Forum-shifting and human rights: prospects for queering the women, peace and security agenda


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ABSTRACT

The adoption of the Women, Peace, and Security (WPS) Agenda by the UN Security Council constituted a forum-shift by women’s rights advocates away from the human rights system. As queer critique of the WPS agenda gathers pace, this article reflects on the antecedents of the queer exclusions of the WPS agenda in international human rights law. The article thereby reveals the consequences in other international law regimes of human rights law’s queer exclusions. The article concludes with some tentative proposals to utilise the pluralism of international human rights law to expand queer possibilities for both human rights and WPS.

“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.”


I. INTRODUCTION

The Women, Peace, and Security (WPS) agenda adopted by the UN Security Council in Resolution 1325 (2000) endorsed women’s full and equal participation in conflict resolution and peacebuilding, the protection of women’s rights in conflict and relief and recovery, and the adoption of a gender perspective throughout international peace and security.¹ Importantly, the resolution reflected a deliberate forum-shift by women’s rights advocates from the consensus-
based systems of the UN General Assembly and international human rights law to the coercive power of the Security Council. Over two decades later, critique of the WPS agenda and its operationalization through the Security Council is multi-faceted and replete. This article engages with a specifically queer critique of the WPS agenda and its exclusions, elucidating the ways in which the agenda’s queer exclusions are fundamentally imbricated in the queer exclusions of international human rights law. This article is thereby intended to inform WPS scholars and advocates of the genealogy in human rights law of the contemporary queer exclusions of WPS. Moreover, this article seeks to alert the human rights community to the rippling and compounding consequences of international human rights law’s queer limitations elsewhere in other regimes of international law.

Queer critiques of the WPS agenda might be summarized as the agenda’s underpinning heteronormative assumptions, its continuing attachment to a male/female gender binary, and its emphasis on sexual danger combined with silence towards homophobic and transphobic violence. Practical and institutional exclusions include relative silence on LGBTQ (lesbian, gay, bisexual, transgender, and queer) issues in the 2015 UN Global Study on WPS, in the UN Secretary-General’s annual reports on WPS, in the Global Indicators on WPS, and in civil society monitoring of the agenda. Queer critique points to the theoretical boundaries that underpin these practical exclusions, most notably boundaries between feminist and queer theory, but also boundaries with masculinities and trans-theorizing. The article seeks to elucidate these critiques by revealing their origins within well-established limitations and exclusions of gender work in international law, in particular international human rights law. A closer look at these antecedents allows for both a clearer understanding of the current limitations to more gender-inclusive and intersectional approaches to WPS, as well as to the possibilities for shifting
direction and to confront these limitations.

In 2000, the first WPS resolution emerged from women's human rights activism insisting gendered experiences of conflict be taken seriously in international peace and security. The now ten resolutions of the WPS agenda builds on a lineage of international law and women’s human rights work. As the article elaborates, the resolution reflected a strategic decision to bring women's rights to the Security Council and to forum-shift away from the consensus-based human rights system. This women’s peace activism leading to the expansive WPS agenda, though powerful and unprecedented, had some significant faults in the foundation for building a feminist future in peace and security work. Rather than focus on the compelling reasons to turn to the Security Council as a powerful forum to include discussions of gender and highlight women’s experiences, the article instead considers the implications of this forum-shift for the concept of gender promoted by the WPS agenda. The article then looks to this forum-shift in order to better understand the persistent challenges that limit queer-inclusive and feminist WPS initiatives today.

This article considers key elements of international human rights law that have been inherited by the WPS agenda and that determine the gender boundaries of the agenda. The article begins by describing the forum-shift by women’s rights advocates from international human rights to the Security Council. The article then outlines foundational queer exclusions of international human rights law, namely the gender binary, heteronormativity, and the invisibility of lesbian and other non-normative gender subjects. The article traces these queer exclusions into the drafting, negotiation, and ultimate text of the WPS resolutions at the Security Council. Finally, the article focuses on sexual danger as a driver of legal developments in both human rights law and WPS, and their resulting queer exclusions. Ultimately, the article argues, given its
antecedents in international human rights law, WPS at the Security Council would inevitably reflect human rights law’s identified queer deficiencies, though further compound them by channelling them through the coercive power of the Security Council. The article concludes by proposing a re-envisioned approach to the pluralism of human rights law as an opportunity to expand queer possibilities for both human rights and WPS.

II. WOMEN, PEACE AND SECURITY AND FORUM-SHIFTING TO THE SECURITY COUNCIL

Forum-shifting is an established feature of engagement with international law. As the institutions and mechanisms of international law have proliferated, a growing number of forums are open to states, civil society, and non-state actors to advance their claims and to seek favorable resolution to disputes under international law. The deliberate pursuit of more favorable forums by diverse actors has now been documented across several regimes and sub-fields of international law, including international criminal law, international fisheries law, and international intellectual property law. As O’Rourke has documented elsewhere, forum-shifting has been a central element of feminist strategy in international law: For the perspective of women’s rights advocates, the diversity of available bodies can present opportunities to ‘hop’ or more sympathetic adjudicative fora or to ‘shift’ institution in order to consolidate or strengthen a particular norm.

