘rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilisation or any other form of sexual violence of comparable gravity’ come within the Court’s jurisdiction as crimes against humanity (Rome Statute, article 7 (1) (g)) and violations of the laws and customs of war in international (Rome Statute, article 8 (b) (xxii)) and non-international armed conflict (Rome Statute, article 8 (e) (vi)).

Security Council Resolutions on Women, Peace and Security

The four pillars of WPS

By the time of the adoption of resolution 1325 in 2000, international law provided a framework for recognition of multiple forms of gender-based violence and pursuit of reparative measures. Nevertheless, application of the law was scant and impunity remained the norm with respect to gender-based and sexual violence. Seeking Security Council endorsement of these developments and of increasing women’s participation in decision-making about conflict was pursued by women activists as another step toward the objective of ending the further violence caused by silence and inaction.

Resolution 1325 identifies the linkage between conflict-related sexual violence against women and girls, and peace, through its assertion that an ‘understanding of the impact of armed conflict on women and girls, effective institutional arrangements to guarantee their protection and full participation in the peace process can significantly contribute to the maintenance and promotion of international peace and security.’ From this implicit recognition that the violence of conflict is gendered the resolution is centred on bringing women’s experiences – as well as men’s – into decision and policy making about armed conflict. It seeks to secure women’s meaningful participation in all processes for conflict prevention, resolution and management. It calls upon relevant actors to bring a gender perspective into all measures for the guarantee and protection of women’s human rights in post-conflict reconstruction, especially those relating to elections, the police, the judiciary and the constitution.

16 World Conference on Human Rights, Vienna Declaration and Programme of Action, 25 June 1993, II, para. 38.

17 Fourth World Conference on Women, Beijing Declaration and Platform for Action, 1995, para. 112.

18 *Ibid.*, at para. 114.

Resolution 1325 expressed the Security Council's concern that civilians, particularly women and children, are increasingly targeted in armed conflict, a reality that has become a defining feature of what have been variously called 'new wars',¹⁹ 'hybrid warfare'²⁰ or 'post-modern warfare'.²¹ At this time the Council took a relatively broad brush approach to the violence targeted against civilians by calling first for parties to conflict to protect women and girls from 'gender-based violence, particularly rape and other forms of sexual abuse' and then including 'all other forms of violence in situations of armed conflict.' Eight years later in resolution 1820 the Council turned more narrowly to sexual violence. It enunciated its understanding of sexual violence as a tactic of war that can significantly exacerbate situations of armed conflict and may impede the restoration of international peace and security. Sexual violence is therefore understood as integral to the violence of conflict and tackling it as essential for the maintenance of peace and security.

Following these first key WPS resolutions the Security Council adopted a further eight resolutions, the most recent being resolution 2493 in October 2019.²² Through the four so-called pillars of WPS the resolutions accumulate a body of global normative standards relating to women's participation, not only in decision-making but also in field operations and institutional positions; prevention of sexual violence in armed conflict; protection of women and girls against conflict-affected sexual violence; and relief and recovery. The resolutions are also practical and urge a range of measures for implementation of these standards to be taken by states, UN institutions and civil society.

Violence and WPS

How then does the Council's WPS agenda fit into other international initiatives for advancing understanding of sexual and gender-based violence and combating its incidence? As explained above, by 2000 such violence had been brought into IHL, human rights law and international criminal law. All three legal regimes were integrated into resolution 1325. The Council called for all parties to armed conflict 'to respect fully international law applicable to the rights and protection of women and girls' (para 11), and it emphasised states' responsibility to prosecute crimes of conflict-affected sexual violence (para 13). But beyond this integration many other relevant issues arise, only some of which can be outlined here.

First, recognition at the highest political level of the need for serious and effective action against the continuing vast scale of conflict-affected sexual violence is self-evidently important.²³ Through its identification as a tactic of war and subsequently of terror,²⁴ the Council has acted to dispel the myth of such violence as an inevitable by-product of conflict. It has instead explained it as deliberately engaged in by parties to conflict as a cheap, brutal and effective way of demoralising, displacing and destroying individuals, families and communities. But in so doing it also simplifies conflict-affected gender-based and sexual violence by reducing it to this one scenario. As academic research and institutional reports have shown, such violence has multiple manifestations, is committed by different perpetrators and for a range of reasons, such as opportunism, taking advantage of collapsed

19 Mary Kaldor (2012 [1999]), *New and Old Wars: Organised Violence in a Global Era* (Stanford University Press).

20 Frank Hoffman (2007), *Conflict in the 21st Century: the Rise of Hybrid Wars* (Potomac Institute for Policy Studies).

21 Chris Hables Gray (2007), *Post-Modern War: the New Politics of Conflict* (Routledge).

22 In October 2020, the 20th anniversary of resolution 1325, the Russian presidency put forth a draft WPS resolution, which failed to receive the required number of affirmative votes for adoption by the Security Council.

