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PRESENTING THE ASIL-WILIG SCHOLARSHIP PRIZE WINNERS: A PANEL DISCUSSION

This panel was convened at 9:00 a.m. on Friday March 31, 2023, by its moderator, Yvonne Dutton, the Women in International Law Interest Group (WILIG) Co-Chair and Professor of Law at Indiana University Robert H. McKinney School of Law, who introduced the panelists and winners of WILIG's 2023 Scholarship Prizes in the book category: Valerie Oosterveld, Professor at Western University Faculty of Law, Canada; Indira Rosenthal, PhD Candidate at University of Tasmania; Susana SáCouto, University Washington College of Law; and Catherine O'Rourke, Professor of Global Law at Durham Law School, United Kingdom.

Introductory Remarks by Yvonne M. Dutton*

The Women in International Law Interest Group's (WILIG) mission is to promote and enhance the careers of female-identifying professionals in the field of international law, as well as to promote awareness of gender and international law. Relevant to this mission and this panel presentation, in 2023, WILIG awarded its Scholarship Prizes for excellence in international law scholarship involving women and girls, gender, and feminist approaches. Although scholars have utilized gender and feminist analyses in international law for at least a quarter of a century, such approaches frequently fail to permeate the mainstream of international legal scholarship and practice. The WILIG Scholarship Prize, awarded every two years, recognizes innovative contributions to international law scholarship that theorize or utilize a feminist lens or lenses, highlight and seek to address topics disproportionately affecting women and girls, or consider the impact of international law or policy on gender more broadly. After careful consideration, and thankful to the committee members who reviewed submissions, in 2023, WILIG awarded the Scholarship Prize for Best Article to Dr. Ramona Vijeyarasa for "Quantifying CEDAW: Concrete Tools for Enhancing Accountability for Women's Rights" (*Harvard Human Rights Journal*, 2021). The committee awarded the prize for Best Book to Valerie Oosterveld, Indira Rosenthal, and Susana SáCouto for their edited volume, *Gender and International Criminal Law* (Oxford University Press, 2022). Honorable Mention in the category of Best Book went to Catherine O'Rourke for her book, *Women's Rights in Armed Conflict Under International Law* (Cambridge University Press, 2020).

I had the honor of moderating a panel discussion with our distinguished winners of WILIG's 2023 book prizes. The panel focused on whether and how feminist work, exemplified through the authors' books, speaks to and permeates the "mainstream" of international legal scholarship and practice. The panelists reflected on how gender has become part of the mainstream of international law, how that mainstream sometimes misunderstands gender, and how gender is excluded from the mainstream in certain ways. Specific questions addressed by the panelists who contributed to the edited volume included: What prompted the editors to publish their book and what did they hope the book would contribute to the discourse on international law—especially as relates to

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the concept of gender? How is "gender" misunderstood by the "mainstream" and how does their book address this misunderstanding and attempt to illustrate the misunderstanding or help to educate readers on the concept? Whether and how gender may still be excluded from the mainstream and examples of how such misunderstandings may impact on accountability efforts and the protection of rights? As to the monograph, what is the focus of the book and its innovations? The panel concluded with an opportunity for all panelists to share challenges they have faced as feminist scholars seeking to engage with the mainstream and strategies for engaging productively with feminist international legal scholarship.

Below are brief summaries of the remarks made by each of the speakers during the panel in response to these questions.

Remarks by Indira Rosenthal*

I want to begin the discussion today by explaining the origins and the motivations behind the book, *Gender and International Criminal Law.* The idea came out of my experience working as a gender and legal adviser with Amnesty International at its International Secretariat in London, over a period of four years. During this time, I worked right across the organization with many different regional and thematic teams, and much of what I did focused on Amnesty's "international justice" research, advocacy, and campaigning work carried out by those teams.

Naively perhaps, I was somewhat surprised by the generally low level of understanding of the relevance of gender norms to the rights violations Amnesty was documenting, and the absence of even a rudimentary gender analysis to expose them in most cases. For example, even a simple question about whether women and men had the same or different experiences because of their gender went unasked far too often.

By the time I got to Amnesty in 2011, everyone had pretty much absorbed the message that rape was a serious crime under international law, and that it was endemic in armed conflict and other situations of mass atrocity. But there was only a limited understanding of rape and other sexual violence as gendered, or of the broader concept of "gender," and the usual stereotypes and misconceptions about its meaning were widespread.