Moreover, transnational women’s advocacy for the enhanced protection of women’s rights in conflict is an example par excellence of such forum-shifting.

The end of the Cold War brought a new era of human rights across the wider UN system, and with it increasing scrutiny of the Security Council and its legitimacy, including calls for the
Security Council to reform, to democratize and to address the impact on human rights of its own operations. These calls for reform overlapped with a feminist spotlight on rights violations impacting women in conflicts such as the former Yugoslavia and Rwanda, and calls for a refocus by the Security Council on the people affected by conflict and by its operations. This refocusing is most clearly evidenced in the Council’s thematic activity on the protection of civilians and on the themes of Children and Armed Conflict, and WPS. Its actions, such as advancing sanctions for use of child soldiers, not only had a bearing on other thematic agenda items, but also provided a model for the kinds of measures that it could advance in respect of thematic and human rights issues broadly.

The Security Council made a first step towards embedding women’s rights in conflict within its agenda by issuing a press release on March 8, 2000, on the occasion of International Women’s Day, declaring that “members of the Security Council recognize that peace is inextricably linked with equality between women and men.” A series of further steps included an arria-formula meeting, an open debate on women, peace and security and finally the adoption of Resolution 1325 in October of 2000. The Resolution provides for four principal pillars of priority action in which women’s rights should be advanced, namely: participation, protection, prevention, and relief and recovery. Thus, the final critical step towards embedding women’s rights in conflict within the Security Council agenda occurred in 2000 with the adoption of Resolution 1325 by the Security Council. The Resolution is widely celebrated for its recognition of women’s gender-specific experiences of conflict and of women as agents of conflict transformation.

Advocacy for the adoption of Resolution 1325 provides an excellent example of forum-shifting. The resolution is viewed as the product and outcome of the women’s movement, and
belonging to transnational feminist momentum since the UN’s Fourth World Conference on Women in Beijing. The desire for clear legally-binding obligations on states was a key motivation for transnational and insider activists moving feminist demands from the international human rights system and UN General Assembly to the Security Council. While critical questions might be asked as to the efficacy and wisdom of this strategy, it nevertheless was a clear strategy to exploit the pluralism and diversity of institutions regulating women’s rights in conflict.

The dedicated activity of the Security Council on issues of WPS since the adoption of Resolution 1325 in 2000, including nine further resolutions and a range of institutional mechanisms, has moved the Security Council to the epicentre of policy and advocacy concerning women’s rights in conflict under international law. The Charter provisions dealing with the powers of the Security Council make no formal reference to human rights, nevertheless, the Charter’s preambular and article 1 commitments to “promote and encourage respect for human rights” imply a role for all UN organs. These Charter provisions have been the subject of highly varying interpretation by the Security Council during the seven decades of its operation. Given the Security Council’s historical lack of engagement on matters of human rights, much less women’s rights, this turn in the regulation of women’s rights in conflict under international law is surprising.

WPS should therefore be studied and understood as a deliberate and strategic forum-shift from the consensus-based mechanisms of the UN General Assembly and international human rights law to the coercive power of the Security Council. This account of WPS and forum-shifting to the Security Council might readily be told as a progress narrative, in which human rights and women’s rights came to infuse the daily work and modus operandi of the Security Council.
Council. The remaining sections, however, turn a more critical eye to this forum-shift, interrogating the terms of engagement for women’s participation and women’s recognition from the human rights system’s early antecedents in the abolitionist movement, right through to the contemporary operation of the CEDAW Committee. This critical re-telling identifies the queer exclusions that remained embedded in ostensibly progressive developments around women’s rights and human rights. These exclusions have left a challenging legacy for WPS efforts at the Security Council.

III. INTERNATIONAL HUMAN RIGHTS LAW AND ITS QUEER EXCLUSIONS

A. The Gender Binary

The gender binary hinges on a definitional framing that there are only two genders, male and female. The limiting framework of the gender binary was developed within a Western understanding of sex and gender norms. The problematic gender binary framework persists, despite growing international recognition of diverse gendered experiences that are not encapsulated by such a narrow definition of gender. Several non-Western cultures account for gender identity well-beyond the male-female binary including the Two-Spirit amongst indigenous tribes in North America, hijras in India and Pakistan, and Fa’afafine in some Pacific countries. As this section outlines, adherence to the gender binary in international human rights law has led to a gender analysis that is failing to keep up with the push for gender protections that move beyond essentialist argumentation about women as victims, men as perpetrators, and assumed heterosexuality.

International human rights laws adherence to a gender binary has lengthy historical
antecedence. Going back to the early twentieth century’s abolitionist origins of contemporary international human rights law, Otto surfaces the three enduring female tropes of international human rights law: first, the wife and mother who needs protection; second, the formally equal woman with the man in the public realm; and, third, the ‘victim’ woman produced by colonial narratives of gender and women’s sexual vulnerability. Further, each of these tropes is premised on a male-female binary, namely the male protector; the formally equal man; and either the male ‘native’ or male ‘savior’, revealing also the deep imbrications of these gender tropes in colonial and racist binaries.

