

# Disarming the Women, Peace and Security agenda: the case for centring the United Nations General Assembly

Catherine O'Rourke\*

\*Catherine O'Rourke, Professor of Global Law, Durham Law School, Durham University, UK.

Email: [jqcp85@durham.ac.uk](mailto:jqcp85@durham.ac.uk)

## Abstract

After over two decades of the Women, Peace and Security (WPS) agenda at the UN Security Council, involving the adoption of 10 thematic resolutions, there is now increasing momentum towards the de-centring of the Council from feminist engagement and from broader institutional activity on WPS. Against this backdrop, this article lays out arguments for centring the WPS agenda instead in the UN General Assembly. Given its broader membership and mandate, its role in international law-making, and critically, its leadership on disarmament, the article argues that the General Assembly offers more propitious opportunities for the institutionalization of a *feminist* peace agenda.

## Introduction

Disillusionment with the United Nations Security Council has perhaps finally reached its zenith. Legitimacy challenges posed by inaction in Syria were highly damaging.<sup>1</sup> Russian aggression in Ukraine, however, has posed more fundamental questions about the international framework for maintaining peace and security.<sup>2</sup> Effort to circumvent the Security Council in order to respond to threats to international peace and security has diversified, gathered pace and gained momentum.<sup>3</sup> The question of what to do '[w]hen UNSC Permanent Members breach international peace and security?'<sup>4</sup> preoccupies scholars and practitioners within the international system. The legitimacy crisis of the United Nations Security Council carries undoubted challenges for the entire global community. Security Council stasis carries particular challenges, however, for feminist activists, lawyers, diplomats and scholars who have, since 2000, accelerated the Security Council's move to the

<sup>1</sup> Aurobinda Mahapatra, 'The Mandate and the (In) Effectiveness of the United Nations Security Council and International Peace and Security: The Contexts of Syria and Mali' (2016) 21 *Geopolitics* 43; Jess Gifkins, 'The UN Security Council Divided: Syria in Crisis' (2012) 4 *Global Responsibility to Protect* 377; Philippa Webb, 'Deadlock or Restraint? The Security Council Veto and the Use of Force in Syria' (2014) 19 *Journal of Conflict and Security Law* 471.

<sup>2</sup> See eg, 'When UNSC Permanent Members Breach International Peace & Security: Reform vs. Status Quo?' in American Society of International Law Annual Meeting, Washington DC, 29 March 2023 (hereafter ASIL).

<sup>3</sup> See eg, Yasmine Nahlawi, 'Overcoming Russian and Chinese Vetoes on Syria through Uniting for Peace' (2019) 24 *Journal of Conflict and Security Law* 111; Jennifer Trahan, *Existing Legal Limits to Security Council Veto Power in the Face of Atrocity Crimes* (CUP 2020).

<sup>4</sup> ASIL (n 2).

epicentre of policy and advocacy concerning women's rights in conflict under international law.<sup>5</sup>

The Security Council's adoption in 2000 of Resolution 1325 on Women, Peace and Security inaugurated the WPS agenda. The resolution was also a feature of broader adoption of so-called 'thematic' agendas by the Security Council in the post-Cold War period, addressed *inter alia* to children and civilian protection.<sup>6</sup> Resolution 1325 provides for four pillars of priority action in which women's rights in conflict should be advanced, namely: Participation, Protection, Prevention, and Relief and Recovery.<sup>7</sup> In the intervening decades, nine additional WPS resolutions have been adopted by the Council. Four focus broadly on advancing the women's participation pillars<sup>8</sup>; five focus on sexual violence in conflict.<sup>9</sup> Together, these resolutions have inaugurated significant institutional activity on women's rights in conflict within the Security Council,<sup>10</sup> as well as setting the agenda for cognate action across the UN<sup>11</sup> and indeed within several UN Member States.<sup>12</sup>

Feminist engagement with the Security Council, epitomized by the campaign for Resolution 1325, has long been characterized by ambivalence. This ambivalence is variously grounded in suspicion of the Council's inherently militarist and selective composition and function<sup>13</sup>; the legitimacy deficits that result<sup>14</sup>; sober assessment about limited material gains from engagement to date<sup>15</sup>; as well as more fundamental questioning of the so-called 'will to power' of feminist engagement with institutions such as the Security Council.<sup>16</sup> Recognition of the enduring implementation and enforcement challenges in the WPS Agenda has resulted in sober and multi-pronged feminist responses, characterized by a turn away from norm-setting and towards implementation.<sup>17</sup> These tensions came to the fore with the ultimate rejection of a draft resolution proposed by Russia to mark the 20th anniversary of the WPS agenda. Mobilized by concerns about the need to 'protect' the WPS agenda from efforts to 'water down previously agreed standards on core issues', civil society successfully mobilized to have several Security Council members vote against the draft resolution.<sup>18</sup> Nevertheless, that this multifaceted ambivalence has not previously grounded a feminist rejection of the institution says much about the enduring place of the Security

<sup>5</sup> Catherine O'Rourke, *Women's Rights in Armed Conflict under International Law* (CUP 2020) 79.