For instance:

- Gender equals female;
- "Gender crimes" are synonymous with rape of females;
- Sexual violence is more difficult to document than other human rights violations;
- Women and girls are the victims and males the perpetrators;
- Women and girls are raped, but when males are raped, it is called torture;
- Sexualized violence is heterosexual; and
- Violations without a sexual element are not gendered or gender-based.

In practice, what I saw was that if these "stereotypes" were not evident in the research findings, for example they did not point to females having been raped, then too often the assumption was that there was no "gender" here. And so, no need to look further. And, as there were no processes or requirements for the systematic conduct of gender analysis in their work, and no accountability mechanisms, that is no one to check up on this, these stereotypes were largely unexamined and unchallenged. In my view, this led to lost opportunities to document the range of rights violations

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and identify the victims of those violations more fully. It was also a waste of precious resources and led to unjustifiable gaps in the organization's research and subsequent campaigning.

This was not, and is still not, a situation unique to Amnesty. This is the picture in many organizations, maybe nearly all of them. And it was not that the people working there did not care. They did. And I have enormous respect and admiration for the people with whom I worked. They were incredibly dedicated and talented. But many did not "get" gender and its effect on rights violations, how the organization selected its priorities, the design, scope, and content of its research and advocacy, as well as whose rights it chose to champion. While I was surprised by this situation, what made me the most concerned, was a lack of understanding about why any of this matters.

This was all happening against the backdrop of a quite remarkable and rapid shift away from ignoring sexual violence and other gendered crimes, to acknowledging them as the serious crimes under international law that they are. There had been a number of convictions of these crimes at the international level and in national courts, and an important body of progressive jurisprudence, primarily from the ad hoc tribunals for the former Yugoslavia and Rwanda, as well as the Special Court for Sierra Leone. Talk about "gender" was quite commonplace and the term was used routinely—gender-based crimes, gendered harms, gender balance, gender experts, gender sensitive reparations, gender equality, and so on.

All this "progress" led to a justifiable sense of accomplishment. We had come a long way in a very short period of time. But I saw another side of this that I thought was problematic—a complacency seemed to have set in. There was a sense that because of the change in the status of sexual violence and a greater awareness that "gender" was something to be reckoned with in international criminal law, it was all sorted. So long as sexual violence was taken seriously in the international justice work, "gender" was covered. I saw this same thinking elsewhere. For example, it was evident in much of the discourse about crimes against women during armed conflict, such as the UN Security Council's Women, Peace and Security Agenda, and in major state sponsored initiatives against conflict related sexual violence.

To me, this way of thinking was too simplistic and incomplete. It was also dangerous, because if we think that by asking "was anyone raped" that we have "covered off" gender, then we stop asking, we stop looking, and then we miss people, maybe entire groups of people, whose rights have been violated or who have been targeted for crimes under international law, and for whom we should also care and be taking action.

It was clear that the situation I was seeing at Amnesty and other places, was also happening in the world of international criminal courts and tribunals. There were the same gendered stereotypes about sexual violence, what it looks like, its perpetrators and victims; the same limited understanding of gender beyond sexual violence, and the same lack of a systematic practice of gender analysis and robust accountability to avoid falling into these pitfalls. The result: charges for sexual crimes did not survive, non-sexual gendered crimes were mischaracterized, and so on. These misconceptions led to lost opportunities too. In this case, lost opportunities to identify, investigate, prosecute, and punish the full scope of crimes, victims, and harms.

The book came out of this experience and my conversations with others working on these issues, especially Michelle Jarvis and my co-editors Valerie and Susana. It was clear we were all seeing similar dynamics. We agreed on the urgent need to open up discussion about what gender in international criminal law means, not only theoretically but practically. And also what it should mean from a feminist perspective, and why it matters that we get it right. Of course it was not possible to cover everything in one book, but we tried for a good cross-section so that someone going through the table of contents, or even reading the book, could see the extent to which gender is relevant to all aspects of international criminal law. We wanted to spark more nuanced discussion and analysis,

and a deeper understanding of gender, so we have better, stronger accountability. If our book can contribute to this aspiration in any way, then I will be beyond thrilled.

