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ORIGINAL ARTICLE

INTERNATIONAL LEGAL THEORY: SYMPOSIUM ON GLOBAL SOUTH PERSPECTIVES ON METHODOLOGY AND CRITIQUE IN INTERNATIONAL LAW

Under the shadow of legality: A shadow hauntology on the legal construction of the Women, Peace and Security agenda

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Abstract

Considered a landmark in feminist international politics, the Women, Peace and Security (WPS) agenda of the UN Security Council has been the object of many feminist explorations. Feminist legal scholars, however, have grappled with the 'shadowy' legality of the agenda, mostly analysing it as an 'unsuccessful' legal project: a partial or in progress legal norm, a defective legal form that attests (and furthers) the exile of inclusion of feminists in international law, or yet a formalistic discussion with lesser impact for feminist activists on the ground. Drawing from Avery Gordon's considerations on taking shadows seriously in our production of knowledge, I propose, however, that reckoning with the shadows of the WPS's legality enables a more comprehensive analysis of how the agenda has been a successful legal project in its own way. Offering a 'shadow hauntology' for the legal status of the WPS, I zoom in on the competing legality perceptions shared by relevant actors, the (gendered and colonially-continuous) shadows that have haunted those perceptions into formation, and how these competing visions have shaped the legality of the WPS as a shadow of its own. This study then offers an alternative way of studying legality both to feminist legal scholarship and studies on international legal sources more broadly. More concretely, it embraces the irresolvability of the legal status of a norm to take stock of the different legal projects and legality perceptions advanced by feminist actors and gender experts, in an effort to understand, in their own terms, the successes achieved.

Keywords: decolonial methodologies; feminist approaches to international law; legality; Women; Peace and Security; UN Security Council

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1. Introduction

'No one cares about this, really; everyone knows Security Council resolutions are legally binding.' In my first explorations into the legal status of the Women, Peace and Security (WPS) agenda, I was met with this discouraging affirmation after asking about the issue to a member of a key international non-governmental organization (INGO). My international lawyer's gut feeling, however, knew this claim was not entirely accurate. A little over a decade after Dianne Otto similar encounter with WPS international advocates,[1] what surprised me the most in this affirmation was not the crushing realization that my research topic would perhaps not be considered relevant to feminist activists. Instead, what struck me was the confirmation that what was traditionally taught in terms of international legality – that is, what demarcates legal from non-legal norms in the international scenario[2] – continued not to correspond with what important actors considered in practice.

I was not alone in being certain that the WPS resolutions, initiated by UN Security Council Resolution (UNSCR) 1325(2000), were not necessarily binding and, therefore, not necessarily legal in the conventional sense of the word.[3] There were many elements to support this hunch. First, the WPS operational clauses are overall couched within recommendatory (and therefore 'soft') language.[4] Second, and perhaps more importantly, the WPS resolutions do not fit the traditional mould of international legal sources (such as those indicated by Article 38 of the Statute of the International Court of Justice);[5] rather, they have been issued by the Security Council. As vastly explored by the literature on the legislative competence creep of the UNSC, the organ oversteps the marks initially devised for its functions when it issues general resolutions for an indefinite period.[6] Its role is that of the policeman, not a justice-grounded global legislator.[7]

On the other hand, the case for the legality of the WPS has always been within arm's reach. First, not all operative clauses of the WPS are recommendatory: those that echo other legal sources

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

[2]While the concept of legality used in this study will be further delineated in sub-Section 3.1 below, it is worth anticipating that it is closer to law identification – as opposed, for instance, to the interpretation of facts as consonant to legal rules or not. On this differentiation see S. Besson and J. d'Aspremont, 'The Sources of International Law: An Introduction', in S. Besson and J. d'Aspremont (eds.), *The Oxford Handbook of the Sources of International Law* (2017), 1, at 13.

[3]I provide more details on these discussions in Section 2. Nevertheless, for a general overview on why the WPS resolutions are (or are not) legal see C. Fuijo, 'From Soft to Hard Law: Moving Resolution 1325 on Women, Peace and Security Across the Spectrum', (2008) 9 *Georgetown Journal of Gender and the Law* 215; T. L. Tryggestad, 'Trick or Treat-The UN and Implementation of Security Council Resolution 1325 on Women, Peace, and Security', (2009) 15 *Global Governance* 539; A. Swaine, 'Assessing the Potential of National Action Plans to Advance Implementation of United Nations Security Council Resolution 1325', (2009) 12 *Yearbook of International Humanitarian Law* 403; Otto, *supra* note 1; C. O'Rourke, 'Feminist Strategy in International Law: Understanding Its Legal, Normative and Political Dimensions', (2017) 28 *European Journal of International Law* 1019; C. Chinkin and M. Rees, 'Commentary on Security Council Resolution 2467 - Continued State Obligation and Civil Society Action on Sexual Violence in Conflict', (2019); C. Chinkin, *Women, Peace and Security and International Law* (2022), Ch. 2.

[4]On the relevance of analysing the language of UNSC resolutions in order to ascertain their legal status see *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) Notwithstanding Security Council Resolution 276*, Advisory Opinion of 21 June 1971, [1971] ICJ Rep. 16, paras. 113–114.

[5]A. Pellet and D. Müller, 'Article 38', in A. Zimmermann et al. (eds.), *The Statute of the International Court of Justice: A Commentary* (2019), 819.

[6]P. C. Szasz, 'The Security Council Starts Legislating', (2002) 96 *American Journal of International Law* 901; E. Rosand, 'The Security Council as Global Legislator: Ultra Vires or Ultra Innovative', (2004) 28 *Fordham International Law Journal* 542; S. Talmon, 'The Security Council as World Legislature', (2005) 99 *American Journal of International Law* 175; B. Elberling, 'The Ultra Vires Character of Legislative Action by the Security Council', (2005) 2 *International Organizations Law Review* 337.

[7]M. Koskenniemi, 'The Police in the Temple Order, Justice and the UN: A Dialectical View', (1995) 6 *European Journal of International Law* 325.

visibly employ forceful language.[8] Second, the legal authority of the Security Council has long lurked just below the surface. Whereas the specialized literature on the Council's legislative activity has devoted its attention to the regimes ensuing Resolution 1373(2001) on counterterrorism and Resolution 1540(2004) on measures against the proliferation of weapons of mass destruction, one could argue that this legislative competence creep had begun way before, more precisely, with the Council's activity of adopting thematic resolutions – among them UNSCR 1325 in 2000.[9]

To paraphrase Catherine O'Rourke,[10] what results from all these elements is a remarkably shadowy legal status of the WPS agenda. From what follows, feminists have seemingly analysed the WPS as an unsuccessful legal project: an either incomplete or in progress legal norm,[11] a defective legal form that attests (and furthers) the exile of inclusion of gender law reform[12] in international law,[13] or yet as a somewhat formalistic discussion with a lesser impact for feminist peace activists on the ground.[14] With this study, however, I propose taking the legal shadows of the WPS not as defects to be resolved or as a failed legal norm. [15] Instead, I suggest that abandoning the question of whether the WPS is 'real law' can provide a more comprehensive analysis of how the legality of the agenda has been constructed and, ultimately, successful in its own way. For that, instead of seeking to remedy or critique the agenda's shadowy legal status, I delve deeper into its irresolvability. More specifically, I ask which shadows have contributed to the rubric's unresolved legal status, and how these shadows have allowed the agenda to succeed as a legal shadow of its own.

Against this background, this article advances two interrelated contributions: one for feminist legal scholarship on the WPS and the other for studies on international legality more broadly. First, I argue that taking the unresolved legal status of the WPS as a feminist failure in international law is a matter of approach and not of necessity. This is because previous feminist explorations of the legal status of the WPS have (in)advertently assumed that relevant actors – especially feminist activists and gender experts – come to international normative projects with somewhat homogenous and traditional-like projects of legality, only to be denied the materialization of such projects. The underlying premise of such an assumption is the inexistence of the different, deviant, and contrasting projects and imageries of legality among different actors, as well as their disrupting capabilities. Further, it underestimates the impact and legal effects that such unconventional projects can achieve in 'walking the halls of (legal) power'[16] precisely by steering clear of any visible pretensions of being or becoming 'hard' law.

Second, I argue that feminists are not alone in their negative bias towards the unresolved legal status of a norm. More broadly, while international legal scholars have been prolific in their

[8]On WPS operative paragraphs that employ forceful verbs such as 'demand' see UN Security Council, Resolution 1820 (UN Doc. S/RES/1820 (2008), para. 3); UN Security Council, Resolution 1888, UN Doc. S/RES/1888 (2009), para. 3; UN Security Council, Resolution 1889, UN Doc. S/RES/1889 (2009), para. 3; UN Security Council, Resolution 2106, UN Doc. S/RES/2106 (2013), para. 13.

[9]C. C. True-Frost, 'The Security Council and Norm Consumption', (2007) 40 *New York University Journal of International Law and Politics* 115.

[10]See O'Rourke, *supra* note 3.

[11]See Chinkin, *supra* note 3, Ch. 2; Fuijo, *supra* note 3.

[12]By 'gender law reform', I draw from Heathcote's definition of 'developments within international law that have been in response to feminist interventions in international law' (G. Heathcote, *Feminist Dialogues on International Law: Success, Tensions, Futures* (2019), at 4).

[13]On the 'exile of inclusion' represented by the WPS agenda see Otto, *supra* note 1.

[14]See O'Rourke, *supra* note 3.

[15]I will develop on my notion of 'legality' and 'legal projects' more in Section 3.1, but it bears noting that I do not mean 'legal projects' as an 'incomplete' or 'intermediary' results of international law-making. Rather, my usage of the term here refers to the perceptions and strategies of actors in making a certain norm as legal in their own terms. On an opposite approach see S. Besson, 'Theorizing the Sources of International Law', in S. Besson and J. Tasioulas (eds.), *The Philosophy of International Law* (2010), 163, at 170.

[16]J. E. Halley, *Split Decisions: How and Why to Take a Break from Feminism* (2006), at 21.

analyses of different – and sometimes contrasting – ways of ascertaining what is 'law' in the international scenario, these examinations have primarily focused on finding (any) commonly shared understandings among international legal scholars and practitioners.[17] Moreover, these explorations have been marked by their drive to solve legality one way or the other – be it in formalist, empirical, or normative terms. This tendency to see legality as begging for a resolution eclipses a more granular view of the different perceptions, struggles, and, ultimately, politics of constructing an international norm as legal among heterogeneous audiences and actors, especially when the result is far from settled.

Against this background, my aim with this study is to revisit earlier feminist calls to rethink the structural ontologies and boundaries of the discipline,[18] with a specific focus on dispelling the imagery that legality needs to be resolved according to any mould at all. For that purpose, I draw from Avery Gordon's insightful considerations on what it means to take seriously the shadows (or ghosts) that haunt our social and material realities as well as our production of knowledge.[19] As it will be narrated in Section 3, I couple Gordon's framework with feminist and decolonial epistemological critiques to give an account of the shadows that have haunted my research on the legality of the WPS, and how they have re-centred my method. I then indicate how I have shifted from a perspective that sought to ascertain, uncover, and find clear-cut answers to legality to one that embraces the shadows that constantly meddle with the taken-for-granted premises[20] of the international legal discipline.