<sup>6</sup> UNSC Res 1325 (31 October 2000) UN Doc S/RES1325/2000.

<sup>7</sup> *ibid.*

<sup>8</sup> UNSC Res 1889 (5 October 2009) UN Doc S/RES1889/2009; UNSC Res 2122 (18 October 2013) UN Doc S/RES2122/2013; UNSC Res 2242 (13 October 2015) UN Doc S/RES2242/2015.

<sup>9</sup> UNSC Res 1820 (19 June 2008) UN Doc S/RES1820/2008; UNSC Res 1888 (30 September 2009) UN Doc S/RES1888/2009; UNSC Res 1960 (16 December 2010) UN Doc S/RES1960/2010; UNSC Res 2106 (24 June 2013) UN Doc S/RES2106/2009.

<sup>10</sup> For a comprehensive overview, see <<https://www.securitycouncilreport.org/women-peace-and-security/>> accessed 21 December 2023.

<sup>11</sup> For eg, UN Women, *Women, Peace, and Security 2020–2021 Annual Report* (New York, 2023).

<sup>12</sup> For a comprehensive collection of National Action Plans on Women, Peace and Security, see <<http://1325naps.peacewomen.org>> accessed 21 December 2023.

<sup>13</sup> See eg, Dianne Otto, 'The Exile of Inclusion: Reflections on Gender Issues in International Law over the Last Decade' (2009) 10 *Melbourne Journal of International Law* 11.

<sup>14</sup> See eg, Dianne Otto, 'Power and Danger: Feminist Engagement with International Law through the UN Security Council' (2010) 32 *Australian Feminist Law Journal* 97.

<sup>15</sup> Kenny Werner and Elena B Stavrevska, *Where are the Words? The Disappearance of the Women, Peace and Security Agenda in the Language of Country-Specific UN Security Council Resolutions. Women's International League for Peace and Freedom and the LSE Centre for Women, Peace and Security* <[https://www.wilpf.org/wp-content/uploads/2020/05/Report-WILPF-LSE\\_Web.pdf](https://www.wilpf.org/wp-content/uploads/2020/05/Report-WILPF-LSE_Web.pdf)> accessed 9 October 2020.

<sup>16</sup> See generally, Janet Halley and others, *Governance Feminism: An Introduction* (University of Minnesota Press 2018); Otto (n 13).

<sup>17</sup> See especially United Nations, *Preventing Conflict, Transforming Justice, Securing the Peace: A Global Study on the Implementation of United Nations Security Council Resolution 1325* (2015).

<sup>18</sup> See further NGO Working Group on WPS, *Security Council members unite to protect the Women, Peace and Security agenda on its 20th anniversary* (30 October 2020) <<https://www.womenpeacesecurity.org/blog-SecurityCouncil-protect-wps-agenda-20th-anniversary/>> accessed 17 September 2022.

Council in feminist strategy in international law.<sup>19</sup> Instead, there has been feminist energy in recent years to de-centre the Security Council from defining, interpreting, implementing, and enforcing the WPS agenda. There has been much feminist momentum behind efforts to shift the agenda to implementation settings outside of the Security Council at the international (human rights) level,<sup>20</sup> at the regional level,<sup>21</sup> and at the national<sup>22</sup> and sub-national<sup>23</sup> level. These efforts should be understood as constituent of broader efforts to limit—or to at least hold accountable—Security Council exercise of its powers.<sup>24</sup>