It has been almost ten years since I left Amnesty, and there has been a lot of movement on these issues in that time. Good things are happening, but there is still a long way to go of course. For instance, there is more to do to ensure that all international criminal justice mechanisms have a strong understanding of the impact of gender norms on the commission of the crimes they investigate and adjudicate, how to respond to them appropriately and fully, and why it is important that they do so. There is also work to do to better understand the ways in which gender norms, together with social norms governing other identities, affect the commission and impact of crimes on people, as well as their investigation, prosecution, and punishment.

I am stopping here. This is a long conversation. I have tried to give an overview of the context in which the idea for the book came about and the reasons why we stayed committed to pulling it together despite a host of life events that threatened to derail it, like births, deaths, strikes, and pandemics.

I would like to conclude with a reminder to myself. This is something I try to do often and especially when I speak publicly like this. Much of my work is done on my own on my computer, in the realm of the intellect, and this book is an academic work. But behind it are real people who have suffered and continue to suffer horrendous acts against them, their families, friends, and communities, that we call crimes under international law. Perhaps some among you today, or your loved ones, have had this experience. This is the reality and I want to acknowledge, from my heart, all the victims/survivors and their suffering, their resilience and their fundamental rights to dignity, peace, safety, and justice. Thank you.

Remarks By Susana SáCouto*

Despite nearly three decades of increased awareness about the commission of sexual violence and other gender-based crimes in situations of conflict and mass violence—most recently seen in the reporting of atrocities coming out of the Ukraine—there are numerous examples of how misunderstandings and stereotypes about gender continue to influence decisions made by the domestic and international tribunals adjudicating these crimes. As we discuss in our book on *Gender and International Criminal Law*, among the prevailing misconceptions about gender are that sexual violence is perpetrated primarily if not exclusively against females, that it mostly manifests in the form of rape, and that gender violence is limited to sexual violence. In the book, we highlight some examples of these misconceptions, particularly in the first chapter.

For instance, one of the examples we talk about has to do with the misconception that sexual violence is perpetrated only against females. When similar conduct is perpetrated against males, there has been a tendency to characterize that conduct as a crime but not necessarily a sexual violence crime. This is what happened in one of the cases arising out of the Kenya situation at the International Criminal Court (ICC), *Prosecutor v. Muthaura, Kenyatta and Ali*. There, the prosecutor charged the accused with the crime against humanity of "other forms of sexual violence" based on evidence of forced circumcision and genital mutilation of men and boys of Luo ethnicity who were perceived supporters of an opposition party, the Orange Democratic Movement, committed by Party of National Unity supporters of Kikuyu ethnicity. The Pre-Trial Chamber flatly rejected the categorization of these acts as "sexual" violence, finding that they were more properly categorized under the crime against humanity of "other inhumane acts," a residual clause which

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covers acts causing severe physical or mental injury that cannot be charged as other crimes against humanity. The Chamber recognized that forced circumcision and genital mutilation occasioned physical and mental harm, but found that these acts of violence were somehow not tantamount to sexual violence even though they targeted the sexual organs of men and boys. Its decision reflects the misconception that acts recognized as sexual violence when committed against women cannot be recognized as such when committed against men.

The tribunals have also often missed, misunderstood, or misidentified the gender dimensions of crimes *without* a sexual element, such as the war crimes of pillaging, attacking civilian objects, or deportation, even though these crimes often have quite significant gendered impacts. What we see, in fact, is that there has been little recognition by international tribunals of non-sexual gendered harms as international crimes. For instance, although the Rome Statute includes a number of crimes that do not necessarily involve sexual violence, such as forced pregnancy, enforced sterilization, and gender-based persecution, to date only forced pregnancy has been successfully prosecuted by the ICC.[1] Furthermore, while international tribunals have recognized that certain conduct, such as forced marriage, includes non-sexual harms and can be prosecuted as an international crime,[2] many other non-sexual forms of gendered harms—including other forms of reproductive violence and gendered forced labor—have not been explicitly criminalized. For example, forced maternity, being forced to impregnate another person, or being forced to conceive, to breastfeed, to use contraception, to obtain an abortion, or to perform domestic labor have yet to be expressly criminalized in international instruments.