As a result, I suggest a 'shadow hauntology' for studying the legality of the WPS, one that gently approaches its shadowy legal status so as not to scare it away. Instead, I embrace its uncanniness and irresolvability to 'follo[w] [its] scrambled trail, pic[k] up its pieces, se[t] them down elsewhere'.[21] For that, my shadow hauntology for the WPS is three-tiered, mainly focused on the agential power of shadows in shaping and reshaping feminist legal projects around the agenda. First, I am interested in how gender power and coloniality acted as shadowy poltergeists that arranged the room whereby legality was a secondary, if not inexistent, concern for feminist activists pushing for the rubric. Second, I explore the annoying power of shadows, that is, how and when the unborn or unresolved legal project of the WPS resurfaced to haunt and remind actors that maybe something else (more legal-like) would be needed to make an impact in global governance. And this leads to the third level of analysis: how this annoying power of shadows animated gender bureaucrats towards a something-to-be-done. Specifically, I am curious about how this something-to-be-done about the WPS generated a productive shadow in international lawmaking: one that 'makes its [legal] mark by being there and not there at the same time'.[22]

To provide such an exploration, this article addresses the legal construction of the WPS agenda in two junctures. The first is the adoption of UNSCR 1325 in 2000. Being the first of the WPS resolutions, Resolution 1325 is crucial to understand any initial projects and tensions around the WPS project. The second is the adoption of UNSCR 1820 in 2008 and the ensuing administrative architecture built for implementation, monitoring, and reporting concerning the WPS rubric. While Resolution 1820 is by no means the full stop for the WPS agenda, it holds specific relevance for the projects of legality around the rubric. As will be demonstrated further, Resolution 1820

[17]I provide further details on these approaches in Section 3. Some examples are J. Klabbers, 'Law-Making and Constitutionalism', in A. Peters, G. Ulfstein and J. Klabbers (eds.), *The Constitutionalization of International Law* (2009), 81; J. Brunnée and S. J. Toope, *Legitimacy and Legality in International Law: An Interactional Account* (2010); J. d'Aspremont, *Formalism and the Sources of International Law: A Theory of the Ascertainment of Legal Rules* (2011); Besson and d'Aspremont, *supra* note 2.

[18]H. Charlesworth and C. Chinkin, *The Boundaries of International Law: A Feminist Analysis* (2000); see also Heathcote, *supra* note 12 (arguing for the need of more structural bias feminist critiques to international law).

[19]A. Gordon, *Ghostly Matters: Haunting and the Sociological Imagination* (2008).

[20]Ibid., at 8.

[21]Ibid., at 66.

[22]Ibid., at 6.

opened the doors for the WPS to become a legal-technical hybrid that, despite its overall flair of due process and enforcement possibilities, further complicates its legal status.

For that analysis, I primarily rely on publicly available sources, such as public statements, institutional reports, and empirical literature written by or on feminist insiders of these two negotiations. I also carried out three interviews with critical insiders to the negotiations for the adoption of Resolution 1325, between late February and late April 2022. These interviews were essential to provide a more empirically-grounded overview of the contestations, heterogeneity, and erratic perceptions of legality among key actors – something that is largely missed when legality studies depart from doctrinal or normative sets of standards for international legal norms. These interviews were held during the COVID-19 pandemic and therefore had to be conducted online via synchronous or asynchronous communication tools. Participants were selected through a snowballing sampling method, where I would first identify key insiders from the empirical literature studied and contact them for other potential interviewees they could suggest. I also relied on personal networks to secure contacts with insiders. Following a (feminist) methodology of collaboration in qualitative research,[23] all interviewees had the opportunity to read an earlier version of this article in its entirety, and were invited to check for any inaccuracies in their own quotes or suggest any other insights I might have missed in my analysis. Only the interviewees that agreed to be cited by name in this study are identified as such. Because of this small sample of interviewees, the conversations I use here are not intended to be considered systematic data. Rather, they should be read as illustrations that corroborate or add more details to data compiled and analysed by previous works.

The article is structured as follows. Section 2 gives a short overview of current feminist approaches to the legal status of the WPS, and the limiting assumptions taken by these works. Section 3 embarks on a personal account of my journey in finding the relevance of centring shadows and hauntings to study legality in international law. It also defines how I employ the concepts of 'legality' and 'shadow hauntology' in this study. Section 4 applies such reflections to analyse how gender hauntingly arranged the room so there was virtually no legal project for Resolution 1325. Section 5 examines the different stories of how legality discussions popped up concerning the WPS agenda, and how they emerged as annoying shadowy presages that feminist 'victory' in the Security Council was perhaps incomplete. Section 6 explores the moments when North-South/East-West dynamics in the global order rearranged the room for the creation of subsequent legal projects for the WPS. Section 7 studies the legal project for the WPS that was prompted by Resolution 1820 onwards, which transformed the rubric into a legal shadow of its own. Section 8 concludes.

2. Scaring the shadows away: Current feminist approaches to the legal status of the WPS agenda

Being considered a landmark in gender law reform in the past decades, the WPS rubric is not only emblematic in its unanimous adoption within a highly masculinized international forum,[24] but it is also an influential normative agenda that has triggered national, regional, and international institutional responses.[25] Because of its normative character, scholars – especially feminist legal scholars – have ventured into adopting *a* stance regarding the agenda's legal status. This task, however, has not been too straightforward.

[23]R. Nagar and F. Ali, 'Collaboration Across Borders: Moving Beyond Positionality', (2003) 24 *Singapore Journal of Tropical Geography* 356.

[24]See O'Rourke, *supra* note 3, at 1028.

[25]C. Hamilton, N. Naam and L. J. Shepherd, 'Twenty Years of Women, Peace and Security National Action Plans: Analysis and Lessons Learned', (2020) *The University of Sydney*, available at eprints.lse.ac.uk/103952/1/Shepherd_twenty_years_women_peace_security_national_action_plans_published.pdf.

Some examinations of the agenda, for instance, have considered it a full-fledged international legal obligation, especially due to the institutional authority of the UNSC.[26] Such a position has often been accompanied by the justification that the forcefulness of Security Council resolutions, as derived from Article 25 of the UN Charter, is perhaps the closest we have to a central global legislator with the power of issuing universally binding decisions.[27] Nevertheless, such an account has not gone uncontested.

Going further into the realm of traditional legal sources, other feminist scholars have been more hesitant to assume full law powers to the rubric. For instance, explorations on the topic have indicated that, to the extent that WPS operative paragraphs are grounded on existing treaties or customary law, they are binding upon relevant states.[28] The same goes for WPS paragraphs that are reiterated in Chapter VII country-specific resolutions of the Council, or yet those that employ forceful language.[29] On that same note, it is suggested that provisions of the WPS resolutions that go beyond treaty or customary law may fall short of constituting legal obligations – be it by not being couched in strong enough language or be it by not being sufficiently certain or clear.[30] Nevertheless, scholars have highlighted that some parts of the WPS might have mustered sufficient state practice and *opinio juris* to be considered customary law – or at least being on the way to doing so.[31]

Yet another exploration of the WPS has featured more pessimistic tones as to its legal status. By recognizing the overall recommendatory tone of the resolutions' provisions and, most importantly, its adoption outside Chapter VII powers, scholars have noted that the WPS comprise non-binding obligations and, therefore, are soft law at best.[32] These examinations have then contrasted the 'softness' of the WPS agenda with other thematic resolutions of the Security Council, which, by arguably speaking the militaristic and masculinized talk more fluently, were adopted in more binding terms.[33] While this lack of binding force has been analysed as having a daily impact on the work of feminist insiders in the UN circle, such a question has been considered less of a preoccupation for feminist activists on the ground.[34] The critique over an apparent lack of legal force of the WPS agenda has, therefore, oscillated between being considered as evidence of the imperviousness of international law to feminist concerns, or yet as a formalistic discussion mostly circumscribed to bureaucratic hubs of international diplomacy.

While the discussions above demonstrate that the legal status of the WPS is far from resolved in feminist legal scholarship, it also exposes which assumptions feminist scholars have taken when engaging with international gender law reform. First, in all of these explorations, the legality of the WPS is taken as a shorthand for bindingness upon states.[35] In this sense, feminists analysing the

[26]See Tryggestad, *supra* note 3, at 544; N. George and L. J. Shepherd, 'Women, Peace and Security: Exploring the Implementation and Integration of UNSCR 1325', (2016) 37 *International Political Science Review* 297; F. Ní Aoláin, 'International Law, Gender Regimes and Fragmentation: 1325 and Beyond', in C. M. Baillet (ed.), *Non-State Actors, Soft Law and Protective Regimes* (2012), 53, at 59.

[27]See Tryggestad, *supra* note 3, at 544; George and Shepherd, ibid.; Ní Aoláin, ibid., at 59.

[28]See Chinkin, *supra* note 3, at 41, 66–8.

[29]See O'Rourke, *supra* note 3, at 1028.

[30]See Chinkin, *supra* note 3, at 42–6.

[31]Ibid., at 61–6. On a similar argument see Fuijo, *supra* note 3.

[32]See Otto, *supra* note 1; see also O'Rourke, *supra* note 3, at 1027–8 (commenting on the softness of the agenda and its impacts for transnational feminist activism).

[33]See Otto, ibid.

[34]See O'Rourke, *supra* note 3, at 1029–30.

[35]J. d'Aspremont, 'Bindingness', in J. d'Aspremont and S. Singh (eds.), *Concepts for International Law: Contributions to Disciplinary Thought* (2019), 67 (explaining that while not everything that is binding is legal, the concept of bindingness has been central for international lawyers attempting to demarcate what is a legal rule and what is not); somewhat contrastingly, see also Besson, *supra* note 15 (noting that bindingness deriving from consensualism refer to the normativity and legitimacy of a norm, not to its legality). On classical challenges to the focus on bindingness as a determinant criterion to demarcate what is legal (or legally relevant) see T. M. Franck, *The Power of Legitimacy among Nations* (1990); B. Kingsbury, N. Krisch and

WPS rubric seem to cling to a conventional view that considers the nature of legal rules as being obligations deriving from direct or indirect state will (mostly taken from Article 38 of the ICJ Statute, international jurisprudence or the UN Charter). Second and relatedly, feminist legal scholars seem to assume that this notion of legality is the singular and somewhat infallible way to test the WPS's legal status – despite the resolutions highlighting the inevitable cracks in such a state-centric model.[36] Third, in their critique of how this state-centric and formalistic model of legality excludes feminist voices in international law, feminist legal scholars appear to have assumed that all feminist transnational activists share the same legality perceptions as those advanced by positivist international lawyers – only to be repeatedly denied entry into the powerful hall of international law-makers.