23 Such violence continues in 'many countries' and detailed accounts are provided for the 19 countries where 'credible and verifiable' information is available; Report of the UN Secretary-General, *Conflict Related Sexual Violence*, S/2019/280, 29 March 2019 at <https://www.un.org/sexualviolenceinconflict/wp-content/uploads/2019/04/report/s-2019-280/Annual-report-2018.pdf>.

24 In UN SC resolution 2242 (2015) and UN SC resolution 2467 (2019) sexual violence is described as a tactic of terror used by certain terrorist and violent extremist groups.

social structures, being encouraged as a reward to fighting forces, or made integral to looting and pillage. For example, a 2018 report by the Commission of Inquiry into gender-based and sexual violence in Syria shows how they are used both to weaken the political opposition to the regime (that is assumed to be largely male) and to further sectarianism, religious extremism and ideology.²⁵ These crimes are committed by state security and military bodies, especially in places of detention and checkpoints, and by non-state armed militias and violent extremists. Civilians too are responsible for gender-based and sexual violence, for instance when family members force a female relative into marriage for her protection against widespread rape, or for money where the family has been made destitute by conflict. Such arrangements may involve children and may constitute ‘temporary’ marriage where the female is abandoned after a short period, leaving her with few options and vulnerable to prostitution or being trafficked.

This privileging of sexual violence as a tactic of war has the potential to create a hierarchy of victims whereby those who have been subject to violence understood in this way are more readily accorded appropriate treatment and reparations than other survivors of sexual violence. This tendency is repeated in Security Council resolutions on human trafficking in armed conflict (another form of gender-based violence).²⁶ Singling out a particular group of survivors undermines the violence committed against other trafficked persons who should also receive such recognition and support but are instead often treated as the ones who are violating the law.

Second, the focus on sexual violence against women in the WPS resolutions has spawned important projects such as the United Kingdom’s Preventing Sexual Violence in Conflict Initiative (PSVI) and brought it – at least to some extent – into mainstream foreign policy.²⁷ But there have also been negative consequences. It centres women’s sexual identity and their need for protection to the detriment of the many activities women pursue in conflict. Moreover, by prioritising sexual violence over the other forms of violence suffered by women in conflict the likelihood of adequate responses to those other harms is reduced. A tendency has developed for women victims of rape to be sought out, for women victims of other violations to be disregarded and for a narrative of victimhood to be created which creates an enduring collective identity. This in turn can have the perverse effect of contributing to the stigma that is both internally felt and externally promoted and which restricts survivors’ options. It also conceals the violence of women’s anger at exclusion, at being essentialised and reduced to sexual beings, and at stigma being directed at them and not at the perpetrator who still enjoys impunity in the vast majority of cases.

The depiction of women as victims of sexual violence carries with it an implicit construction of men as the perpetrators of violence, or, ironically, as the heroic protectors of women, including through actions by military and security personnel and thus contributing to further violence. Despite the earliest cases in the ICTY clearly setting out extreme forms of sexual violence against men,²⁸ that men and boys are also subjected to conflict-affected sexual violence is recognised in only two out of the ten WPS resolutions, 2106 (2013) and 2467 (2019). Despite their historic (and contemporary) targeting, nor are LGBTIQI people included in WPS except perhaps implicitly in resolution 2467 through wording encouraging states to ‘adopt a

25 Independent International Commission of Inquiry on the Syrian Arab Republic (2018), ‘“I lost my dignity”: Sexual and gender-based violence in the Syrian Arab Republic’, UN Index: A/HRC/37/CRP.3, 8 March 2018; see also Christine Chinkin and Madeleine Rees, Commentary on the above Report at <http://www.lse.ac.uk/women-peace-security/assets/documents/2018/LSE-WPS-WILPF-Syria-SGBV.pdf>.