At first, some of these harms may not appear as grave as the harms that have been explicitly recognized as criminal by tribunals. Yet non-sexual harms may actually cause as much pain and suffering to victims and survivors as harms that have been explicitly recognized in international criminal law. For instance, in a case coming out of Guatemala, two former military members were convicted of, *inter alia*, acts of sexual violence, sexual slavery and domestic slavery committed against Maya Q'eqchi' women near a military outpost in Sepur Zarco during the civil war in Guatemala. For months during 1982 and 1983, the women—respectfully referred to as the *abuelas* (Spanish for the grandmothers)—were not only subject to repeated rapes and other forms of sexual violence but also forced to take turns every few days washing, cooking, and cleaning for soldiers. Although the "shifts" eventually ended, some women were forced to continue to cook and wash for the soldiers for up to six years.

During the trial, expert testimony made clear that the gendered domestic labor that the *abuelas* were forced to perform—which might have been viewed by some as less serious than the crime of sexual slavery—had in fact been experienced by them as equally harmful. As gender anthropology expert Rita Laura Segato explained, being forced to leave their children and use their own food to cook for the soldiers while some of their own children went hungry and died caused the *abuelas* intense shame and guilt. As Segato noted, such was the harm that when the women testified about "their sexual subjugation and their domestic subjugation, they [did] it with the same pain, manifesting similar hardship [and] referring to [forced] access to their body [in the same way as forced] access to their work and their products."[3]

The recognition that the forced domestic labor was tantamount to domestic slavery—and that it was committed in the same context as the sexual slavery, that is as part of a broader, systemic

[1] Prosecutor v. Ongwen, ICC-02/04-01/15, Judgment on the Appeal of Mr. Ongwen Against the Decision of Trial Chamber IX of 4 February 2021 Entitled "Trial Judgment," para. 1104 (Dec. 15, 2022) [hereinafter *Ongwen* Appeals Judgment].

[2] *See, e.g., id.*, para. 1024.

[3] Guatemala, Tribunal Primero de Sentencia Penal, Narcoactividad y Delitos Contra el Ambiente, C-01-76-2012-00021, Sentencia, at 22 (Feb. 26, 2016) (author's translation).

pattern of violence intended to spread terror among the Indigenous population rather than isolated acts or the product of rogue soldiers—allowed for it to be appropriately prosecuted as a crime against humanity. Yet, without a gendered analysis, the grave harm experienced by the *abuelas* may well have been overlooked.

In sum, in the book we highlight some of these examples to point out that a limited, "mainstream" understanding of gender can lead to mischaracterizing, overlooking, or under-prioritizing sexual violence and other forms of gender-based harms. Significantly, impunity for these harms means not only that perpetrators are not held accountable for various forms of gender violence, but also that victims and survivors are then often cut out of other measures that might flow from convictions, like reparations for those harms.

In terms of strategies for engaging the mainstream with feminist international legal scholarship, one obvious way is through teaching. I teach a seminar on gender and international criminal law and try to raise these issues through the readings and discussions I have with students.

Another strategy is to demonstrate what feminist legal thinking actually looks like in practice through projects that reimagine and rewrite "mainstream" decisions using a feminist lens. Some of us have participated in these kinds of projects. Indira, Valerie, and I participated, for instance, in one such project where we were asked to rewrite various ICC decisions from a feminist perspective. These projects are an opportunity to model what a gender-competent approach to judging and decision making would look like. They are an opportunity to illustrate—not just talk about—the difference that gender-competent judging can make. In other words, they offer a hands-on practical example of how to answer the question of how courts can avoid mischaracterizing, overlooking or under-prioritizing sexual violence and other gender-based harms in their decisions.

Remarks by Valerie Oosterveld*

There have been a number of positive developments within the field of international criminal law over the past three decades with respect to gender.

First, the jurisprudence crafted and created by gender-sensitive and gender-competent lawyers at the International Criminal Tribunals for the former Yugoslavia and Rwanda, the Special Court for Sierra Leone, and elsewhere is having lasting effect. We see this in recent International Criminal Court (ICC) decisions and judgments, such as in the Trial and Appeals Chambers judgments in the *Ongwen* case, in which a range of sexual and gender-based acts directed against girls and women were prosecuted.[4] In particular, Ongwen was convicted of certain crimes he carried out himself: forced marriage, torture, rape, sexual slavery, enslavement, forced pregnancy, and outrages upon personal dignity committed against seven females who were abducted and placed into his household. Ongwen was also convicted of crimes that were carried out by individuals under his command as part of a plan: forced marriage, torture, rape, sexual slavery, and enslavement committed against girls and women within the Sinia brigade, which was led by Ongwen.