From what follows, the WPS's success[37] as a legal project in international law has been mostly evaluated according to canonical imaginaries of the international legal practice and discipline – without, however, inquiring which legality benchmarks transnational feminist activists and gender experts took for themselves when advancing the agenda. This ends up eclipsing the alternative imaginaries of lawmaking as advanced by such actors, as well as precluding a more careful look at the impacts of such imaginaries. As a result, current analyses of the legal status of the WPS scare any shadowy legalities from sight, be it to ascertain its 'true' status or to advance (warranted) feminist critiques of the international legal order and profession more broadly. Consequently, such examinations remain trapped in the well-known resistance-compliance paradox,[38] as feminist scholars take formalistic, conventional paradigms that exist solely within the limits of the discipline[39] to evaluate the success/disruption achieved by feminist activism in international lawmaking.

To be sure, feminist scholars are not alone in adopting such assumptions. More broadly, international lawyers examining the question of legality in the international scenario have often assumed that there are formal, empirical, or normative ways to resolve legality and, ultimately, demarcate law from non- or 'incomplete' law.[40] In the subsequent section, I analyse this assumption as a hypervisible tendency taken by international lawyers in exploring legality in international law, interweaving this analysis with an account of my own engagements and anxieties, as an international legal student, around the legal status of the WPS. I then reflect on other possibilities of studying legality in international law, laying out the specific methodology guiding this study forward.

3. On venturing into the shadowy corners of international legality

As alluded to in the introduction, my engagement with the WPS status has been rife with disconcerting gut feelings. While constantly interrupted – or kindly shushed – that legality was a moot issue for the agenda, the variety of different stances I had found on the legal status of the WPS within feminist legal scholarship demonstrated that the question was nothing but resolved.

R. B. Stewart, 'The Emergence of Global Administrative Law', (2005) 68 *Law and contemporary problems* 15; N. Krisch, 'The Pluralism of Global Administrative Law', (2006) 17 *European Journal of International Law* 247; B. Kingsbury, 'The Concept of "Law" in Global Administrative Law', (2009) 20 *European Journal of International Law* 23. More recently, see also the contributions in N. Krisch (ed.), *Entangled Legalities beyond the State* (2022).

[36]See Chinkin, *supra* note 3, at 65 (raising the question of whether current approaches to the identification of customary international law might be too formalistic and state-centric to account for the developments of the WPS agenda).

[37]On a reflection of the political, contextual, and institutional impositions over feminist 'successes' in international law see Heathcote, *supra* note 12.

[38]S. Kouvo and Z. Pearson (eds.), *Feminist Perspectives on Contemporary International Law - Between Resistance and Compliance?* (2011).

[39]*South West Africa Cases (Ethiopia v. South Africa; Liberia v. South Africa), Second Phase*, Judgment of 18 July 1966, [1966] ICJ Rep. 6, at 34, para. 49.

[40]See Besson, *supra* note 15; Klabbers, *supra* note 17; Brunnée and Toope, *supra* note 17; d'Aspremont, *supra* note 17. See also the contributions in Besson and d'Aspremont, *supra* note 2.

However, whenever I ventured into works addressing legal sources more broadly, any glimpse of resolution for the issue still escaped me. Against this background, the more I attempted to know the legal status of the WPS, the more it appeared to me 'not as a professional success but as a failure':[41] a growing, elusive, and ghostly legal form that I repeatedly failed at scaring away.

To be fair, this quest of resolving the legality of a particular norm was not innocent. Instead, it was marked by my own training and by the premises that international law students have long learned to internalize: one needs to separate law from non-law, be it for the sake of the autonomy of international law (both in its theoretical and professional dimensions), or yet for a normative project of constructing an international order based on the rule of law instead of raw power.[42] In this sense, despite acknowledging the complex and sometimes contrasting ways one can resolve the legality of a norm,[43] international legal scholars have worked hard in trying to find a solution nevertheless. To fulfil this endeavour, attempts abound – from re-reading a (mostly German or American, and invariably male) legal philosopher,[44] to examining what has not (yet) been studied about Article 38 of the ICJ Statute,[45] or yet to dipping one's toes in empirical research to find which (and how) different international law-applying officials use international normative instruments.[46] Against this background, while the recipes for finding legality mushroom in international legal scholarship, the underlying assumption is that it is solvable – or at least workable – one handbook at a time. What this creates is a 'hypervisible' expectation for studying legality, one that seeks to banish any shadowy glimpses of the irresolvability of demarcating law from non-law in the international scenario and, hopefully, aiding international lawyers to navigate their own craft.[47]

Aside from these scholarly tendencies, determining the legality of the WPS resolutions was also motivated by my professional aspirations. As a racialized woman from a working-class background in the Global South, I simply do not look like the 'successful' international law student and/or practitioner – to put the sexist, racist, classist, and colonial environment of the field[48] in mild terms.[49] As much as it pains me to admit the influence of such exclusionary continuities in

[41]See Gordon, *supra* note 19, at 22.

[42]See Klabbers, *supra* note 17; Brunnée and Toope, *supra* note 17; d'Aspremont, *supra* note 17.

[43]On an earlier recognition of the increasing plurality and ways of ascertaining international legal sources see R. Y. Jennings, 'What Is International Law and How Do We Tell When We See It?', in J. Barrett and J.-Pierre Gauci (eds.), *British Contributions to International Law, 1915-2015* (2020), 629, original published in 1983. See also Besson and d'Aspremont, *supra* note 2, at 15.

[44]For instance, see d'Aspremont, *supra* note 17 (drawing mostly on H. L. A. Hart); Brunnée and Toope, *supra* note 17 (drawing on Lon L. Fuller); J. Kammerhofer, 'Sources in Legal Positivist Theories: The Pure Theory's Structural Analysis of the Law', in Besson and d'Aspremont, *supra* note 2, at 343 (drawing on Kelsen).

[45]M. Fitzmaurice, 'The History of Article 38 of the Statute of the International Court of Justice: The Journey from the Past to the Present', in Besson and d'Aspremont, ibid., at 179; O. Spierman, 'The History of Article 38 of the Statute of the International Court of Justice: "A Purely Platonic Discussion"?', in Besson and d'Aspremont, ibid., at 165.

[46]W. Sandholtz, 'How Domestic Courts Use International Law', (2015) 38 *Fordham International Law Journal* 595; Y. Shany, 'Sources and the Enforcement of International Law: What Norms Do International Law-Enforcement Bodies Actually Invoke?', in Besson and d'Aspremont, ibid., at 789.

[47]See Besson and d'Aspremont, *supra* note 2. See also W. G. Werner, *Repetition and International Law* (2022), at 14–16, 26 (commenting on approaches, such as Besson's and d'Aspremont's, which take theorizing about sources of international law as a way to guide international lawyers on how to properly speak and do international law as a profession).

[48]My understanding of the international law field follows the Bourdieusian notion of a 'structured system of social positions—occupied either by individuals or institutions', with rules and logic of functioning that members are expected to follow, and that represents 'a site of a competition for monopoly of the right to determine the law'. See P. Bourdieu, *The Field of Cultural Production* (1993), at 6; P. Bourdieu, 'The Force of Law: Toward a Sociology of the Juridical Field Essay', (1986) 38 *Hastings Law Journal* 805, at 817.

[49]A. Roberts, *Is International Law International?* (2017), at 40; K. Polonskaya, 'Selecting Candidates to the Bench of the World Court: (Inevitable) Politicization and Its Consequences', (2020) 33 *Leiden Journal of International Law* 409, at 409; L. L. S. Pereira and N. Ridi, 'Mapping the "Invisible College of International Lawyers" through Obituaries', (2021) 34 *Leiden Journal of International Law* 67. See also the Symposium on Systemic Racism and Sexism in Legal Academia, *Opinio Juris*, available at opiniojuris.org/category/symposia/themes/. Also, on the ableism of international law, see L. Kulamadayil, 'Ableism

my research, being able to provide a clear answer to intricate and foundational puzzles to the discipline – such as the legality of a norm – represented a golden opportunity for me to prove I could also be fluent in the language of such an exclusive 'invisible college'.[50] In a model minority self-fulfilling prophecy, I approached the legality of the WPS as a project that could legitimate my credentials in the field – in an (in)voluntary attempt to internalize the disciplinary sensitivities of international law[51] and display my aptitude in assimilating them.

As a result, I kept seeking to 'discover' and 'clarify' the legal status of the WPS, in a manner that turned my exchanges into an extractivist exercise: I did not dialogue nor listen to what WPS experts or activists were trying to convey or conceal. Instead, I turned them into objects of extraction towards my goal of ascertaining whether this 'WPS thing' was indeed law or not. More importantly, I adhered to the overall narrative that 'shadowy legalities' should be banned from our analytical results – as if 'clear' and 'distinguishable' legalities were a factual reality to be grasped or, at least, a worthy teleological project to pursue.

However, this project of ascertaining the legality of the WPS gradually disintegrated as my research went further. This is because whenever I looked closer at the empirical sources documenting the rubric's evolution, legality seemed as if a fleeting background accessory. I kept trying to find it in the tiniest details, augment its brightness whenever a mere glimpse of it came to the surface – all of which felt not only exhausting but dishonest.

As explained by Gordon, '[b]eing haunted draws us affectively, sometimes against our will and always a bit magically, into the structure of feeling of a reality we come to experience, not as cold knowledge, but as a transformative recognition'.[52] As I reckoned the challenges of the research paths ahead of me – or my own limitations (no use in finding the culprit) – this drew me affectively towards other methodological paths. More specifically, it animated me towards picking up Fleur Johns's insightful considerations 'against claims that conflicts seemingly turning on questions, principles or "feelings" of legality can and must "rest" or be resolved at all'.[53] Assuming the irresolvability of legality, Johns explains, allows us to dispel imaginaries that legality can be found or constituted against a 'common bedrock or system'.[54] But, most importantly, it enables a less politically foreclosing overview of legality, one that admits zooming in on the often unpredictable ways of crafting legality in international law.[55]

With this methodological re-centralization, my aim with this study is to take Johns' suggestions further and add more granularity as to how to explore legality without taking on a methodological or normative commitment to resolve it. More concretely, my objective here is not to take the WPS case as a means to provide answers on what legality is in international law or how it can (not) be achieved. Instead, my objective here is to take the shadowy legal status of the WPS resolutions and elaborate a framework for understanding legality through what queer Indigenous theorist la paperson dubs 'theorizing from the break'.[56] Drawing on Black American theorist and poet Fred Moten,[57] la paperson explains that:

> [t]he object––which is not a human subject, which is the state of Black being that is already outside of the "human" ethnoclass of Man––resists ... The object resists Eurocentric theory

in the College of International Lawyers: On Disabling Differences in the Professional Field', (2023) *Leiden Journal of International Law* 1.

[50]O. Schachter, 'Invisible College of International Lawyers', (1977) 72 *Northwestern University Law Review* 217.

[51]J. d'Aspremont, 'The Professionalisation of International Law', in J. d'Aspremont et al. (eds.), *International Law as a Profession* (2017), 19, at 34.

[52]See Gordon, *supra* note 19, at 8.

[53]F. Johns, 'Legality', in d'Aspremont and Singh, *supra* note 35, at 647.

[54]Ibid.

[55]Ibid., at 648–9.

[56]La paperson, *A Third University Is Possible* (2017), at 6–7.

[57]F. Moten, *In the Break: The Aesthetics of the Black Radical Tradition* (2003).