Each of the identified enduring female tropes preceded the Universal Declaration of Human Rights and survived into the post 1945 human rights canon, including the text of CEDAW. For example, the protective trope is evident in the CEDAW’s permissive approach to sex-specific restrictions on women’s work conditions in article 11; the formally equal trope is evident throughout the Convention’s express non-discrimination framework; and the colonial victim subject is particularly evidenced in articles 6 and 14, which envisage the imperial victim subject of trafficking, prostitution, and rurality. More liberatory approaches to women’s human rights also find expression in the Convention, for example in the definition of discrimination in article 2 as both direct and indirect as well as public and private; provisions in article 4 for affirmative approaches to equality; and article 16 urging states to recognize women’s unpaid work. Nevertheless, this gender binary is essential for enabling a gender hierarchy in international human rights law, which privileges as ‘universal’ the bearer of masculine characteristics, while marginalising as ‘particular’ the rights of women.

Rejection of the gender binary is a cornerstone of queer theory and trans theory. Trans theory:
aims to resist applications of “trans” as a gender category that is necessarily distinct from more established categories such as “woman” or “man.” Rather than seeing genders as classes or categories that by definition contain only one kind of thing … we understand genders as potentially porous and permeable spatial territories (arguable numbering more than two), each capable of supporting rich and rapidly proliferating ecologies of embodied difference.44

Resistance to the harms caused to sexual and gender minorities when enforcing the gender binary, through what Spade calls administrative violence, therefore, drives much queer and trans advocacy for issues including prison reform, healthcare access, and proper identity documents (e.g. drivers licenses, birth certificates, passports, public benefit cards, and immigration documents).45 While the human rights system has offered pockets of support to the principle of self-determined gender,46 the issue remains largely marginal and—unlike replete examples of the biologically-determined gender binary in human rights—lacks any clear treaty basis. Consequently, international human rights laws adherence to the gender binary can position it as oppositional to these campaigns for queer liberation.

B. Heteronormativity

Heteronormativity—the belief that heterosexuality is the default, preferred or normal mode of sexual orientation—has similarly lengthy antecedence to the gender binary in international human rights law.47 Queer theorists have shown how this Western social norm of heteronormativity organizes social, political, and economic norms about both sex and gender.48 Furthermore, black feminist Patricia Hill Collins illustrates how this entanglement between binary thinking and heteronormativity “underpins intersecting oppressions of race, class, gender, and sexuality” and, in turn, “reveals that heterosexuality is juxtaposed to homosexuality as its oppositional, different and inferior “other.”49 As a result, women are faced with what Rich calls
compulsory heterosexuality, resulting in lesbian invisibility. Consider, for example, the language of the Universal Declaration on Human Rights and the two Covenants—the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights—all of which are silent on sexuality and sexual orientation as prohibited grounds for discrimination. This silence is arguably particularly disappointing, given the well-known and well documented Nazi targeting of homosexuals. The underpinnings of the modern human rights system in the non-recurrence of Nazi harms are otherwise largely clear.

Heteronormativity has likewise manifested in key international sites and contestation around consensus statements of women’s rights over the language of gender. These tensions were most blatant in the 1995 Beijing Fourth World Conference for Women. In the negotiation of the outcome documents, the language of “sexual orientation” was ultimately deleted. Lesbian women had made a strategic decision to pursue language of ”sexual orientation” rather than “lesbian” in the outcome documents, believing such language to have a greater prospect of success, not least because it had precedence in the international human rights system. The deletion of ‘sexual orientation’ language from the outcome documents made use of the language of ‘gender’ even more important. Was gender supposed to mean ‘sex,’ or was gender supposed to open the door to alternative non-binary gender identities and forms of sexual expression? This was a question that clouded much debate at Beijing, as women's right activists and states used the language of ‘gender,” but with different meanings. Ultimately, the inclusion of gender language was secured through effectively conceding gender as a synonym for women. The ‘Statement by the President of the Conference on the Commonly Understood Meaning of the Term “Gender,”’ provided that:
2(1) the word "gender" had been commonly used and understood in its ordinary, generally accepted usage in numerous other United Nations forums and conferences;

2(2) there was no indication that any new meaning or connotation of the term, different from accepted prior usage, was intended in the Platform for Action.

3 Accordingly, the contact group reaffirmed that the word "gender" as used in the Platform for Action was intended to be interpreted and understood as it was in ordinary, generally accepted usage.\textsuperscript{56}

Out of 189 participating states, just eight made interpretive statements that they understood the other status’s grounds on which discrimination was prohibited to include ‘sexual orientation.’\textsuperscript{57} The Beijing outcome documents are themselves silent on ‘sexual orientation’ and nowhere refers to ‘sexual rights.’\textsuperscript{58}