A number of feminist lawyers submitted a series of *amicus curiae* briefs to, and appeared before, the Appeals Chamber in *Ongwen* to discuss, for example, forced marriage as an inhumane act and forced pregnancy. In the forced marriage briefs, the *amici* discussed relevant jurisprudence from the Special Court for Sierra Leone and the Extraordinary Chambers in the Courts of Cambodia.[5]

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[4] *Ongwen* Appeals Judgment, *supra* note 1.

[5] Prosecutor v. Ongwen, ICC-02/04-01/15-1935, *Amici Curiae* Brief on Forced Marriage, paras. 6–8, 16– 17, 19, 21–26 (Dec. 22, 2021).

This cross-fertilization between tribunals is heartening to see, particularly after years of setbacks at the ICC with respect to gender-related crimes.

The development of gender-sensitive policy papers by the ICC's Office of the Prosecutor (OTP) has contributed to these positive developments. The central policy paper in this respect is the 2014 Policy on Sexual and Gender-Based Crimes. In that policy, the OTP committed to applying "a gender analysis to all crimes within its jurisdiction, examining how those crimes are related to inequalities between women and men, and girls and boys, and the power relationships and other dynamics which shape gender roles in a specific context."[6] This policy created a detailed framework for the OTP's analysis of crimes. The resultant focus on gender-competent analysis by lawyers and others in that office has led to improved examinations, investigations, and prosecutions, resulting in convictions sustained on appeal in the *Ntaganda* and *Ongwen* cases. This policy paper is being updated in 2023.

As a gender-integrated approach to examinations, investigations, and prosecutions took deeper hold, we saw the adoption of the 2016 Policy on Children, which is also being updated in 2023. That policy is integrated with the 2014 policy and indicates that the OTP pays "particular attention to the gender-specific impact on, harm caused to, and suffering of children affected by" sexual and gender-based violence.[7] Additionally, the OTP's 2021 Policy on Cultural Heritage also integrates gender considerations throughout. For example, it recognizes that "[m]any forms of sexual or gender-based crimes may be designed to affect the cultural heritage of a community . . . individuals may be targeted for sexual slavery, or subjected to the crime of forced pregnancy, because of their shared cultural heritage, or because of their personal importance to the cultural heritage of that group, e.g., as religious or spiritual leaders."[8]

In December 2022, the prosecutor released a Policy on the Crime of Gender Persecution. This policy recognizes the role played by persecution on grounds of gender in conflict and situations of mass atrocity, and the benefits stemming from investigation and prosecution of this crime:

> Recognition of gender persecution not only helps to unearth the discriminatory intent that can drive [crimes of sexual and gender-based violence] … or entire conflicts, it can also shed light on victims who are vulnerable because of multiple and intersecting forms of discrimination. … Such recognition can also reflect the continuum of historical and longstanding structural discrimination and fundamental rights deprivations experienced by vulnerable gender groups such as women, girls and LGBTQI+ persons. It can also help to unearth misogynist, homophobic, and transphobic discrimination, when it intertwines with racial, ethnic and other forms of discrimination that undergird crimes. Accountability for gender persecution crimes can help contribute to sustainable peace and disrupt the normalisation of institutionalised gender discrimination and violence.[9]

This ICC OTP policy paper, and the others mentioned above, have shown their usefulness not only in the practice of the OTP, but also as guidance documents for countries interested in their own investigations and prosecutions of genocide, crimes against humanity, and war crimes. For example Colombia's Special Jurisdiction for Peace has considered the Policy on Sexual and Gender-

[6] Office of the Prosecutor of the International Criminal Court, Policy Paper on Sexual and Gender-Based Crimes, para. 20 (June 2014), *at* https://www.icc-cpi.int/iccdocs/otp/OTP-Policy-Paper-on-Sexual-and-Gender-Based-Crimes–June-2014.pdf.