"by way of open analytic failure" of that theory; in other words, it resists by dwelling in the "breakdown of the breakdown".[58]

Here I position myself as the racialized subject/object that resists the disciplinary search for clear and solvable legalities, perhaps even abandoning my aspirations to show a docile fluency in international legal theory. Instead, I offer a 'shadow hauntology' for the study of legality, one that invites the researcher's gaze away from where legality shows itself to where, why, and how its shadows shine more brightly.

3.1 Operationalizing a shadow hauntology for the WPS' legality

To operationalize this 'shadow hauntology' for the study of the legality of the WPS, there is first the need to detail what I mean about 'legality' in this study. To zoom in on the unresolved legal projects of the WPS, my usage of the term here is closer to 'whatever people identify and treat through their social practices as "law" (or droit, Recht, etc.)'.[59] Along the same lines, I understand 'legal projects' not as 'incomplete law',[60] but as legality perceptions put in strategic and political action: that is, how actors employ these perceptions to construct a norm as legal in their own terms. This is in line with the approach taken by sociologists within the law and society scholarship, which have focused not on abstract, 'commonly shared' principles to study legality, but on the concrete perceptions of people regarding law and the legal system.[61] For that, the cultural approach taken by Patricia Ewick and Susan S. Silbey to legality[62] – and the scholarship they have influenced[63] – is also particularly illuminating. By drawing on the famous distinction between the 'law in the books' and the 'law in action',[64] they zero in on 'the meanings, sources of authority, and cultural practices commonly recognized as legal, regardless of who employs them or for what purposes'.[65] 'Commonly' here does not mean a homogeneity of law/non-law understandings across the board,[66] but a heterogeneity of actors – including mundane ones – which often do not follow the ideas that circulate among professional or academic legal circles by the book.

This understanding of legality thus entails broadening the scope of who is a relevant actor participating in constructing what is understood to be legal. This hopefully dispels the perspective that only those within the legal profession have access to and/or control of this process.[67] As a result, such conceptualizations of legality enable a more diverse and complex understanding of legality construction, complicating rather than ironing out the path toward a solution for legal ascertainment.

The other conceptual clarification needed for this study is what I mean about 'shadow hauntology' and its relevance to the study of international legality. For that, I take the responsibility of an unfaithful translator of some ideas from past studies in hauntology,[68] sharing

[58]La paperson, *supra* note 56, at 52.

[59]B. Z. Tamanaha, *A General Jurisprudence of Law and Society* (2001), at 194; B. Z. Tamanaha, *A Realistic Theory of Law* (2017), at 73.

[60]See Besson, *supra* note 15, at 170.

[61]For instance, see D. Cooper, 'Local Government Legal Consciousness in the Shadow of Juridification', (1995) 22 *Journal of Law and Society* 506; S. S. Silbey, 'After Legal Consciousness', (2005) 1 *Annual Review of Law and Social Science* 323.

[62]P. Ewick and S. S. Silbey, *The Common Place of Law: Stories from Everyday Life* (1998).

[63]See an overview of this literature on Silbey, *supra* note 61.

[64]R. Pound, 'Law in Books and Law in Action', (1910) 44 *American Law Review* 12.

[65]Ibid., at 347.

[66]By acknowledging that there is no culture uniformly, statically or ubiquitously shared by individuals, it is hard to envision that legality perceptions, while informed by culture, would follow such a pattern. See ibid., at 329, note 2.

[67]Ibid., at 327–8.

[68]On the relevance of 'unfaithful' theory translation see J. H. Miller, 'Border Crossings, Translating Theory: Ruth', in S. Budick and W. Iser (eds.), *The Translatability of Cultures: Figurations of the Space Between* (1996), 207, at 220–3;

an interest in looking at three aspects regarding the agential haunting power of shadows. The first aspect is understanding matrixes of power – such as gender and coloniality[69] – as haunting poltergeists that 'create a confined but powerful room in which to live'.[70] More specifically, I am interested in how these matrixes of power arrange the room for different legal projects to arise (or not). Also inspired by Marysia Zalewski's take on the hauntings and spectrality of gender in international politics,[71] here I would like to focus on the haunted arrangements that gender, as well as North-South/East-West power dynamics, effect in the construction of international legality.

The second aspect is how shadows can have an annoying power in prickling us and making us realize that something-needs-to-be-done. For that, Gordon's exploration of Barthes' *punctum* is particularly relevant.[72] By analysing the affective power of a photograph – that is, how it can draw the viewer in – Barthes indicates that there is usually a division of elements in a photo, namely the stadium and the punctum. The stadium refers to the photograph's familial cultural, historical, and political 'tableaux': 'the recognizable and culturally comprehensible signs of a family, a disaster, a revolution, an atrocity, a loving moment, a dignified portrait'.[73] Because it appeals to our familial, 'cultured habits', the stadium evokes a polite interest: '[i]t may shout, but it does not wound'.[74] On the other hand, the punctum is the unresolved element that pierces, disrupts, and breaks the stadium. More precisely, it refers to those off-centre details, 'wounds' or 'pricks' that punctuate and trigger an affectively moving episode. In Gordon's words, 'the punctum is what haunts. It is the detail, the little but heavily freighted thing that sparks the moment of arresting animation, that enlivens the world of ghosts'.[75] It is, then, the annoyingly sharp detail that shouts, wounds, and animates us towards an affective reaction to the present.

This push, haunted by that which is not resolved, is what Gordon calls 'reckoning'. More precisely, a reckoning is the moment that allows us to 'kno[w] what kind of effort is required to change ourselves and the conditions that make us who we are, that set[s] limits on what is acceptable and unacceptable, on what is possible and impossible'.[76] Reckonings, according to Gordon, often produce transformations which, differently from resistance, 'encompas[s] everything from the ordinary capacity of people to make meaning out of things they use or enjoy but did not make to organized social movements to large-scale revolutions'.[77]

And this connects to my third interest: exploring the reckonings that, animated by haunting shadows in themselves, produce shadows as transformations. I am then curious about the reckoning-inspired moves that masquerade the visibility of something – those weird turnarounds that, despite moving something to an uncanny, paradoxical corner, strengthen

I. Chambers, 'Theory, Thresholds and Beyond', (2010) 13 *Postcolonial Studies* 255. On hauntology endeavours that inspire my own see J. Derrida, *Specters of Marx: The State of the Debt, the Work of Mourning and the New International* (2011); Gordon, *supra* note 19; D. Hollan, 'Who Is Haunted by Whom? Steps to an Ecology of Haunting', (2019) 47 *Ethos* 451.

[69]Here I follow a Butlerian-inspired notion of gender, one that draws from her conceptualization of the 'heterosexual matrix', which related to the: 'grid of cultural intelligibility through which bodies, genders, and desires are naturalized' (J. Butler, *Gender Trouble: Feminism and the Subversion of Identity* (1999), at 194, note 6.) As for the concept of 'coloniality', I build on Quijano's and Lugones's conceptualizations of the term, which relate to the pervasiveness of colonial modes of dispossession, racialization, and cultural exclusion of territories, bodies, and knowledges. See A. Quijano, 'Coloniality of Power and Eurocentrism in Latin America', (2000) 15 *International Sociology* 215; M. Lugones, 'Toward a Decolonial Feminism', (2010) 25 *Hypatia* 742.

[70]See Gordon, *supra* note 19, at 207.

[71]M. Zalewski, 'Gender Ghosts in McGarry and O'Leary and Representations of the Conflict in Northern Ireland', (2005) 53 *Political Studies* 201.

[72]See Gordon, *supra* note 19, at 106–8.

[73]Ibid., at 106.

[74]Ibid.

[75]Ibid., at 108.

[76]Ibid., at 202.

[77]Ibid.

their force.[78] Here, I am particularly keen to look at how actors may end up building a successful legal norm not by resolving it but by further complicating it. In other words, I want to explore better how actors can thrive on a norm's continued unresolved legal status to generate more far-reaching (legal) results.

4. Legality as an afterthought: The haunted absence of a legal project for UNSCR 1325

> I mean, now we have the luxury of sitting there and saying, oh, it's not legal, oh, it's not this, but getting your foot in was such a big deal. So yes, people were writing saying that we don't have a legal status and we didn't think about enough at the beginning. It's true, we didn't think about it enough at the beginning, it crossed everybody's mind, but that was not the focus. So, that's the background of how we came about it and so on and so forth, and why the focus was just getting there and getting as many issues on the table as possible ... And you had to get the political thing first before the legal.[79]

In my conversations with key insiders of the negotiations for the adoption of Resolution 1325, the overall sense was that the legal project for the resolution was a secondary concern vis-à-vis the gendered politics of the Security Council. In this section, I delineate how the gender politics of international security diplomacy acted as powerful haunting shadows that shaped the priorities and contours of the project for Resolution 1325. To understand that, it is first necessary to understand the context from which the WPS project arose.

While a 'feminist project of peace' can be more accurately linked to the century-old history of women's peace activism in the international scenario,[80] the discussions and initiatives that followed from the inclusion of the topic 'Women and Armed Conflict' in the 1995 Beijing Declaration and Platform for Action (Beijing Platform[81]) are a commonly cited turning point towards the project of having a dedicated *Security Council resolution* on the theme. In the forty-second session of the Commission on the Status of Women (CSW) of 1998, the formation of the Women and Armed Conflict Caucus – a group of INGOs, co-ordinated by the Women's International League for Peace and Freedom (WILPF) – was pivotal for the road to the Security Council. The Caucus not only led the outcome document of the Commission that sought to revise the Beijing Platform and propose better operationalization of its areas of concern, but the discussions held at this session also spurred the realization that, for the Beijing Platform to advance in the areas of women and security, there was a need to move it from the 'women's agenda' to the 'main agenda' – namely, the Security Council's agenda of international security.[82]

While the hopes of feminist INGOs in getting the topic of women and armed conflict to the UNSC were ambitious, they were not too improbable. As one of the key insiders that worked with WILPF reminded me, the project of Resolution 1325 in the Security Council arose from a desire to 'seiz[e] a moment, a trend, where the Council was focusing on thematic issues—children and armed conflict, civilians and armed conflict—and deciding to ride that and see what we

[78]Ibid., at 17.

[79]Interview with Isha Dyfan on March 2022, in file with the author. Dyfan worked at the Women's International League for Peace and Freedom at the time of the adoption of Resolution 1325 and was one of the founding members of the NGO Working Group. After the passage of UNSCR 1325, she continued working on themes of women, peace, and security for international NGOs for seven years. She is currently the UN Independent Expert on the situation of human rights in Somalia.

[80]C. Cockburn, *From Where We Stand: War, Women's Activism and Feminist Analysis* (2008).

[81]United Nations, Beijing Declaration and Platform of Action, adopted at the Fourth World Conference on Women, 27 October 1995, available at https://www.unwomen.org/sites/default/files/Headquarters/Attachments/Sections/CSW/PFA_E_Final_WEB.pdf.