It is in this vein that queer postcolonial scholars have critiqued reformist initiatives to enhance LGBTQ protections under international human rights law, such as the Yogyakarta Principles. The Yogyakarta Principles are a set of principles on the application of international human rights law in relation to sexual orientation and gender identity.\textsuperscript{59} The Principles affirm binding international legal standards with which all States must comply.\textsuperscript{56} The twenty-nine Principles were initially drafted by a group of human rights experts in 2006, and include The Right to Equality and Non-Discrimination, the Right to Participate in Cultural Life, and the Right to Promote Human Rights.\textsuperscript{61} The document sets outs how human rights actors but also the media, non-governmental organizations, and funders should engage with sexual orientation and gender identity (SOGI) issues in international law.\textsuperscript{62} Queer and postcolonial scholars recognise the important advances represented by the Yogyakarta Principles and their growing legitimacy
within international human rights law. To quote Kapur: “In the choice between criminality and legitimacy, the latter is clearly preferable to being an ostracised criminal deviant.” Nevertheless, the Principles remain a powerful illustration of the limitations of human rights engagement. The Yogyakarta Principles, while important, are largely based on biological assumptions about sexuality, located in a dualist heteronormative framework that ignores the dynamic understandings of gender and gender identity as socially constructed. Gender remains confined to two categories, male and female, with the gay family constructed as monogamous, nuclear and having an emphasis on procreation. And gender identity continues to be associated with transgender persons rather than as something every person possesses. According to Kapur, the ultimate goal of “public visibility and inclusion in the heteronormative structures and the patriarchal institutions of the family” presupposes what queer ‘freedom’ should look like. This is neither radical nor transformative but regulatory. It is sanctioned by a heterosexual regime in order to prove its own humanity.

C. Invisibility of Lesbian and Other Non-normative Gender Subjects

Compounding queer exclusions, even when the reinterpretation of civil and political rights to provide some minimum guarantees to gay men under international human rights law has been possible, it has offered limited visibility or protection to lesbian relationships. Unhelpful for advancing the human rights of lesbian women is the largely male profile of litigants and activists for the enhanced protection of SOGI rights under international human rights law. In a brilliant analysis, Hodson identifies how the celebrated SOGI jurisprudence of the European Court of Human Rights (ECtHR) has in fact made lesbian lives invisible. She names the invisibility of
lesbian subjecthood in the Courts ‘homosexual’ subject.\textsuperscript{70} For example, the Court’s celebrated jurisprudence under Article 8 (right to private and family life) to advance the decriminalization of homosexuality has defined much of this jurisprudence as specific to a sexual act that homosexual men are understood to be inherently disposed to and identified by. Likewise, the UN human rights system’s first case on sexual orientation concerned anti-sodomy laws.\textsuperscript{71} The Human Rights Committee and the ECtHR decided these cases focusing primarily on the right to privacy, providing a small opening for gradual changes in both systems.\textsuperscript{72}

Whilst the specific criminalization of homosexual sex has meant that such jurisprudence has addressed only that manifestation, the invisible subject cannot claim rights\textsuperscript{73} Of the 125 applicants in ECtHR SOGI cases from 1955 to 2015, only seventeen applicants were female and few of those applications were considered on their merits.\textsuperscript{74} In fact, no violation was found of a lesbian woman’s rights by the ECtHR until 1999 in \textit{Smith and Grady v. The UK} which challenged the prohibition of gay men and women from military service and involved both male and female applicants.\textsuperscript{75} Thus, it was only in 2008 that the European Court found its first violation by a female applicant alone. This concerned adoption in \textit{E.B. v France} (2008).\textsuperscript{76} More broadly, this review of the earlier unsuccessful lesbian cases evidences a clear reluctance by the Court to apply article 8 protections to lesbian relationships and to lesbian families.\textsuperscript{77}

By contrast, the Inter-American systems jurisprudence on SOGI rights commenced later than that of the European human rights system has centrally involved female family relationships, paradigmatically through the \textit{Atala v Chile} judgment.\textsuperscript{78} In this judgment, concerning the denial of custody rights to a female Chilean judge due to her sexual orientation as lesbian, the Inter-American Court of Human Rights (IACTHR) had to analyze whether sexual orientation was a protected category under the American Convention on Human Rights by
delving into a family law case. The IACTHR held that courts cannot use the best interest of the child as a tool to discriminate against parents based on their sexual orientation. Unlike the criminalization of sodomy cases, *Atala* left the door open to expand the right to family to associations formed outside the legal marriage, both by heterosexual and same-sex partners.

These significant divergences in regional jurisprudence around lesbian lives and families, places even greater importance on the UN human rights jurisprudence in this area. The landmark *Toonen v. Australia* decision of the UN Human Rights Committee addressed decriminalization of homosexuality with a male applicant. Meanwhile, the CEDAW Committees approach to the specific issues of discrimination faced by lesbian women has a long evolution. Between 1994 and 2001, the Committee referred to sexual orientation in several concluding observations but then stopped doing so. In 2008, activists briefed the Committee on the impact of state and non-state violence against lesbians, bisexual women, and transgender individuals. The Committee then again began to express its concern about discrimination and harassment of women because of their SOGI. The Committee has typically been cautious in its approach to issues relating to discrimination against women on the ground of their sexuality. It has referred with approval to legislation which prohibits discrimination on the ground of sexual orientation and noted with concern the criminalization of same-sex relationships. In its discussion of multiple discrimination in General Recommendations 27 and 28, adopted in 2010, the Committee noted that women experience discrimination not only as women but also on the basis of ‘other factors,’ of which sexuality is one. General Recommendation 28 affirms that lesbian women are particularly vulnerable to discrimination, although it does not explicitly refer to bisexual, transgender, and intersexual persons. It must be noted, however, that General Recommendation 28 was adopted by a majority, and not by a consensus, at the CEDAW Committee, evidencing
divisions within the Committee as to the appropriate interpretation and application of the Convention to gender non-conforming and queer women.90