[7] Office of the Prosecutor of the International Criminal Court, Policy on Children, para. 52 (Nov. 2016), *at* https://www.icc-cpi.int/sites/default/files/iccdocs/otp/20161115_OTP_ICC_Policy-on- Children_Eng.PDF.

[8] Office of the Prosecutor of the International Criminal Court, Policy on Cultural Heritage, para. 60(iii) (June 2021), *at* https://www.icc-cpi.int/sites/default/files/itemsDocuments/20210614-otp-policy-cultural-heritage-eng.pdf.

[9] Office of the Prosecutor of the International Criminal Court, Policy on the Crime of Gender Persecution, 5 (Dec. 2022), *at* https://www.icc-cpi.int/sites/default/files/2022-12/2022-12-07-Policy-on-the-Crime-of-Gender-Persecution.pdf.

Based Crimes in implementing its own approach to these crimes. In recent years, we have seen domestic prosecutions of gender-based international criminal law violations, such as German cases with respect to crimes committed against Yazidis by members of ISIS. And, in Ukraine, the Office of the Prosecutor General has a specialized unit focused on sexual and gender-based crimes, advised and trained by feminist lawyers and investigators. We have also seen some incremental positive impact created by gender advisers at tribunals such as the Special Tribunal in the Central African Republic, and a gender-sensitive focus by some countries in the United Nations Sixth Committee on the draft Crimes Against Humanity Convention.

I will end by mentioning that the 2022 Gender Strategy and Implementation Plan of the International, Impartial, and Independent Mechanism for Syria (IIIM) deserves special note. I highly recommend it as an example of gender being understood in all of its complexity in international criminal law. According to the IIIM,

> The IIIM's purpose is to assist in the investigation and prosecution of the most serious crimes in the Syrian Arab Republic ("Syria"). Without a comprehensive, contextual understanding of these crimes, we cannot hope to facilitate justice. Our understanding—and any attempt at justice—will, at best, be limited and skewed unless the role of gender is analysed in every area. A gender analysis is a crucial tool for understanding how gender impacts the experiences, needs, power relations, rights and opportunities of individuals and communities. It is essential to understand the full extent of the harm suffered by victims/survivors in the Syrian context and develop appropriate responses and remedies.[10]

The Gender Strategy and Implementation Plan sets out the IIIM's commitment to pursue inclusive justice for victims/survivors and to center them in the Mechanism's decisions and strategies, such that "any disadvantage caused by gender does not reduce the prospects of justice and where justice is a vehicle to help overcome such disadvantage."[11]

Certainly, there is much more to do, but these important steps represent current bright spots in gender-sensitive international criminal law.

Remarks by Catherine O'Rourke*

In my comments, I want to use my book *Women's Rights in Armed Conflict Under International Law*—and my approach to writing the book—to demonstrate some of the common strategies and pitfalls for feminist scholars seeking to engage the mainstream of international law.

Women's Rights in Armed Conflict Under International Law

As the title suggests, the book is motivated by the significant development that we have seen in the recognition of women's and gender rights in conflict under international law since 1990. In particular, of central interest to the book, is that these legal developments have taken place not within one particular regime of international law, rather they have taken place across several regimes that regulate women's rights and conflict. The book first sets out to provide a descriptive doctrinal analysis of key aspects of how four particular regimes of international law—international

[10] International, Impartial and Independent Mechanism to Assist in the Investigation and Prosecution of Persons Responsible for the Most Serious Crimes Under International Law Committed in the Syrian Arab Republic Since March 2011, IIIM Gender Strategy and Implementation Plan – Abridged Version, 3 (Sept. 30, 2022), *at* https://iiim.un.org/wp-content/uploads/2023/02/Gender-Strategy-Implementation-Abridged.pdf.

[11] *Id.*

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humanitarian law, international criminal law, international human rights law and the UN Security Council—regulate women's rights in armed conflict. In the book's very long Chapter 2, it looks at the four regimes for their sources of law, their definitions of both conflict and women's rights, and their monitoring and enforcement mechanisms.