[82]See Cockburn, *supra* note 80, at 139–40.

could get'.[83] Legal concerns, at that stage, were not necessarily on the horizon: 'It was very much about the policy and political opportunity and the norm building action potential, not about legally binding.'[84]

In the discussions held at the forty-fourth session of the CSW in March 2000, this exercise of riding the wave of thematic norm production from the Security Council started to take a more solid shape.[85] This session served as a Preparatory Committee of the General Assembly Special Session 'Beijing+5', scheduled in June that same year.[86] Before and during this session, feminist transnational civil society articulated a robust advocacy campaign to gain traction for a better implementation of the commitments taken by states and the UN on issues of women and armed conflict.[87] Their efforts proved very successful, especially in getting the support of key actors of the UN machinery attending the CSW forty-fourth session. One of them was Ambassador Anwarul Chowdhury of Bangladesh, who presided over the Security Council at the time. His openness to the campaign and the idea of having a Security Council resolution on the theme was crucial to articulating feminist concerns to the Council's membership.[88] On 8 March 2000, his commitment to getting the 'women's agenda' to the Security Council agenda was concretized through a formal statement recognizing that 'peace is inextricably linked with equality between women and men'.[89] As explained by Sanam Naraghi-Anderlini, the weight of this press release was significant: since it had been adopted via collective negotiation at the Council – and not merely through the Presidency alone – the statement meant that women's concerns with peace and security were now formally on the agenda of the UNSC.[90] As echoed across the literature narrating the efforts leading up to the adoption of Resolution 1325, this formal statement was hailed as the first step in 'cracking open the doors to the impenetrable Security Council'.[91]

What followed was a concerted effort by feminist INGOs to push for an open debate at the Council. Through the newly formed NGO Working Group on Women, Peace and Security – which originated from the Women and Armed Conflict Caucus and counted with members from WILPF, the Hague Appeal for Peace, Amnesty International, the Women's Commission for Refugee Women and Children, International Alert, and the Peace Education Center at Teachers College of Columbia University – feminist activists sought to keep the momentum after the Presidency of Bangladesh came to term.[92] In their campaign, they arranged several meetings with UN Security Council members and, more importantly, elaborated the first draft of a Security Council resolution. This first draft was penned down by Florence Martin of Amnesty International, which, according to Anderlini, 'had some experience in *legal* drafting'.[93] This is

[83]Asynchronous interview held between 21 March 2022 and 20 April 2022 with key insider that worked at the Women's International League for Peace and Freedom at the time of the adoption of Resolution 1325, and one of the founding members of the NGO Working Group. In file with the author. On a concurring view, see also L. J. Shepherd, 'Power and Authority in the Production of United Nations Security Council Resolution 1325', (2008) 52 *International Studies Quarterly* 383, at 393.

[84]Ibid.

[85]See Cockburn, *supra* note 80, at 140.

[86]S. N. Anderlini, 'Civil Society's Leadership in Adopting 1325 Resolution', in S. E. Davies and J. True (eds.), *The Oxford Handbook of Women, Peace, and Security* (2019), 38, at 43; 'Commission on the Status of Women-Follow-up to Beijing and Beijing + 5', available at www.un.org/womenwatch/daw/csw/44sess.htm; United Nations, '23rd Special Session of the General Assembly', available at www.un.org/en/conferences/women/newyork2000.

[87]See Anderlini, ibid., at 41–6.

[88]Ibid., at 45.

[89]United Nations Security Council, 'Press Release SC/6816', 2000, available at www.un.org/press/en/2000/20000308.sc6816.doc.html.

[90]See Anderlini, *supra* note 86, at 45.

[91]Ibid; F. Hill, M. Aboitiz and S. Poehlman-Doumbouya, 'Nongovernmental Organizations' Role in the Buildup and Implementation of Security Council Resolution 1325', (2003) 28 *Signs: Journal of Women in Culture and Society* 1255, at 1257; Cockburn, *supra* note 80, at 140; Tryggestad, *supra* note 3, at 547.

[92]See Anderlini, *supra* note 86, at 44.

[93]Ibid., at 46 (emphasis added).

perhaps the only instance, among the specialized literature, where a legal project is mentioned in the negotiation process. Again, the brevity of this legality concern is outshone by the many other barriers surrounding the work of feminist advocates at the time. For instance, during the meetings of these activists with Security Council members, some (gendered) resistance – or yet inattention – became visible.[94] In a written exchange with a key insider that worked with WILPF at the time, she recounted that:

> [There was this time] when a P-5 Ambassador walked in when we were speaking to his colleagues at the mission. He said, rather haughtily, "I've got a few minutes. Tell me what you want." And we did. "We want a resolution, (i.e. not a Presidential statement or Press statement—the other two actions the Security Council can take). We want peacekeeping in there. We want the peace table in there and we want a report. There is a lot more we'd like but they are must haves". "Fine [he said]. We can try all that. Continue talking with my colleagues but I have to go." It was good that we could rattle it off—that we knew what we wanted—and that we didn't take his precious time (several thousand expletives deleted).[95]

Moreover, some accounts highlight that the Russian and Chinese delegations were the ones that most explicitly expressed their concerns against expanding the Security Council into 'softer' agendas such as human rights.[96] However, in my conversation with insiders, one stressed that *all* P5s 'did not want us to discuss women'.[97] She explained that P5s were adamant that women's issues did not belong in the Security Council, directing feminist advocates to the Economic and Social Committee or the Commission on the Status of Women instead.[98] As already explored by previous works, such a move is closely linked to a gendered division concerning the UN's architecture. In this division, 'hard' issues such as security are coded as masculine and allocated to bodies with coercive powers at their disposal (i.e., the UNSC), whereas 'soft' topics such as social, economic, cultural, and humanitarian issues are coded as feminine and relegated to the Economic and Social Council, the General Assembly and other similar bodies that have no teeth for their decisions.[99]

At that moment, the support of the Namibian Ambassador, Martin Andjaba, is often considered a turning point in boosting the project of Resolution 1325 forward. Although feminist INGOs were harnessing the support of several countries – especially western countries such as the Netherlands and Canada – they were actively concerned about pushing the resolution to be spearheaded by a country from the Global South.[100] Namibia then arose as the perfect candidate for such a task: not only did they have a Presidential seat in the Council in that upcoming October, but they also had just hosted and led the review panel organized by the UN Department of Peacekeeping Operations on 'Mainstreaming a Gender Perspective in

[94]Ibid.

[95]Interview with key insider that worked at the Women's International League for Peace and Freedom at the time of the adoption of Resolution 1325, and one of the founding members of the NGO Working Group. In file with the author.

[96]See Anderlini, *supra* note 86, at 46–7.

[97]Interview Cora Weiss on 22 February 2022, in file with the author. She is currently the President of the Hague Appeal for Peace, was formerly the President of the International Peace Bureau, and is a Nobel Peace Prize nominee. She was one of the drafters of UNSCR 1325 and an original member of the NGO Working Group. She is now an Adviser to the Global Network of Women Peacebuilders.

[98]Ibid.

[99]S. Gibbings, 'Governing Women, Governing Security: Governmentality, Gender Mainstreaming and Women's Activism at the UN', (Master thesis, York University, Faculty of Graduate Studies 2004), at 40–1. See also D. Otto, 'The Security Council's Alliance of Gender Legitimacy: The Symbolic Capital of Resolution 1325', in H. Charlesworth (ed.), *Fault Lines of International Legitimacy* (2010), 239, at 257.

[100]See Cockburn, *supra* note 80, at 141.

Multidimensional Peace Support Operations', which culminated in the Windhoek Declaration and Namibia Platform for Action.[101]

From securing the commitment of the Namibian delegation to the adoption of Resolution 1325, feminist INGOs had to wait a little outside.[102] The work at this stage was primarily done internally: states had to negotiate the final version of the resolution privately and, for that, Aina Liyambo, a young woman in the Namibian delegation, is said to have been a critical actor in guaranteeing that the initial concerns of feminist civil society were not entirely left out of the final text.[103] The role of the only woman representative of a Security Council member at the time, the Jamaican Ambassador Patricia Durant, is also considered crucial for guaranteeing that her male colleagues would not diminish the importance of the project of Resolution 1325.[104] A final exchange between Security Council members and civil society took place on 23 October 2000 via an Arria Formula Meeting[105] – with a meaningful presence of African and Latin-American civil society.[106] A two-day open debate on Women, Peace and Security at the UNSC followed, with outstanding support from member states.[107]

On 31 October, UNSCR 1325 was unanimously adopted, resulting in a document addressed to all member states of the UN and not just those within the agenda of the Council.[108] As shared across the literature, this was a historical day: with the Security Council gallery full of women, [109] the haunting shadows of gendered diplomacy appeared as if dissipated:

> My God, when it was unanimous … you can't clap in the Security Council [but] we clapped—we could not believe we had done it. We clapped, and some people got up. [Because getting this resolution] there [in the Security Council] was like, *you were coming from darkness to light*.[110]

5. Presage to a reckoning: Legality surfacing as an annoying reminder that something (still) needed to be done

Pinpointing when legality started to become a pebble in the shoe of the WPS activists is not at all straightforward. In the lack of more precise data on this moment, I had to scout for it. To my surprise, I found wildly different stories on the subject. I say 'surprise' because my pool of interviewees was by no means big: out of the three interviews I was able to secure – with all of them being founding members of the NGO Working Group – they all provided me complete distinct stories about when, why, and how legality debates around the WPS popped up. The first one is narrated by a woman from a more political background, who nevertheless attended law school but had to drop it both due to constant harassment from professors and her personal choice to marry a lawyer.[111] A few excerpts of my conversation with her are worth mentioning in full:

[101]UN General Assembly and Security Council, 'Letter Dated 12 July 2000 from the Permanent Representative of Namibia to the United Nations Addressed to the Secretary-General', UN Doc. A/55/138–S/2000/693 (2000), available at undocs.org/S/2000/693.

[102]See Anderlini, *supra* note 86, at 47–8.

[103]Ibid.

[104]See Cockburn, *supra* note 80, at 142.

[105]Ibid.

[106]Ibid.

[107]UNSC, 55th year, 4208th meeting, UN Doc. S/PV.4208 (24 October 2000), available at undocs.org/S/PV.4208.

[108]See Anderlini, *supra* note 86, at 48.

[109]See Cockburn, *supra* note 80, at 143; Anderlini, ibid., at 42; Hill, Aboitiz, and Poehlman-Doumbouya, *supra* note 91, at 1260.

[110]Interview with Isha Dyfan. On file with the author (emphasis added).

[111]Interview with Cora Weiss. On file with the author.

Interviewee: [The story of how legality was brought to the table] is an important story, because … a lot of the women who were sitting around the table for a few weeks doing this, doubted that it would have any impact because it was adopted and not voted. I said, "Wait a minute, I'm going to get the lawyer to tell us", and I told the lawyer for the United Nations at that time, … Kofi Annan's lawyer. We made a breakfast date—because breakfast was a very common thing to do then—… and only … I can't remember … Only two or three women showed up. He sat at the head of the table, and I said, "Okay. Tell us why … Tell us if this is international law." He took his jacket, put his hand into his inside pocket … took out the Charter, and read us [Article] 25. And [it] says that every member state agrees [to carry out Security Council decisions], it doesn't matter whether you have mandating language or not … [This] was a worrying concern within days of weeks after [the adoption] …

Me: Then people would not have this [legality] discussion anymore?

Interviewee: No. That's when the doubters [of 1325] became evident … And then all we had to say was "it's the law that you have to carry out the decisions of the Security Council".