26 UN SC resolution 2331 (2016).

27 E.g. G8 Declaration on Sexual Violence, 11 April 2013; Declaration of Commitment to End Sexual Violence in Conflict, 2014; both available at <https://www.gov.uk/guidance/psvi-library>.

28 *Prosecutor v. Tadic*, IT-94-1-T, 7 May 1997.

survivor-centred approach’ to addressing conflict-related sexual violence including for ‘groups that are particularly vulnerable or may be specifically targeted’.

Third, there is emphasis throughout the WPS resolutions on ensuring accountability for sexual violence and ending perpetrator impunity primarily through criminal investigation and prosecution. Trials of sexual violence are often tainted by a lack of gender sensitivity and reliance on gender stereotypes that perceive women as untrustworthy witnesses and through laws that require women to forcibly resist their attacker.²⁹ In national legal systems under-reporting continues and conviction rates are low. Although the ICTY and ICTR achieved a good deal in the prosecution of rape and sexual violence, international criminal law has borrowed from and reflects national criminal laws and procedures. Issues of consent, women’s conduct, and detailed analysis of the precise nature of the violence continue to be the subject of questioning even when the acts were committed in the midst of the violence of conflict and genocide. WPS resolution 2467 (2019) gives prominence to the importance of ensuring women’s access to meaningful justice. It calls for measures to ‘strengthen legislation and enhance investigation and prosecution of sexual violence in conflict and post-conflict situations.’ The resolution suggests legal reforms such as victim and witness protection laws, legal aid, specialised police units and courts and removal of procedural impediments such as restrictive time limits for filing claims and corroboration requirements that discriminate against victims as witnesses and complainants. If implemented and applied by legal professionals who understand the gender bias inherent in criminal proceedings, these measures could help to ameliorate the violence of the trial process for women. However, and as the CEDAW Committee has observed, legal reforms alone are insufficient to achieve gender justice, for they must be understood and ‘supported by State actors, who adhere to the State party’s due diligence obligations.’³⁰ The WPS resolutions do not provide such emphasis and are weak on reinforcing already existing state obligations under international human rights law, including their due diligence obligation for ending gender-based violence through adequate and effective investigation, prosecution, appropriate punishment and reparations.

Fourth, the structural and societal bases for sexual and gender-based violence are little remarked upon. Conflict-affected sexual violence is represented by the Security Council as exceptional and apart from the ‘everyday’ violence committed against women. As an independent expert treaty body, the CEDAW Committee is free from the political constraints of the Security Council, and its General Recommendation 30³¹ depicts more fully the situation of women in conflict and its aftermath. Its recommendations are both more detailed and wider in scope than those of the Security Council. It highlights the linkage between ‘everyday’ violence and armed conflict that ‘exacerbate[s] existing gender inequalities, placing women at a heightened risk of various forms of gender-based violence by both State and non-State actors.’ (para. 34). The Council does not distinguish between women (apart from the particular circumstances of those living in camps for displaced persons) while the Committee recognises how violence has differential impact according to a woman’s personal situation and other identity markers in addition to gender.³² It provides examples of how locating violence against women in pre-existing

29 For examples of such attitudes see *Vertido v. Philippines*, Communication No. 18/2008, CEDAW/C/46D/18/2008, 1 September 2010; *RPB v. Philippines*, Communication No. 34/2011, CEDAW/C/57/D/34/2011, 12 March 2014.

30 *Sahide v Austria*, Communication No. 5/2005, UN Doc. CEDAW/C/39/D/5/2005, 6 August 2006, para 12.1.2.

31 CEDAW Committee, General Recommendation 30 on women in conflict prevention, conflict and post-conflict situations, CEDAW/C/GC/30, 18 October 2013.