Of course, this phenomenon of multiple regimes of international law regulating substantively the same issue or area is not unique to women's rights in conflict. It is another example of much broader dynamics of fragmentation of international law and fragmentation is a central organizing concept of the book. In terms of the motivations for the book, it was clear that whilst there was quite considerable analysis of gender and women's rights within the particular regimes I was looking at —international humanitarian law, international criminal law, international human rights law, and the UN Security Council—that analysis across them was relatively rare. In particular, what fragmentation itself was meaning for the protection of women's rights in armed conflict was insufficiently understood and underexplored. Chapter 3 provides a doctrinal analysis of key dynamics in the interactions and interdependencies between the regimes in their regulation of women's rights in armed conflict.

Part One of the book is therefore primarily about setting out the book's overall legal framework and does engage in doctrinal questions around hierarchies of norms and areas where there may be potential norm conflict. But I was very keen that the book go beyond that doctrinal analysis to try to discern *in practice* how the international institutions charged with monitoring and enforcing these legal rules—the International Committee of the Red Cross, the International Criminal Court, the UN human rights treaty-bodies, and the UN Security Council—were operating on the ground in conflict-affected settings. In particular, to what extent were issues of fragmentation—and norm conflict—emerging in practice? Part Two of the book looks at what I identify as a small subset of emblematic women's rights violations and I look at those questions across three case studies, namely the Democratic Republic of Congo, Colombia, and Nepal.

Finally, in Part Three, the book draws together the findings and insights from the case studies to propose what I see as the comparative advantage of the different regimes when it comes to the protection of women's rights in conflict: what is it that each particular regime seems to do particularly well? And the final chapter of the book sets out what I call a "feminist toolbox for fragmentation," which proposes tools and strategies for engaging productively across the four regimes for the overall enhanced protection of women's rights in armed conflict.

Feminist Scholarly "Rigor" in International Law

In terms of engaging the mainstream of international law, Hilary Charlesworth notes that feminist international law scholars have to endure assumptions and challenges to our scholarly "rigor" that other international law scholars do not.[12] In my experience, these challenges to our rigor tend to manifest in three ways. The first is the juxtaposition between the supposed counterpoints of feminism (read: political) and "expertise" (read: neutrality). That counter-position between feminism and expertise may then be used to marginalize feminist international lawyers as not really being "expert" at all. The counter-position can be very important in determining who is appointed or elected to particular roles within international law in which neutrality and objectivity is prized.

Second, there is often an assumption that—as a feminist scholar—you are perhaps not a very good lawyer and legal scholar. For example, I have lost count of the number of times people commented to me with surprise about how much "law" is in *Women's Rights in Armed Conflict Under*

[12] Hilary Charlesworth, *Cries and Whispers: Responses to Feminist Scholarship in International Law*, 65 NORDIC J. INT'L L. 557 (1996).

International Law. The expectation seemed to be that, in light of the title and my scholarly profile, that the book's content would be "feminist" rather than "legal."

Third, perhaps more benignly, a challenge to the "rigor" and seriousness of feminist legal scholarship is its characterization as marginal or "niche"; to quote Hilary Charlesworth again, the idea that feminist work is "an optional extra, a decorative frill" to mainstream international law.[13] For example, Ruth Rubio Marin in her new book on feminist constitutionalism talks about being told by a senior male colleague that it was fine to work on feminism, but that if she wanted to be a truly "great" constitutional scholar, she needed to be a "Lionel Messi."[14] That is, she needed to work on all of the central questions of constitutionalism, rather than focusing on "niche" interests. Because focusing on how constitutions treat half the population is clearly a "niche" concern.

Strategies for Engaging the International Law Mainstream

In light of the noted challenges, what are the tools and effective strategies by which we can effectively engage the "mainstream" of international law? This scholarship prize is one strategy and WILIG is explicit about that as a goal of the scholarship prizes. On the one hand, the prizes reflect the siloing and the sub-field status of feminist work, as they are awarded by WILIG; nevertheless, these are a type of ASIL prize and ASIL carries a lot of esteem in our profession, thus raising the profile and status of such work.

In general, my own approach to engaging the mainstream is to publish primarily in mainstream international law journals and only infrequently in feminist outlets. There are two reasons for that decision: first, is an intellectual conviction that the insights from my work on women and gender offers insight to international lawyers and central questions of international law. Moreover these insights have relevance for international lawyers who do not have a "thematic" interest in gender and women's rights. I work carefully and deliberately to try to frame those insights in ways that are not dismissed as marginal or niche or irrelevant. Second, more pragmatically, there are professional reasons for being seen to be publishing in mainstream "top" journals in our fields and sub-fields. This also includes positioning oneself in a job market, in which positions for purely feminist international legal work are either scant or non-existent.