Me: Okay. I know it's been 22 years, so I don't want to try your memory any longer, but do you remember who brought these [legality] concerns to the table?

Interviewee: No. It was a significant enough number, so that's why we had to call on the lawyer.[112]

Here, the differentiation between 'them' (the advocates for 1325) and 'the UN lawyer' is interesting as it seems to presuppose a stark division between international lawyers and feminist activists pushing for the agenda. The 'international lawyerly' vision represented here[113] – and, as narrated by the insider, taken as a decisive solution for the topic among WPS activists – speaks much more of the power of the UNSC as granted by the UN Charter than anything else. However, another insider spoke differently as to the power of the Council and the legality envisioned by initial drafters of UNSCR 1325:

> We (the working group) definitely understood that the resolution was not made under Chapter 7 and was therefore not [legally] binding. We also understood that the resolution did not include that vital last line exist 'the council remains seized of the matter' which means it is an item on the Security Council agenda. Very many people are ignorant of procedure, protocol and the precise nature of powers of UN bodies, so when discussion or questions happened around whether it was legally binding, my answer and those I heard and listened to, definitely informed people that the resolution was not legally binding, but was a norm building exercise, a kind of rhetorical self-entrapment that some regime theorists go on about.[114]

Whereas this last legality account seems closer to what international lawyers would have liked to hear, it lacks the more formalistic reflections on demanding language or state consent – elements so often underscored among (feminist) legal discussions about the topic. Instead, the insider here

[112] Ibid.

[113] In her analysis of Article 25 as 'solving' or not the legal status of the WPS, Chinkin (*supra* note 3, at 43–4) draws from ICJ jurisprudence to note that the aforementioned provision would not be that decisive. Rather, what would carry a heavier weight for the ascertainment of the legal status of a UNSC resolution would be its language – that is, whether it is couched in forceful terms or not. As explained previously, the WPS is mostly framed within recommendatory tones.

[114] Interview with key insider that worked at the Women's International League for Peace and Freedom at the time of the adoption of Resolution 1325. On file with the author.

points to legality as a matter of procedure and protocol. In this sense, legality appears as relating the powers of UN bodies – a much more international bureaucrat vision of legal rules than that of building custom or featuring treaty-like obligational language.

Another insider – a legally trained human rights practitioner, also an original member of the NGO Working Group – provided a different story as to how the first contours of a legal project to the WPS formed:

> So, I think we started to get an idea of [legal] status when we pushed for an Arria formula. I think that was the point that we started saying, oh, I think they may be now thinking that we could get a resolution, so what would this resolution be? And some people were saying: "ah, please, let's just make sure we get that Arria formula go through because every step is like pulling teeth with these people". And we were still not convinced what we thought we had broken many, many, many barriers by that time … So, [the concern with the legal status] came much later because we were all agreed at that point of the Arria that we would go for this broad statement, once we get our foot in, we will start to pound. That was the strategy. We will then start to say, okay, elaborate on this paragraph, elaborate on that … We felt that we had succeeded in actually moving the needle forward and broken the glass ceiling. We felt that way, even though the content is not as mandatory as one would've liked, or as legal as one would've liked. But the scope that was covered was sufficient for us to draw from it and expand it.[115]

The legality perception noted here, again, evades a more traditional account. 'Mandatory' and 'legal', differently than feminist and traditional accounts on the legality of UNSC resolutions, appear as if divorced. Moreover, any traditional account of legal sources, or appeal to state will are placed in the background. Instead, legal status appears here as a matter of (more) feminist political persistence and precision. It arises as needing continued feminist activism to elaborate on and increment the paragraphs already achieved, as well as by penning the subsequent resolution with more precision.

Despite their differences, in all of the three accounts, the discussions on the legal status of the WPS arise as an annoying realization – or yet as a staunch response to 'doubters' or 'very many people [that] are ignorant about protocol' – of what the project of Resolution 1325 *could have been* if legal from the start (with 'legal' here carrying different meanings to each actor). Moreover, the issue of an unresolved legality seems to have surfaced through interactions with outsiders to the inner circle of WPS advocates: either prompted by the ones that doubted the project, by people outside the working group, or within the course of an Arria Formula meeting. Catching WPS activists by surprise in the almost mythical moments when Resolution 1325 was either short of being adopted or briefly after the celebrations for its adoption, this unresolved legality then materializes as an annoying presage that a 'something-to-be-done' concerning the legal status of the WPS would be needed if the agenda were to have an impact in the years to come. In the next section, I explore the initial context of the implementation of the agenda, and how coloniality and power shifts in the Security Council would rearrange the room for the WPS to become a legal shadow of its own.

6. Another poltergeist moment: Colonial and power shadows arranging the room for an upcoming legal project for the WPS

Whereas the achievement of getting the 'women's agenda' into the 'Security Council agenda' was a highly commemorated event, the initial enthusiasm waned with the lack of implementation and diffusion of Resolution 1325 in its earlier years.[116] Its 'softness' has usually been put to blame.

[115]Interview with Isha Dyfan. On file with the author.

[116]See, for instance, UN Security Council, 5066th meeting, UN Doc. S/PV.5066, available at undocs.org/S/PV.5066.

Without more forceful language or a yet dedicated accountability mechanism, keeping the agenda's compliance pull was considered a particularly vulnerable deal, mostly dependent on the goodwill of individual states (within or outside the Security Council membership).[117] Amidst concerns with implementation, new perceptions around the legal status of the WPS appeared. In 2009, Torunn Tryggestad indicated that state representatives were usually opposed to considering the WPS as a legal obligation, especially those from the Group of 77 (G77), as its Security Council birthmark was seen as indicative of a western imposition.[118] While this can sit uneasily with the leadership position of third-world states in pushing the adoption of UNSCR 1325, Tryggestad explains that this shift in perspective is understandable as the divide between North-South/East-West in the Security Council was heightened after 9/11 and the counterterrorist regime ensuing UNSC Resolution 1373(2001).[119] This point is crucial. Aside from a mere shift in the position of third-world states towards the agenda, I argue that these North-South/East-West divides and dynamics significantly arranged the room for subsequent legal projects around the WPS.

As detailed previously, the support of third-world states, such as Bangladesh, Namibia, and Jamaica, was indispensable to the adoption of Resolution 1325. While this can be read as a product of individual agency and interpersonal relations between feminist activists and third-world state representatives, it is also possible to understand it as an opportunity they seized to make their voices heard – and remembered – in international norm production. In this regard, for instance, Sheri Gibbings documents that Namibia's explicit support for a resolution was also motivated because it represented an opportunity for the Namibian delegation to capitalize on introducing the topic to the Council and thus have its Presidency remembered positively.[120] Against this background, one is left to wonder whether the prospect – however misleading it might have been – of a more 'democratic', 'transparent', and less deadlock-prone Security Council in the late 1990s and early 2000s did not resonate with the previous experience of third-world states in pushing for law-making through resolutions at the General Assembly in the 1970s.[121] In that sense, (legal) norm-making through the Security Council could have appeared as an interesting possibility to yield a symbolically powerful and far-reaching leadership in international lawmaking, without the need to undergo the arduous process of consensus-based multilateral negotiations.

Despite this connecting thread, thematic norm production in the Security Council has specific instabilities by design. The unrepresentative membership scheme of the UNSC is, of course, the issue at stake here. Unlike the General Assembly, the Council has a club-like structure,[122] instead of resembling a legislature through universal membership. Moreover, no G77 member is a permanent member of the Council. From what follows, whichever 'opportune' moment that

[117]See Swaine, *supra* note 3, at 408–9; S. Willett, 'Introduction: Security Council Resolution 1325: Assessing the Impact on Women, Peace and Security', (2010) 17 *International Peacekeeping* 142.

[118]See Tryggestad, *supra* note 3, at 549.

[119]Ibid.

[120]See Gibbings, *supra* note 99, at 50–1.

[121]I thank Prof. B. S. Chimni for raising this point when commenting an earlier version of this draft, presented at the 'Alternative Approaches to International Organizations' conference, held at the Graduate Institute (Geneva) in October 2021. On the third-world effort to make law through the UNGA see, among others, M. E. Ellis, 'The New International Economic Order and General Assembly Resolutions: The Debate over the Legal Effects of General Assembly Resolutions Revisited', (1985) 15 *California Western International Law Journal* 647, at 661; H. W. A. Thirlway, *International Customary Law and Codification* (1972), at 5–6; B. S. Chimni, 'Customary International Law: A Third World Perspective', (2018) 112 *American Journal of International Law* 1, at 36–7; Charlesworth and Chinkin, *supra* note 18, at 136–7; Q. Slobodian, *Globalists: The End of Empire and the Birth of Neoliberalism* (2018), at 220; N. Gilman, 'The New International Economic Order: A Reintroduction', (2015) 6 *Humanity: An International Journal of Human Rights, Humanitarianism, and Development* 1, at 6; M. E. Salomon, 'From NIEO to Now and the Unfinishable Story of Economic Justice', (2013) 62 *International & Comparative Law Quarterly* 31, at 661–2; C. O'Hara, 'Consensus Decision-Making and Democratic Discourse in the General Agreement on Tariffs and Trade 1947 and World Trade Organisation', (2021) 9 *London Review of International Law* 37.

[122]N. Krisch, 'The Decay of Consent: International Law in an Age of Global Public Goods', (2014) 108 *American Journal of International Law* 1.

law-making through the Security Council may have offered to third-world states was likely short-lived. For that, two contextual developments must be considered.

First, unauthorized uses of force by the US in the Second Gulf War, the Kosovo campaign, and the Afghanistan invasion 'led to serious questions as to whether the Security Council could function at all without a second superpower to counterbalance US dominance'.[123] Against this background, the formation of the Russian Federation quickly filled in the bipolar power vacuum left by the dissolution of the USSR. With this re-strengthening of Russia as a global political force, it resumed its usage of the veto more regularly (with the support of China). This context matters here because, given both Russia's and China's consistent opposition to expanding the purview of the Security Council into human rights and humanitarian issues,[124] thematic resolutions such as the WPS were soon towered over with concerns of veto use.

Second, the very own project of UNSCR 1325, although arguably racialized and western-centric from the start,[125] became gradually more entangled with the racial and imperial tensions of the post-9/11 security paradigm[126] – all of which served as a background to the agenda's first years of implementation. This is observable, for instance, through a glance over the National Action Plans (NAPs) elaborated by states to implement the WPS agenda in the years between the first of the WPS resolutions, UNSCR 1325, and the one that followed it, UNSCR 1820.[127] Twelve states adopted NAPs during this period: Denmark (2005, 2008), the United Kingdom (2006), Norway (2006), Sweden (2006), Spain (2007), the Netherlands (2007), Switzerland (2007), Austria (2007), Iceland (2008), Finland (2008), Côte d'Ivoire (2008), and Uganda (2008).[128] The western predominance here is clear. More than that, all but one (UK) of these western countries adopted their NAPs under their Foreign Affairs ministries,[129] a move regarded as indicative of an 'outward-facing' policy on WPS – that is, one that carries imperialist undertones by understanding the agenda as a matter to be applied 'elsewhere', most notably in third-world countries where the West holds military bases or peacekeeping missions.[130]

The visuals[131] of several of these NAPs are also telling of their 'outward-facing' profile: Denmark's 2006 and 2008 NAPs are illustrated with the faces of brown and Black women and children – a trend also followed by the Netherlands in their 2007 document, and by Finland in their 2008 NAP.[132] Norway's 2006 policy delineation is also rife with racialized women disproportionately in the role of supposed victims in contrast with white Norwegian women

[123]T. P. Paige, *Petulant and Contrary: Approaches by the Permanent Five Members of the UN Security Council to the Concept of 'threat to the Peace' under Article 39 of the UN Charter* (2019), at 19.