It took until 2022 for the CEDAW Committee—the first amongst any of the UN human rights treaty bodies—to make its first finding in an individual communication that the criminalization of same-sex lesbian conduct is a human rights violation.91 One of the key findings in this case is that the criminalization of same-sex sexual conduct between women breaches CEDAW’s article 16 rights, which relates to marriage, family relations, autonomy, and choice.92 The Committee states that the “rights enshrined in the Convention belong to all women, including lesbian, bisexual, transgender and intersex women’ and that it applies to ‘no-heterosexual relations.”93 The Committee in this way, belatedly, “underlines its commitment to inclusivity and responds to scholarly criticism that under CEDAW ‘women’s experience of ‘family life’ is assumed to be married and heterosexual.”94

This new direction in the CEDAW Committees approach to lesbian relationships—and the divergence between the approaches to lesbian family rights of the European and Inter-American Court—signal one of the most appealing characteristics of the human rights system for women’s rights advocates, namely its pluralism. Drawing from diverse treaty sources and combined with a diffuse system of treaty interpretation and norm development; there can be considerable space for the creative and resourceful advocate to advance expansive and progressive articulations of women’s rights in conflict. Likewise, it can also make ostensible progress on women’s and gender rights within one treaty system or body more difficult to consolidate across international human rights law.95

IV. THE WOMEN, PEACE AND SECURITY AGENDA AND ITS QUEER EXCLUSIONS
A. The Gender Binary

The WPS agenda is most legible as a set of ten Security Council resolutions beginning with the Security Council 1325 on Women, Peace, and Security. In part, the limitations of the gender binary undergird the forum shift to bring women’s rights to the Security Council in the first place. Women’s rights activists recognized the limitations of producing peace and security efforts through a gender perspective that only prioritized the visions of men. The mobilizing for the resolution was a forum shift to the Security Council as a means to get women not only to the peace table during peace talks but also women’s rights onto the agenda in security spaces where women were otherwise excluded. As Resolution 1325 drew attention for its symbolic importance as a means to include women in peace and security efforts, practical concerns about weak provision for implementation quickly emerged. Nine subsequent WPS resolutions have been adopted: four focus broadly on advancing women’s participation pillars; five focus on sexual violence in conflict. These additional resolutions have extended the breadth and depth of Resolution 1325, made provision for the implementation of the overall WPS agenda and engaged a broad range of member States willing to lead adoption of additional resolutions on this issue.

Yet, peace and security initiatives continue to discuss women as part of a binary in opposition to men, reverting to essentialism while also failing to account for the broad diversity of gender identities. Furthermore, the patriarchal limitations of the Security Council continued to hamper the ability for women to be agents of change rather than merely victims in conflict. The definition of gender as operationalized within the WPS agenda generally upholds the gender binary too, with little attention to how heteronormativity and cis-privilege both shape peace and security spaces. The gender binary as mobilized by the WPS agenda results in significant
limitations. The slippage of using gender to mean women has led to several challenges when it comes to implementing a more inclusive gender perspective in WPS work. There has been a siloing in addressing gender-based violence (GBV), rather than a unified approach.

B. Heteronormativity

Responses to the need to confront the heteronormativity of WPS through efforts to prioritize LGBTQ inclusion, or a queering, of the WPS agenda echo the trajectory of these efforts in international human rights law. The behind-the-scenes debates about the discourse of gender do not always surface; however, in 2019, one example of how state resistance can limit queer inclusion in the resolutions made international news. In the drafting of Resolution 2467, accounts reveal how both the United States and Russia attempted to advance domestic homophobic and transphobic policies through their Security Council membership through efforts to remove the word ‘gender’ and replace it with ‘woman.’ Further, regressive forces were effective in their efforts to remove references to sexual and reproductive health for women who had been raped in conflict. These negotiations are just one of many calculated decisions that have gone into the drafting of the resolutions and the gender perspective these resolutions are able to promote. Considering the powerful role that WPS resolutions play in the broader landscape of international security policy about gender, the implications of these debates over what issues are relevant to the agenda are far reaching.

Because the Security Council resolutions must avoid the veto of the five permanent members in order to be adopted, the watering down of resolutions from more progressive language has been common. The makeup of the Security Council magnifies the damaging impact
of those states—prominent amongst the permanent members—unwilling to commit to a more expansive vision for gender at the international level, resulting often in mediocre commitments and vague resolutions.\textsuperscript{108} These tensions came to the fore with the ultimate rejection of a draft resolution proposed by Russia to mark the twentieth anniversary of the WPS agenda. Mobilized by concerns about the need to protect the WPS agenda from efforts to “watering down previously agreed standards on core issues,” civil society successfully mobilized to have several Security Council members vote against the draft resolution.\textsuperscript{109} A lack of clear agreement on a more expansive attention to gender and sexuality diversity—and the absence of positive definitions of these terms under international human rights law—has left a vacuum around what the terms ‘gender’ and women mean, allowing for violent rhetoric to fill this void, and in some cases fuel transphobic and queerphobic claims. The debate over the use of the word ‘gender’ specifically has been further heightened by the anti-gender backlash in recent years.\textsuperscript{110}