In terms of *Women's Rights in Armed Conflict Under International Law*, I deployed a number of strategies to try to engage the mainstream of international law. I published the book with a key publisher of many of the most important monographs in international law, thereby attempting to head-off the "rigor" question. I titled chapters and sections using key terms in international law, in particular "fragmentation," but also sources of international law. Whilst conducting feminist doctrinal analysis, I was careful to cite the mainstream legal literature on particular questions and not only critical, feminist, or gender work. The book discusses several landmark cases in international law in terms that will be familiar to international lawyers. The book *expressly* engages central questions of international law, in particular concerning sources of international law, but also the role of international institutions. The book attempted to offer an innovative methodology for studying a central contemporary phenomenon of international law, namely fragmentation, and was explicit about offering this as a methodology for studying fragmentation beyond women and gender analysis.

Nevertheless, in spite of deploying all of these various strategies, truthfully I do not know how successful the book ultimately has been in engaging the mainstream. I wonder if I made a strategic

[13] Hilary Charlesworth, *The Women Question in International Law*, 1 ASIAN J. INT'L L. 33 (2011).

[14] RUTH RUBIO-MARIN, GLOBAL GENDER CONSTITUTIONALISM AND WOMEN'S CITIZENSHIP: A STRUGGLE FOR TRANSFORMATIVE INCLUSION (2022).

error in titling the book *Women's Rights in Armed Conflict Under International Law*. Perhaps I should have put "fragmentation" in the book title. I also wonder if there may be particular challenges around engaging the mainstream through books and monographs. Publishing feminist work in dedicated feminist books eschews the most effective strategy there is for engaging the mainstream, namely publishing in mainstream international law journals.

Still "Talking to Ourselves?"[15] (and Perhaps That Is Ok Too)

When talking about being a feminist scholar in international law, I started with a quote from Hillary Charlesworth. In this concluding section, about being a legal scholar doing feminist work, I want instead to start with Nicola Lacey, the very distinguished legal theorist at the London School of Economics who has done much remarkable feminist legal work. She has a great line about how the problem with feminist lawyers is that we feel we must be lawyers first and feminists second.[16] I read this comment as a caution about doing the sort of international legal scholarship that will be published in mainstream journals; that mainstream positive response can mean that one is not at the cutting-edge of feminist work. There may be a trade-off in this regard and I certainly think that is true of my own work.

Of course, my book was not only about speaking to mainstream international lawyers; it was also motivated by a real sense of urgency around engaging feminist legal scholars, legal practitioners, and activists who work on gender and conflict. I wanted to raise awareness and knowledge of the range of regimes that are in play with regard to regulating women's rights in conflict. In particular, I wanted to de-center the UN Security Council from this area of law. The Security Council, which has been so alluring because of its unique enforcement powers and dedicated Women, Peace and Security agenda, is also increasingly problematic as an institutional partner to feminist work. I had a particular concern that the over-focus on the UN Security Council was happening at expense of other regimes and institutions of significance, most notably international humanitarian law. Thus, the book sought to engage the mainstream of international law, but the urgent findings, insights and message was for my fellow feminist travelers in international law.

To conclude more positively then, rather than thinking about challenges and tradeoffs in engaging the mainstream of international law, perhaps it is better to think about different outputs for different audiences. In that spirit, we should value and celebrate these ("niche") spaces, such as WILIG, that make our work better (and more "rigorous"!). We should treasure these conversations where we to talk ourselves. And we should constantly challenge ourselves to make these spaces more diverse and representative and inclusive, so that we do not end up replicating—in different ways—the sorts of hierarchies that have traditionally marginalized feminist work in international law.

[15] Hilary Charlesworth, *Talking to Ourselves? Feminist Scholarship in International Law*, *in* FEMINIST PERSPECTIVES ON CONTEMPORARY INTERNATIONAL LAW: BETWEEN RESISTANCE AND COMPLIANCE? (Sari Kouvo & Zoe Pearson eds., 2011).

[16] Nicola Lacey, *Theory into Practice? Pornography and the Public/Private Dichotomy*, 20 J. L. & SOC. 93 (1993).