32 CEDAW Committee, General Recommendation 28 on the core obligations of States parties under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women, CEDAW/C/GR/28, 16 December 2010, para 18 identifies ‘race, ethnicity, religion or belief, health, status, age, class, caste and sexual orientation and gender identity’ as factors that are ‘inextricably linked’ with sex and gender-based discrimination.

gender inequality requires examination and, where necessary, amending of discriminatory laws, in compliance with CEDAW, article 2. The Security Council does not define armed conflict – any more than it defines violence – making nebulous the scope of the WPS resolutions. It does assume a ‘post-conflict’ moment. The CEDAW Committee, in contrast, explains how violence against women does not end with a ceasefire or peace agreement and draws attention to the reality that ‘while the forms and sites of violence change, ... all forms of gender-based violence, in particular sexual violence escalate in the post-conflict setting.’³³ And by seeing violence and peace in this continuum it focuses attention on how a feminist lens highlights the ‘insidious forms of violence that hinder peace or the promise of peace.’³⁴

Fifth, and following on from the above, the WPS resolutions do not disturb the patriarchal power structures in which sexual and gender-based violence are made possible, normalised and flourish. Sexual violence in the WPS resolutions is disembodied from both intersecting discriminations and the gender power dynamics that sustain structural violence, along with other factors of power such as race, colonialism, and neo-liberal economics. Patriarchy combines with the assumption that military solutions are the appropriate way of dealing with sexual violence. This securitisation of sexual violence (and thus of women) is exemplified through the series of measures for protection against sexual violence that are set out in resolution 1820: military discipline; vetting; enhanced command responsibility and the training of troops. It is also maintained, albeit in a less obvious way, in the call for enhanced participation of women within militaries and security forces, including those engaged in peacekeeping operations. This legitimates those structures through the co-option of women into them, rather than seeking ways to change them. The same can be said about the continued demands for increasing women’s participation in peace processes; there is no corresponding call for decreasing the participation of those responsible for the violence – the men with guns. The assumption that the presence of women enhances the prospects for ending violence and attaining a sustainable peace is borne out to some extent by research³⁵ and equality requires it. Nevertheless, simply allowing women into peace negotiations fails to take any systemic or systematic approach to redistribution of power through resource or land allocation. It remains for any women who are brought into such processes to fight for social justice and reconstruction. Playing out against pre-existing gender inequalities, gender-based and sexual violence are implicated in the political economy of violence³⁶ and of conflict and its aftermath.³⁷ This more complete understanding is needed to inform prevention measures and to underscore the obligations of all members of the international community.

Especially symptomatic of the militarised and securitised approach to redressing conflict-affected sexual violence is the Security Council’s minimal attention to conflict prevention, which is addressed within the WPS resolutions only through the call for women’s increased representation in ‘national, regional and international institutions and mechanisms for the prevention, management, and resolution of conflict’ (resolution 1325, para 1). In line with the Beijing Platform for Action, women activists urged that the resolution should include ‘reduction of excessive military expenditures and control the availability of armaments.’³⁸ Nevertheless,

33 CEDAW Committee, General Recommendation 30, para 35.

34 Sanam Roohi (2019), ‘Toward a Grounded Research Agenda: Refusing the Normal and Resisting Hegemonising Impulses’, in ‘Collective Discussion: piecing-up feminist peace research’, 13 *International Political Sociology* 86, p.92.

35 E.g. Radhika Coomaraswamy et al. (2015), *Preventing Conflict, Transforming Justice, Securing the Peace: A Global Study on the Implementation of United Nations Security Council Resolution 1325* (New York: UN Women) pp.41-2.

36 Jacqui True (2012), *The Political Economy of Violence against Women* (Oxford Studies in Gender and International Relations).

37 Women’s International League for Peace and Freedom (2017), *A Feminist Perspective on Post-conflict Restructuring and Recovery: the Case of Bosnia and Herzegovina* at <https://wilpf.org/wp-content/uploads/2017/09/ExecutiveSummaryCaseofBosnia.pdf>.

38 Beijing Platform for Action, Strategic Objective E.2.

military expenditures and disarmament found no place in resolution 1325. The legal arms trade is noted in the preamble of resolution 2106 through reference to the Arms Trade Treaty, also adopted in 2013, and its requirement that decisions about export licences must consider the risk of arms ‘being used to commit or facilitate serious acts of gender-based violence or serious acts of violence against women and children’ (article 7 (4)).³⁹ In its General Recommendation 30 the CEDAW Committee took a stronger line by linking the need to regulate the circulation of weapons (including illicit conventional arms and small arms) to prevention of conflict and their use for commission of acts of gender-based violence (para. 29). And in light of the ‘correlation between the increased prevalence of gender-based violence and discrimination and the outbreak of conflict,’ addressing gender-based violence and discrimination is key to conflict prevention. The Committee also noted women’s low participation in institutions working on global issues such as military expenditure and nuclear disarmament, a conclusion that is borne out in a quantitative analysis carried out by the UN’s Institute for Disarmament Research (UNIDIR) into women’s participation in arms control and non-proliferation diplomacy.⁴⁰ UNIDIR’s study emphasises that unless women are able to assert real influence, simply increasing their numbers will not reduce gender inequality.