C. Invisibility of Non-Normative Gender Subjects

In the WPS agenda, the invisibility of the non-normative gender subject has certainly manifested in lesbian invisibility and the agenda’s unspoken assumption of a female heterosexual subject. Perhaps more surprisingly, the invisibility of the non-normative gender subject has manifested also in the agenda’s attempts to “engage men and boys.”\textsuperscript{111} The second decade of the WPS agenda made efforts to address the role of men more prominently in promoting a gender perspective in peace and security work. Resolution 2106 passed in 2013 called for ‘engagement’ with men while Resolution 2242 passed in 2015 called for the ‘enlistment’ of men.\textsuperscript{112} This engagement work is uneven at best. Scholars have examined how these efforts in the WPS
agenda point to key tensions such as the dilution of feminist initiatives, the inability to hold men accountable in much work led by the ‘good men’ industry, as well as the reification and continued privileging of men as necessary ambassadors for change for women.\textsuperscript{113} The agenda engages men either as (potential) perpetrators of violence against women, or—to a lesser extent—as victims of sexual violence. Manifold complex gender identities are therefore occluded, including civilian male experiences of conflict, such as male carers, as well as those of queer and displaced men.

Tensions around the place of men in the WPS agenda have also emerged over the question of how to draw attention to sexual violence against men, given that so much humanitarian programming to respond to sexual and GBV is developed to support women as survivors of sexual violence at the hands of male perpetrators.\textsuperscript{114} A debate between Jane Ward and Chris Dolan in the International Review of the Red Cross illustrates this tension in the field of humanitarian emergency response. Ward writes:

\begin{quote}
While it is a positive development that the needs of male survivors and LGBTI populations in humanitarian settings have been brought into sharper focus as a result of the human rights approaches that underscore GBV interventions, it is a misrepresentation of GBV theory and practice to claim that males and LGBTI groups should attract equal focus in GBV programming. Vitiating the gender and GBV language in order to refocus the field towards attention to the needs of males and LGBTI populations is not likely to serve any of these groups effectively, least of all women and girls.\textsuperscript{115}
\end{quote}

In a response, Dolan notes that accessing appropriate support services which work for all survivors regardless of gender is a struggle that is particularly acute for men and LGBTQ persons.\textsuperscript{116} Ward’s argument reflects an anxiety of losing hard-won attention to women’s experience of GBV in conflict.\textsuperscript{117} Dolan’s response reflects his experience working with the Refugee Law Project supporting male and LGBTQ survivors in Uganda. Both point to the
contested terrain over what gender means and how or if to include men as well as LGBTQ individuals in this meaning. Tensions around the treatment of male victims within feminist campaigns for change clearly pre-existed the WPS agenda but have crystallized in particular ways through the WPS agenda. Concerns about ‘diluting the agenda’ can serve to uphold a limiting vision for WPS, focusing primarily on the experiences of heterosexual women rather than a broader analysis of gender.

V. SEXUAL DANGER, NOT SEXUAL RIGHTS

A. International Human Rights Law

The continuities and legacies of human rights laws’ queer exclusions are most acute in the WPS agenda’s reliance on sexual danger to drive legal and normative developments. Clear tensions emerged between feminist campaigns in international human rights law to end GBV and feminist campaigns for sexual and reproductive rights, based on the pleasure motive. In practical terms, one might ask at what points has women's sexual agency and freedom (pleasure) underpinned human rights claims. The low profile of such demands, especially when contrasted with advocacy to end sexual violence (danger), especially in armed conflict, and its connection to carceral feminism in human rights law, is striking. This contrast between outcomes grounded in pleasure or danger is particularly acute when considering the outcome documents of the 1993 Vienna Conference on Human Rights. In contrast with the priority given in the Vienna Declaration to ending violence against women, sexual orientation is condemned nowhere as a ground for discrimination, in line with the later Beijing Declaration. Likewise, these tensions are clear in how the Vienna Declaration addresses sexual and reproductive rights, which primarily
addresses sexuality as the freedom from sexual violence, harassment, and trafficking, manifesting yet again the enduring victim trope in women’s human rights protections.

Importantly, the UN International Conference on Population and Development in Cairo in 1994 offered glimpses of a new and potentially more progressive approach. At Cairo, the new idea of ‘reproductive health’ was understood to include sexual health. In fact, in the outcome document, this is articulated as “a satisfying and safe sex life,” a concept much closer to what Otto calls ‘pleasure.’ This language is taken up in Beijing too under reproductive health. Regrettably, however, these modest developments at Cairo and then Beijing prove short-lived. They find little trace in contemporary articulations of human rights. International human rights law has instead dealt with sexuality primarily to the end of defining ‘acceptable’ sex. Human rights law responses to prostitution and trafficking, for example, evidence the persistent treatment of sexuality as dangerous for women. ‘Acceptable’ sex therefore takes place within monogamous marriage; it is presumed heterosexual; and understood only in reproductive terms. ‘Acceptable sex’ is the opposite of risky criminal indecent and pathological other ‘sex’ of human rights law. Notably, this critique of ‘acceptable sex’ under international human rights law has become more acute with the increasing visibility of sexual and gender minorities in human rights law. Some queer scholars characterize engagements such as the Yogyakarta Principles and the mandate of the UN Independent Expert on SOGI as inherently deradicalizing. Kapur in particular sees such developments as meaning that queer advocacy in human rights law is now doing the regulation work of sexual rights that it sought to challenge.