[124]For a systematic and detail-rich analysis of the positions of Russia and China regarding the concept of 'threat to the peace', see ibid., at 261–76; T. P. Paige, 'The Bear and the Dragon: Pragmatism and State-Centric International Law in the UN Security Council', (2021) 90 *Nordic Journal of International Law* 446.

[125]N. Pratt, 'Reconceptualizing Gender, Reinscribing Racial–Sexual Boundaries in International Security: The Case of UN Security Council Resolution 1325 on "Women, Peace and Security"', (2013) 57 *International Studies Quarterly* 772; M. Henry, 'On the Necessity of Critical Race Feminism for Women, Peace and Security', (2021) 9 *Critical Studies on Security* 22.

[126]See Pratt, ibid.

[127]As detailed by previous studies, NAPs are a good indicative of state commitment to the WPS and its assumptions regarding the agenda. See Shepherd, *supra* note 83; Swaine, *supra* note 3.

[128]For an incredibly helpful overview of NAPs over the years see wpsnaps.org.

[129]Both Côte d'Ivoire and Uganda adopted their NAPs through government ministries that dealt with gender/women perspectives, and not under their ministries of Foreign Affairs.

[130]See Hamilton, Naam and Shepherd, *supra* note 25; L. J. Shepherd, 'Making War Safe for Women? National Action Plans and the Militarisation of the Women, Peace and Security Agenda', (2016) 37 *International Political Science Review* 324; Swaine, *supra* note 3.

[131]On another (much more sophisticated) visual analysis of NAPs see C. Achilleos-Sarll, '"Seeing" the Women, Peace and Security Agenda: Visual (Re) Productions of WPS in UK Government National Action Plans', (2020) 96 *International Affairs* 1643.

[132]Ministry of Foreign Affairs of Denmark and the Ministry of Defence, 'Denmark's Action Plan on Implementation of Security Council Resolution 1325 on Women and Peace and Security', 2005, available at www.wpsnaps.org/app/uploads/2019/09/Denmark-NAP-1-2005.pdf; Ministry of Foreign Affairs, 'Dutch National Action Plan on Resolution 1325: Taking a Stand

soldiers, something present in the Austrian and Icelandic NAPs of 2007 and 2008, respectively.[133] All this, coupled with the context of 'gender issues' being interwoven into narratives of interventionism and pre-emptive security after 9/11,[134] contributed to the increasing association of the WPS with a western, imperialist mode of security governance.

Against this background, the legality contestations animated by G77 members for the WPS gain a broader context. Instead of a mere formalistic discussion, the challenges of third-world countries regarding the agenda's legal status are towered over by western and interventionist contours of early implementation efforts with the agenda. The initial feminist-Global South alliance was then starting to show the signs of its fallibilities: given its embeddedness in the power politics of the Security Council and of global security more broadly, the WPS project was ultimately gender and race re-inscribed by the geopolitical tensions unfolding after 9/11.[135] In that sense, the WPS then started to serve as a continuity, rather than a break from, old matrixes of gender and colonial schemes in the production of legal norms.[136] This, I suggest, was a powerful room re-arrangement that significantly shaped the legal projects for the WPS that would be accomplished by subsequent resolutions under the rubric.

7. The reckoning: Turning the WPS into a legal shadow of its own

Against this increasingly contentious scenario regarding the WPS and its legal status, in this subsection, I explore how the agency of UN gender experts re-branded the WPS from a western project to a UN 'legal-technical' project. This move, I argue, was successful not because it cast more light onto the contested legal status of the agenda. Instead, it pushed the WPS into even more shadowy corners of international legality.

At this point, it is necessary to clarify that the ownership of the resolution following 1325 – UNSCR 1820 – is not too clear-cut. Otto, for instance, indicates that Resolution 1820 was primarily a US-led project, and that the participation of the NGO Working Group was, at best, a submissive one.[137] My interviewees also demonstrated a disconnect between original WPS activists and the resolutions that followed 1325. When speaking about Resolution 1820 and subsequent documents, one of the insiders I spoke to excused herself and retorted: '[t]he most important single thing about 1325 was that it's a product of civil society. It's not a government document. Now [the rubric] is a government document … I am not a follower of the "daughters of 1325"'.[138] Another insider answered the same question with similar disinterest: 'I don't know anything about subsequent resolutions or the mechanisms that came as I stopped following the issue.'[139]

While governments – especially the US one – were indeed crucial actors in the adoption of UNSCR 1820, the agency of UN gender experts in the negotiation and design of this resolution

for Women, Peace and Security', 2007, available at www.wpsnaps.org/app/uploads/2019/09/Netherlands-NAP-1-2008-2011.pdf.

[133]Norwegian Ministry of Foreign Affairs, 'The Norwegian Government's Action Plan for the Implementation of UN Security Council Resolution 1325 (2000) on Women, Peace and Security', 2006, available at www.wpsnaps.org/app/uploads/2019/09/Norway-NAP-1-2006.pdf; Ministry for Foreign Affairs, 'Women, Peace and Security: Iceland's Plan of Action for the Implementation of United Nations Security Council Resolution 1325 (2000)', 2008, available at www.wpsnaps.org/app/uploads/2019/09/Iceland-NAP-1-2008.pdf.

[134]Z. Eisenstein, *Sexual Decoys: Gender, Race and War in Imperial Democracy* (2007); M. Denike, 'The Human Rights of Others: Sovereignty, Legitimacy, and "Just Causes" for the "War on Terror"', (2008) 23 *Hypatia* 95.

[135]See Pratt, *supra* note 125.

[136]See Tryggestad, *supra* note 3.

[137]D. Otto, 'Power and Danger: Feminist Engagement with International Law through the UN Security Council', (2010) 32 *Australian Feminist Law Journal* 97, at 109–10.

[138]Interview with Cora Weiss. On file with the author.

[139]Interview with hekey insider that worked at the Women's International League for Peace and Freedom at the time of the adoption of Resolution 1325. On file with the author.

was also quite prominent.[140] In her exploration of the issue, Megan Dersnah indicates that one of her respondents went as far as saying that Resolution 1820 was 'UNIFEM's baby', therefore being driven by insiders of the UN system rather than civil society or state initiative.[141] Concerned with the slow and fragmented progression of WPS implementation, Dersnah explains that gender UN experts sought to streamline and centre the WPS into one pillar in particular: conflict-related sexual violence (CRSV). By re-framing the WPS through a more narrow focus on CRSV, gender experts were able to embed the WPS within a security narrative that resonated with a 'protectionist logic' towards women and girls, thus shying away from the more contentious issues of UNSCR 1325 such as the participation and agency of women in peace processes.[142] More importantly, the CRSV theme was also attached to a broader framework of global legal norms on humanitarian law, which served as a firm basis on which UN gender experts could rely for advancing progress with the WPS.[143] The result of this expert-led mobilization was UNSCR 1820(2008): a resolution with a much more forceful tone than UNSCR 1325, as well as with important prompts for accountability and monitoring mechanisms.[144]

While Dersnah focuses on the power of gender expertise in shifting the focus of the agenda to its CRSV pillar,[145] here I would like to focus on how this gender expertise re-created the WPS as a legal-technical project that propelled even further the shadowy legality of the WPS. More specifically, I argue that UNSCR 1820 and its ensuing accountability and implementation architecture complicated even more the legal status of the WPS, in a manner that transformed the agenda into an irresolvable hybrid of binding and non-binding, consensual and impositional, legal and political. For that, I build on Isobel Roele's insightful explorations of subsidiarity and infra-law regimes created around quasi-legislative resolutions of the Security Council, namely Resolution 1373 (2000) and Resolution 1540 (2004).[146] Following a Foucauldian approach to disciplinary power, Roele explains that the administrative and technical-based architecture created to assist states in implementing these resolutions disciplines them 'under the radar' and in a capillary fashion.[147] In that regard, the multiple and decentralized administration pursued by the UNSC in the regime mentioned above 'transform[s] incompetent states' into complying ones through mechanisms of assistance and standardization of implementation, to completely regulate the international space.[148] Roele indicates that such a form of legal-technical capillary control is obscured by the open texture of the resolutions, coupled with a narrative that states are free to implement UNSC resolutions in their own manner – offering, then, a 'notion of national responsibility shorn on national control'.[149] As a result, these 'infra-law' regimes remain on the 'dark side' of the legal order.[150]

I argue that all this was achieved for the WPS in three steps. First, this legal-technical project took the contentious legal status of WPS out of the spotlight: it centred it as a normative framework that mirrored other legal obligations taken multilaterally (and therefore arguably outside a mere 'western' influence). Second, it borrowed from the language of expertise to lend an aura of objectivity and complementarity: experts would only *assist* states in implementing the

[140]M. A. Dersnah, 'United Nations Gender Experts and the Push to Focus on Conflict-Related Sexual Violence', (2019) 2 *European Journal of Politics and Gender* 41.

[141]Ibid., at 46.

[142]Ibid., at 46–8; E. O'Gorman, 'WPS and the Special Representative of the Secretary-General for Sexual Violence in Conflict.', in Davies and True, *supra* note 86, at 306.

[143]See Dersnah, *supra* note 140, at 47.

[144]Ibid., at 51.

[145]Ibid., at 52.

[146]I. Roele, 'Sidelining Subsidiarity: United Nations Security Council Legislation and Its Infra-Law', (2016) 79 *Law & Contemporary Problems* 189.

[147]Ibid., at 204.

[148]Ibid., at 196.

[149]Ibid., at 189.

[150]Ibid., at 198.

agenda for issues grounded in existing legal obligations, namely CRSV. Third, it did all this by surreptitiously approximating the agenda to the sanctions mechanism of the Security Council, thus sharpening the teeth of gender mainstreaming in international security.

To understand how this has played out in reality, it is necessary to unpack the accountability language of UNSCR 1820 and what kind of expertise it entails. This resolution is the first document of the agenda that signals the need to enhance implementation through better monitoring and the creation of yardsticks of compliance.[151] It is also the first of the WPS resolutions to affirm the Council's intention,

> when establishing and renewing state-specific sanctions regimes, to take into consideration the appropriateness of targeted and graduated measures against parties to situations of armed conflict who commit rape and other forms of sexual violence against women and girls in situations of armed conflict.[152]

This embeddedness of WPS within a broader context of national accountability and of the Council's sanctions framework, for its turn, requires a specific type of legal-technical expertise that can, *inter alia*: (i) assist countries in investigating and prosecuting crimes under international criminal law; (ii) create clear guidelines and benchmarks to assess compliance with the CRSV-theme, based on standards of international human rights law and international humanitarian law; (iii) gather 'credible' evidence relating to the progress of those countries and report it to the Security Council sanctions committees.