The Security Council’s continued militarised approach is a far cry from the peace agenda of those women activists who campaigned for resolution 1325. In 2015 a Global Study on Implementation of Resolution 1325⁴¹ stressed that ‘the United Nations must take the lead in stopping the process of militarisation and militarism that began in 2001 in an ever-increasing cycle of conflict.’⁴² The WPS resolutions favour security over peace and fail to challenge the economies and cultures of conflict and violence. Instead ‘they were negotiated and are being implemented in ways consistent with the historic perpetuation of military intervention and violent masculinities.’⁴³

Concluding thoughts

It might have been hoped that by bringing together women, and peace and security, the Security Council would effectively address the violence that threatens women’s lives and thus promote peace, the objectives of many women activists since at least the beginning of the 20th century. The WPS resolutions however fall far short of such a transformative peace and women’s human rights agenda. They concentrate on one form of violence – conflict-affected sexual violence – which is assumed as exceptional and different from the multiple other manifestations of gender-based and sexual violence committed before, during and after conflict. Conflict-affected sexual violence is presented primarily as a failure of military discipline and to be combatted through increased participation by women, criminal prosecutions and institutional innovation. The bias is toward the violence committed by individuals and armed groups, thereby concealing the overall violence of armed conflict, including that committed by the state. The structural violence of poverty, of militarisation and availability of weapons, of intersecting inequalities, of the commodification of women and girls, in a word of the unequal distribution of social, economic and political power within and between states, does not figure in the Security Council’s version of WPS. The geo-political composition of the Security Council and the

39 This is reiterated without elaboration in resolution 2467 (2019).

40 Renata Hessmann Dalaqua, Kjølv Egeland and Torbjørn Graff Hugo (2019), *Still Behind the Curve: Gender Balance in Arms Control, Non-Proliferation and Disarmament Diplomacy* (UNIDIR).

41 Coomaraswamy, *Preventing Conflict, Transforming Justice, Securing the Peace*. The Global Study was called for by UN SC resolution 2122 (2013).

42 *Ibid.*, at 17.

43 Ray Acheson and Maria Butler (2019), ‘WPS and Arms Trade Treaty’, in Davies and True, *The Oxford Handbook of Women, Peace and Security*, p.690, 697.

militaristic outlook of the five permanent members make this unsurprising, as does the grounding of WPS in international law. Despite its apparent commitment to the regulation of violence, international law legitimates the violence of colonialism, of force used to protect state sovereignty rather than the individuals within the state, and the global capitalist system.

Inroads have been made to the state-centrist nature of international law through the evolution of human rights law and institutions since their first appearance in the UN Charter and the adoption in 1948 of the Universal Declaration of Human Rights. State obligations to combat violence against women have been developed through the General Assembly, the UN Human Rights Council and its special procedures and the human rights treaty bodies. The prohibition of gender-based violence against women is now customary international law binding upon all states.⁴⁴ An expansive WPS agenda built around women's human rights as envisaged by activists and advanced by the CEDAW Committee could significantly contribute to prevention of all violence and peace. This would require a radical mindset shift from state security to human security, from focus on violence by individual perpetrators to state and structural violence, and institutionally from the Security Council to the Human Rights Council. Women activists sought the support of the most powerful international entity when they lobbied the Security Council for the adoption of resolution 1325, but in so doing they facilitated the securitisation of WPS and thus of further violence.