What is clear from the above discussion is that binaries and hierarchies that underpin gender do not concern only gender. Rather, they are deeply imbricated in colonial and racist binaries and hierarchies. This is evidenced in international women's rights narratives about which
women are most vulnerable to sexual violence as well as what is necessary to ‘secure’ omen against these harms. In a pathbreaking critique of the human rights canon’s focus on sexual danger, Kapur provided a particularly compelling analysis of the gendered and racialized binaries that define human rights. She critiques the production of the ‘authentic victim subject’ through advocacy to end GBV under human rights law. According to Kapur this ‘authentic victim subject’ is, in fact, a “Third World” woman victim subject. Moreover, she reveals how the gender and cultural essentialism of the violence against women campaigned works to buttress politics that are not emancipatory for women. Kapur too starts her intervention with Vienna in 1993 and its focus on GBV. Here she identifies the emergence of the hegemonic victim subject as a shared location from which different cultural and social contexts can speak. However, critically, she identifies how this strategy relies on overly generalized claims about women that ignores intersectionality and that essentialize non-Western cultures, in particular by positioning non-Western women as victims of culture. According to Kapur, the essential problem of human rights law is how it invites responses and remedies from states that have little to do with promoting women's rights.

B. Women, Peace, and Security

Much of the focus of the WPS resolutions continues to be on accounting for, responding to, and preventing rape as a weapon of war. A focus on sexual violence in conflict began with WPS Resolution 1820 (2008) and was affirmed in Resolution 1888 just a year later. The emphasis on sexual violence does fall within three of four pillars (prevention, protection, and relief and recovery), and is arguably one of the most palatable ways to implement the WPS
agenda. This palatability is in part because of the ability to frame the issue within the tropes about women in conflict in need of protection. Marking the ten-year anniversary of the WPS agenda, Resolution 1960 (2010) established monitoring, analysis, and reporting arrangements (MARA) which are the basis of this carceral feminist critique. For example, it was in this resolution that the Secretary-General is requested to ‘list’ perpetrators of the sexual violence when reporting to the Security Council as a mechanism for informing Security Council activities in respect of particular conflict situations, including its potential use of sanctions or even use of force. This ‘listing’ procedure is the clearest basis to critiques of the WPS agenda’s endorsement of securitization and militarization that are ultimately antithetical to women’s and gender rights.

The listing procedure is usefully viewed among a growing number of worrying Security Council ‘robust peacekeeping’ mechanisms linked to protecting women, children (or women and children), and wildlife. These mechanisms may also support homonationalist claims justifying the use of force to protect LGBTQ communities. Gender theory locates sexual violence within roots of hegemonic masculinity and patriarchy during conflict, understanding it as part of a continuum of violence. This continuum situates gendered violence (including homophobia and transphobia) as an extension of violence present during times of peace. By contrast, ‘listing’ and similar exercises of Security Council power limit the focus to ‘rape as a weapon of war’ that turn to carceral solutions to criminalize individual perpetrators, rather than appeal to systemic change.

The emphasis on ‘sexual danger’ to drive change in international law’s treatment of women at the Security Council has clear continuities from earlier engagements with the international human rights system, which has prompted some interrogation. Engle, for example,
revisits the history of women’s human rights organizing and turns to what women’s rights issues and questions are left out by this shift in advocacy towards the criminalization of sexual harm.\textsuperscript{139} Pointing to the problematic ‘common sense,’ which developed around the move towards criminal law, she instead notes that this path was not an obvious direction for this movement to follow.\textsuperscript{140} Importantly, she notes this path has led to frameworks of criminalization, militarization, and securitization and a clear departure from feminist motivations for peace. Also left behind is attention to other gendered harms, anti-imperialism, and investment in what victims want other than ‘bringing those responsible to justice.’\textsuperscript{141} Rather than seeing this move towards a focus on sexual violence because of co-optation as some have argued, Engle points to this shift as a buy-in to this approach by women’s rights movements out of a desire to be included within international human rights law, international criminal law, and, most potently, the activities of the Security Council.\textsuperscript{142}