The mobilization of this type of expertise started formally with the following resolution under the WPS rubric, UNSCR 1888(2009), which establishes the mandate of the Office of the Special Representative of the Secretary-General on Sexual Violence in Conflict (SRSG-SVC). The SRSG-SVC is mandated to facilitate co-operation and co-ordination among all relevant stakeholders for a 'system-wide response' against CRSV.[153] UNSCR 1888(2009) also requests the Secretary-General (SG) – aided by the SRSG-SVC – to elaborate lists of parties 'credibly suspected of committing patterns of rape or other forms of sexual violence' through their annual report on WPS, to possibly include those parties in UNSC targeted sanctions.[154] Another mobilization of legal-technical expertise for the WPS agenda, established through the same UNSCR 1888(2009), is the Team of Experts on the Rule of Law and Sexual Violence (ToE-SVC). The ToE-SVC has the scope of assisting national authorities in strengthening the rule of law, employing experts to strengthen national capacity, and working with 'civilian and military judicial systems, mediation, criminal investigation, security sector reform, witness protection, fair trial standards, and public outreach'.[155]

Expanding the mandate of the Secretary-General in listing parties credibly suspected of committing CRSV, UNSCR 1960(2010) also requested the SG to establish monitoring, analysis and reporting arrangements (MARA).[156] The MARA for the WPS was established following a Provisional Guidance Note by the SRSG-SVC, which further systematized the gathering of evidence-based information for the sanctions mechanisms of the Council.[157] To set MARA's working definitions of CRSV, the SRSG-SVC relied on existing UN expert-based analytical

[151]See Resolution 1820(2008), *supra* note 8, para. 15.

[152]Ibid., para. 5.

[153]See Resolution 1888(2009), *supra* note 8, para. 5.

[154]Ibid., para. 27(c).

[155]Ibid., para. 8.

[156]UN Security Council Resolution 1960, UN Doc. S/RES/1960(2010), para. 8, available at undocs.org/S/RES/1960(2010).

[157]Office of the Special Representative of the Secretary-General on Sexual Violence in Conflict, 'Provisional, Guidance Note – Implementation of Security Council Resolution 1960 (2010) on Women, Peace and Security (Conflict-Related Sexual Violence).', 2011, at 13, available at www.un.org/sexualviolenceinconflict/wp-content/uploads/2018/11/tools-for-action/mara/MARA-Provisional-Guidance-Note-2.pdf.

guidelines on the issue, as well as international treaties such as the Rome Statute of the International Criminal Court.[158] The purpose of the MARA is then established as 'ensur[ing] systematic gathering of timely, accurate, reliable and objective information on conflict-related sexual violence against women, men and children in all situations of concern'.[159] According to the SRSG-SVC, such information aids strategic advocacy and programmatic responses for survivors at the country level. It also grounds Security Council action, including in targeted measures and sanctions.[160] Finally, the SRSG-SVC also sets ethical criteria and monitoring principles for the work of the MARA. These principles include, among others, knowledge of international human rights and international humanitarian law standards.[161]

Through these expert-based mechanisms arising from its CRSV-pillar, the WPS is re-branded into a legal-technical instrument, in a possible attempt to separate the image of the WPS as a western imposition. At the same time, the rubric conjures up mechanisms of compliance, monitoring, and evidence gathering, to suit the enforcement mechanisms of the Security Council.[162] Despite flaring up the possibility of triggering enforcement mechanisms, this re-branding also foregrounds the consent of states in implementing the agenda, whereby its implementation is simply 'assisted' and 'capacity-built' by the technical framework of the UN. Finally, all of these changes take the contentions with the legality of the resolutions out of the spotlight by reinforcing them as documents merely 'echoing' other legal sources.[163] In many ways, these competing ramifications resemble the different legality perceptions narrated by the key insiders to UNSCR 1325: a legality imaginary that, while thriving on procedure, precision, managerialism, and the power of international bureaucracies, also derives its strength from the agency and persistency of its advocates. The result of all this is a powerful shadowy legal form that never resolves itself – a hybrid that aptly blends binding and non-binding, imposition and consensualism, legal and political action.

8. Conclusion

'I say [the WPS] is international law, you should use it. I also say that sometimes my only suppressed desire is to sue a country for not invoking 1325 . . . I would love to see that happen.'[164] I heard this quote from a major actor in the adoption and implementation of Resolution 1325 at the beginning of my first interview with insiders. Shortly after giving this quote, the interviewee and I started talking about the power of law in helping activism, more specifically by clothing struggles for equality with a cloak of authority. I then asked whether having the WPS as law helped her or her colleagues remind other actors to follow the rubric. She retorted: 'Of course, it's important. Of course, you should follow it. But name another law that people follow these days . . . I mean, law is not in fashion.'[165]

This exchange reminded me that while the legality of a norm is in the eyes of the beholder, legal perceptions among actors are never a coherent or simple story.[166] People and groups might hold

[158]Ibid., at 2.

[159]Ibid., at 4.

[160]Ibid.

[161]Ibid., at 20.

[162]On the sanctions architecture of the Security Council as 'quasi-judicial' see I. Johnstone, 'Legislation and Adjudication in the UN Security Council: Bringing down the Deliberative Deficit', (2008) 102 *American Journal of International Law* 275.

[163]A good example of further reinforcements of the WPS just 'echoing' other legal sources is the approximation of the rubric to the CEDAW Committee. See 'UN Committee on the Elimination of Discrimination Against Women (CEDAW), General Recommendation No. 30 on Women in Conflict Prevention, Conflict and Post-Conflict Situations', UN Doc. CEDAW/C/GC/30 (2013), at paras. 25–6, available at undocs.org/CEDAW/C/GC/30.

[164]Interview with Cora Weiss. On file with the author.

[165]Ibid.

[166]See Cooper, *supra* note 61; Ewick and Silbey, *supra* note 62; Silbey, *supra* note 61; S. S. Silbey, 'Talk of Law: Contested and Conventional Legality', (2006) 56 *DePaul Law Review* 639.

competing perceptions about law and legality, something that also clashes with our own expectations as (feminist) international lawyers seeking to find an adequate solution to the legality of a certain norm. However, it was in these places of discomfort and incoherence, those moments where expectation and reality felt animistically dislodged, that I attempted to listen to what they announced through a refusal to walk well-worn paths of international legal theory. It then demanded a gentler approximation to these shadows, one that respected all their shades, agential power, as well as the very own shadows they generated along the way.

As a result, the main takeaway from the present shadow hauntology is that while the WPS is a thoroughly unresolved legal project, it is by no means an unsuccessful one. Three main findings of this research enable this conclusion. First, there were the masculinized dynamics within the Security Council, which haunted feminist activists pushing UNSCR 1325 more vigorously than legality concerns. In that sense, to speak of Resolution 1325 as being born a soft, 'defective', or 'exiled' norm in terms of its legal status seems incongruent: legality in conventional terms – or in any term at all – seems not to have been a primary issue for its initial drafters. Rather, legality appears as an afterthought, likely borne out of interaction with other actors rather than as an original feminist project. While this could be argued as being evidence that gendered biases structured feminist agency in not being able to make law or to think about legality at all, it also tugs at another direction: that of strategic pragmatism and agency, by feminist activists, in placing legality in the backburner at such crucial moments for their transnational activism.

Second, the accounts narrated by the key insiders show legality perceptions that do not necessarily fit the mould international lawyers expect, nor point to shared assumptions. In its haunting apparition shortly after – or shortly before – feminists were celebrating their apparent victory in the Security Council, legality took many forms, none of each coalesced into a single, shared imaginary among different actors. It appeared as deriving from the power of the UNSC (both stemming from the Charter or bureaucratic formalities), or yet as drawing its force from the persistence and evolution of feminist transnational activism. Instead of taking this as a mere 'mistake' or 'failure' on the part of feminists, or yet of trying to force a solution upon their competing visions, here I suggest that these different visions on legality reveal alternative perceptions of international lawmaking – all of which would make a significant splash in the subsequent years of activism for the WPS.

This goes directly to the third finding, regarding the reckoning carried out by UN gender experts in transforming the legal profile of the WPS from Resolution 1820 onwards. Shifting to a more legal-technical language for the negotiation and adoption of the subsequent resolutions of the WPS, this move lent an aura of impartiality and credibility to the WPS – thus distancing it from the image of a mere western imposition. It also grounded the WPS as a document that merely 'mirrors' other legal obligations, thus taking its own legal status away from the spotlight. Finally, it also foregrounded states' will in implementing the agenda by setting up an expert-based administrative architecture based on assistance and capacity-building. In many ways, these changes end up by (re-)producing the manifold legality perceptions shared by key insiders to UNSCR 1325: perceptions that simultaneously rely on state will and institutional managerialism, draw authority from both consensualism and imposition, and, ultimately, thrive on bureaucracy and activism – all intertwined. The result of all this is a powerful shadowy legal form that never resolves itself and, for that same reason, is successful on several fronts.

With these considerations, the primary purpose of this study is to give a broader reflection on what it means for feminists to make international law. Often, when gender law reform is analysed, feminist scholars lament the 'unsuccessful' legal forms generated. However, the WPS case not only blurs the lines between feminist successes/failures in international lawmaking, but it also enables us to take stock of the different legal projects and legality perceptions shared among feminist actors and gender experts, in an effort to understand, in their own terms, the successes achieved. In this sense, if Gordon's work on haunting is all about the 'paradigmatic way in which life is more

complicated than those of us who study it have usually granted',[167] my work here is a humble attempt to look at legality as much more complicated than international lawyers have usually granted. Indeed, if the powerful (yet exceedingly simple) theoretical statement that life is complicated allowed Gordon to look at the complex stories that people tell about 'themselves, about their troubles, about their social worlds, and about their society's problems',[168] I took this theoretical statement to guide my research to focus on the stories people tell about (feminist) international lawmaking, in an effort to understand the complicated and messy environments, perceptions, and projects of those involved in it.

This exercise, as demonstrated in this study, brings mixed blessings. It exposes the responsibility of said actors in successfully advancing legal projects that are not necessarily 'textbook feminist' – such as relying on the authoritative force of highly undemocratic, militarized, racialized, gendered, and disciplinary institutions.[169] It also makes it inherently harder to paint a clear picture of feminist inclusion/exclusion in international lawmaking, as the gendered biases and exclusions of the international legal order are exposed in their (perhaps more accurate) spectral forms – constantly shifting, always escaping a definitive grasp and, perhaps for those same reasons, being able to haunt in powerful ways.[170] Despite these limitations, such an exercise also reveals ways of imagining and forging legality through the persistent agency of feminist activists – something that, hopefully, can recognize (and advance) more diverse avenues for constructing international law otherwise.

[167]See Gordon, *supra* note 19, at 7.
[168]Ibid., at 4.
[169]See Otto, *supra* note 137.
[170]See Zalewski, *supra* note 71; C. H. Enloe, *The Big Push: Exposing and Challenging the Persistence of Patriarchy* (2017).

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