A mindset shift seems currently unlikely in light of the rise of authoritarian governments, the push-back against human rights and the abuse of gender ideology to challenge efforts to combat violence against women⁴⁵ and women's sexual and reproductive rights. Protecting traditional social and family values are prioritised over tackling violence against women as in President Erdogan's decree announcing Turkey's withdrawal from the Istanbul Convention⁴⁶ in March 2021 in face of rising rates of femicide in the country.⁴⁷ The UN Human Rights Council special rapporteur on human rights defenders has highlighted that 'women who defend and promote rights are often the first to come under attack' and that violence against them and against 'gender non-conforming persons has been normalised by populism, fundamentalism and violent extremism' and by the use of 'misogynistic, sexist and homophobic speech by political leaders.'⁴⁸

That these examples represent only the peak of the iceberg make only too pertinent the questions asked by a participant at one of the British Academy discussions on violence: where are human rights today in discussions about civil wars and violence? Who are now the guardians of human rights? Who defends human rights when those that traditionally did so (including the US and UK) are either silent, or worse, active in their denial of human rights, notably those of women? And how can trust and legitimacy be regained? In this environment the goal has to be to retain the normative gains that have been made in combatting gender-based violence against women and to seek their implementation, which has to date has been woefully inadequate.

44 CEDAW Committee, General Recommendation No. 35 on Gender-Based Violence against Women, Updating General Recommendation No. 19, CEDAW/C/GC/35, 2017, para 2.

45 E.g. the Bulgarian Constitutional Court has effectively prevented ratification of the Council of Europe Convention on Preventing and Combating Violence against Women, including Domestic Violence (Istanbul Convention) on the grounds that the concepts of gender and gender identity are ambiguous and undermine legal certainty; Ruzha Smilova (2018), 'Promoting 'Gender Ideology': Constitutional Court of Bulgaria Declares Istanbul Convention Unconstitutional', at <https://ohrh.law.ox.ac.uk/promoting-gender-ideology-constitutional-court-of-bulgaria-declares-istanbul-convention-unconstitutional/>.

46 Council of Europe Convention on Preventing and Combating Violence against Women, including Domestic Violence, 11 May 2011.

47 Statement Council of Europe Commissioner for Human Rights (2021), 'Turkey's announced withdrawal from the Istanbul Convention endangers women's rights', at <https://www.coe.int/en/web/commissioner/-/turkey-s-announced-withdrawal-from-the-istanbul-convention-endangers-women-s-rights>. Opponents of the Convention often assert that its prohibition of discrimination on the grounds of sexual or gender identity undermines marriage through its support for gay marriage.

48 Report of the Special Rapporteur on the situation of human rights defenders, Situation of women human rights defenders, A/HRC/40/60, 10 January 2019, para 24.

The abstentions to a draft WPS resolution presented by Russia in October 2020 by a cross-regional group of Security Council members showed support for the progress achieved and an unwillingness to accept any dilution of the agenda.⁴⁹ Instead many such states urged full implementation of the existing resolutions. Despite its shortcomings, implementation of the WPS agenda ‘on a model of substantive equality’ and in accordance with the rights laid out in CEDAW⁵⁰ and their integration into Security Council country-specific resolutions would be at least a step toward a changed outlook.

Finally, the covid-19 pandemic has again demonstrated that crisis exacerbates gendered violence and societal fault-lines and has exposed the inadequacies of militarised thinking in responding to crisis. It has also further diverted attention from the ‘slow’ violence that is destroying the environment and ultimately the planet.⁵¹ The crisis of climate change is likely to intensify violence – including gender-based violence – in ways that are as yet unknown. The CEDAW Committee has provided guidance to states on the concrete steps they should take to mitigate the risk of such violence within the framework of CEDAW that include ‘targeted laws, policies, mitigation and adaptation strategies, budgets and other measures.’⁵² Practical measures as recommended by the Committee should be integrated into the WPS agenda and urgently implemented if it is to prevent and protect women and girls from the violence of environmental conflict, and more importantly to contribute to sustainable, gendered peace and the preservation of all persons and all other forms of life on this planet.

49 NGO Working Group on Women, Peace and Security, ‘Security Council Members Unite to Protect the Women, Peace and Security Agenda on its 20th Anniversary’, (30 October 2020) at <https://www.womenpeacesecurity.org/blog-uncsc-protect-wps-agenda-20th-anniversary/>.

50 CEDAW Committee, General Recommendation No. 30 on Women in Conflict Prevention, Conflict and Post-Conflict Situations, CEDAW/C/GC/30, 31 October 2013.

51 Rob Nixon (2011), *Slow Violence and the Environmentalism of the Poor* (Harvard University Press).

52 CEDAW Committee, General Recommendation 37 (2018) on the gender-related dimensions of disaster risk reduction in the context of climate change, CEDAW/C/GC/37, 13 March 2018.

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