A pressing question for those committed to the WPS agenda as an agenda for feminist emancipation is what role, if any, the forum of the Security Council should play in addressing harms against LGBTQ people in conflict. The significantly differing views on this question illustrate the underlying challenges for how best to move forward with WPS interventions. For example, at the 2015 Arria-Formula Open Meeting on Vulnerable Groups in Conflict: ISIL’s Targeting LGBT Individuals, the LGBTQ organization Outright Action International put forward the experiences of LGBTQ Iraqis to members of the Security Council.\textsuperscript{143} The group, along with MADRE and Organization for Women’s Freedom in Iraq held the forum to bring attention to the way ISIS was targeting LGBTQ Iraqis as a part of the ongoing conflict. The Arria-Formula was the first to address LGBTQ violations in conflict and, in doing so, make the connection of WPS agenda and LGBTQ inclusion, and one of the first looks at violence against LGBTQ people as a
part of violent conflict. In an assessment of the event, Lisa Davis (of MADRE) and Jessica Stern (of Outright) detail the important roles of U.S. Ambassador Samantha Power, who spoke at the event, and the Permanent Missions of Chile and the United States, which co-hosted the event.\textsuperscript{144} Davis and Stern’s account of the Arria Formula is unambiguously positive about this “big step forward” within the ‘powerful Security Council itself.’\textsuperscript{145}

But returning to Kapur’s critique of international human rights law interventions as a form of regulating sexuality, just how connections between conflict harms against LGBTQ people and the mandate of the Security Council are being made requires closer observation.\textsuperscript{146} The need for critical observation is especially true when considering the case of Iraq where nearly 95\% of the population is Muslim.\textsuperscript{147} Given the persistent trope that Islam is inherently anti-LGBTQ, presenting Iraq as a site of homophobic violence, whilst urging action, potentially even intervention, by actors in the Security Council is cause for deeper reflection.

VI. CONCLUSION: NEW DIRECTIONS FOR QUEERING WPS

This article has sought to delineate, for the first time, the antecedents of contemporary feminist and queer critique of the WPS agenda within the long-established limitations of international law and international human rights law. The article’s key contribution is, therefore, descriptive and historical, connecting contemporary problems to older ones. Further, through the lens of ‘forum-shifting,’ the article has sought to highlight how the decision to target the Security Council and to move away from the consensus-based systems of the UN General Assembly and international human rights to the coercive power of the Security Council has heightened rather than resolved these problems. As scholars with activist commitments, the authors conclude with
some—inevitably flawed and incomplete—proposals for a way forward.

Feminist disillusionment with the Security Council has arguably reached its zenith. Frustrated by decades of undelivered commitments, and further catalyzed by Security Council failures on COVID-19 and forced inaction in response to Russian aggression in Ukraine, questioning the utility of continued feminist engagement with the Security Council is increasingly mainstream. What Chinkin and Rees identify, baldly, as the failure of the normative agenda has led to their arguments for a refocusing on the human rights system as a more propitious avenue for the pursuit of the WPS agenda. This article endorses this proposal for creative engagement across the institutions of international law, in particular, the human rights system.

The human rights system, for all the shortcomings that are comprehensively rehearsed in this article, nevertheless, may offer openings for re-envisioning both human rights and WPS. These authors tentatively propose this as a possible way forward for a number of linked reasons. First, the article notes the glimpses of a more promising and queer-inclusive approach to human rights in sites such as the Cairo and Beijing endorsement of sexual rights to a ‘safe and satisfying sex life’ as well as the more promising recent direction of some queer-inclusive human rights approaches to family rights. Second, the identified pluralism of the human rights system operates in ways that differ in important respects from the Security Council’s coercive power. Although a halting and contingent process, it is the diversity and pluralism of international human rights law that provides unique opportunities for more feminist and queer-inclusive interpretations to enter the mainstream of international law. Third, the human rights system is explicit about its dependence on civil society for implementation, monitoring, and enforcement, and civil society is a critical source for subaltern and queer-inclusive interpretations of human rights.
Formal successes for queer inclusion in the human rights system—most notably, the mandate of the Independent Expert on SOGI by the Human Rights Council—illustrate how much of the most meaningful work for LGBTQ people at the UN continues to be at the level of theory-building and evidence-gathering. Moored by its formal mandate to a sexual danger and violations-focused vision of human rights, the mandate-holder has nevertheless found ways to operate with considerable creativity to ensure queer and trans-inclusion in reporting about gender. For example, the 2021 Gender Theory report presented to the Human Rights Council incorporates findings from hundreds of submissions and the current call for the 2022 report on Peace and Security to be presented to the General Assembly is likely to do the same. The launch of this new report by the Independent Expert may prove valuable for opening up conversations for queer inclusion in WPS, as well as pointing to the continuing failures and limitations of gender work when it comes to serving LGBTQ communities. Further, as work on ‘feminist insiders’ reveals, it matters that there are now openly queer people working within the UN and queer experience and expertise informing the interpretation of both human rights and international peace and security.

Finally, the WPS agenda exists well-beyond the resolutions of the Security Council and this realization centers the work of feminist and queer civil society, which continue to localize and domesticate the WPS agenda. There is an opportunity in the next decade of WPS efforts to support queer inclusion, especially in the push for localization, funding the grassroots, and supporting a WPS agenda that is not formed solely inside the Security Council but may also be progressively advanced through human rights law. The WPS forum-shift to the Security Council to bring attention to women’s experiences in conflict illustrates an effort to repurpose an international security forum to confront issues well beyond its formal mandate. These authors
believe the next decade of WPS offers opportunities for more positive and productive forum-shifting, informed by the hard-learned lessons of the past, to diverse spaces of queer inclusion.

Endnotes

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