This article argues that the Security Council has proven to be a flawed conduit for feminist objectives in peace and security. With increasing feminist consensus around the nature and scale of the problem, the article sets out to document one potential way forward, namely centring the WPS agenda in the UN General Assembly. A notable casualty of the Security Council's adoption and pursuit of the WPS agenda has been the feminist peace priority of disarmament, which has never found expression through the WPS resolutions. In a period of intense questioning about the Security Council's role and efficacy in response to threats to international peace and security, the article sets out to engage positively with opportunities for the pursuit of feminist peace agendas that centre disarmament at the General Assembly. The article proceeds as follows: 'Disarmament in feminist peace agendas' section attends to defining 'feminist peace agendas' and, adopting an inductive approach, identifies disarmament as a recurrent theme of expressly feminist peace agendas. 'Institutionalizing disarmament in international law' section turns to the evolving fate of disarmament as a priority in the Covenant of the League of Nations and the Charter of the United Nations, and in institutional activity within the UN General Assembly and the UN Security Council. 'Disarmament in the WPS agenda' section examines the more specific question of the fate of disarmament within the WPS agenda. 'Disarmament at the United Nations: understanding broader institutional factors' section explains the silence on disarmament of the WPS resolutions in terms of broader institutional features of the General Assembly and the Security Council, namely, differences in their composition, decision-making, and law-making role. Finally, the last section sets out options for centring the WPS agenda in the General Assembly in order to advance feminist peace agendas in international law.

## Disarmament in feminist peace agendas

Defining feminist peace agendas is a tricky undertaking. There is a rich body of scholarship on feminist definitions and conceptualizations of peace. Indeed, there is now a sub-field of peace studies dedicated to feminist peace research.<sup>25</sup> Given the article's focus on international law and institutions, the objective here is not to define feminist peace agendas *per se*, rather the objective is to discern the feminist peace agendas that have underpinned feminist engagement with international law. In this respect, identifying efforts to institutionalize feminist peace agendas in international law is less problematic empirically than

<sup>19</sup> Catherine O'Rourke, 'Feminist Strategy in International Law: Understanding its Legal, Normative and Political Dimensions' (2017) 28 *European Journal of International Law* 1019.

<sup>20</sup> Catherine O'Rourke and Aisling Swaine, *Guidebook on CEDAW General Recommendation No. 30 and the UN Security Council Resolutions on Women, Peace and Security* (UN Women 2015).

<sup>21</sup> See eg, Catherine O'Rourke, *Transitional Justice and National Action Plans on Women, Peace and Security in the Middle East and North Africa Region* (UN Women 2022).

<sup>22</sup> Aisling Swaine, 'Globalising Women, Peace and Security: Trends in National Action Plans' (2017) 135 *Nato Sci Peace Sec* 7.

<sup>23</sup> Global Network of Women Peacebuilders, *Implementing Locally, Inspiring Globally: Localizing UNSCR1325 in Colombia, Nepal, the Philippines, Sierra Leone and Uganda* (UN Women 2013).

<sup>24</sup> For eg, Trahan (n 3).

<sup>25</sup> Tarja Väyrynen and others, *Routledge Handbook of Feminist Peace Research* (Routledge 2021); Catia Confortini, 'Feminist Contributions and Challenges to Peace Studies' *Oxford Research Encyclopedia of International Studies* (2010).

theoretically. An inductive approach is therefore appropriate. This practice of distilling feminist peace agendas from empirical and longitudinal analysis of feminist activism and outputs is well-established.<sup>26</sup> Looking inductively across 'critical junctures'<sup>27</sup> in feminist peace activism that targets international law and institutions, namely the Hague Women's Conference of 1915,<sup>28</sup> engagement with the landmark United Nations Fourth World Conference on Women in 1995<sup>29</sup> and advocacy for the WPS agenda at the Security Council,<sup>30</sup> two clear themes are discernible, namely a prioritization of women's participation and a prioritization of disarmament. The issue of participation has been extensively parsed elsewhere.<sup>31</sup> The article focuses therefore on feminist efforts to advance disarmament as core to feminist peace agendas under international law.

Women's autonomous peace organizing came to prominence as part of the late-19th century emergence of modern transnational humanitarianism, which was epitomized by anti-slavery campaigns, the birth of Red Cross movement and popular mobilization for arms limitation and disarmament.<sup>32</sup> The Hague Peace Conferences 1899 and 1907, convened, respectively, by Russia and the USA, revealed the importance of civil society, including women's civil society, in advancing humanitarian disarmament, bringing state delegations to a negotiation, and even getting disarmament on the agenda.<sup>33</sup> Whilst civil society activism did not however dictate the actual outcome, this period is nevertheless significant for establishing patterns in women's disarmament activism that were to endure. These patterns included working autonomously as women's associations, but embedded within broader humanitarianism, and engagement with sites of international governance and international law.

The Hague Women's Conference of 1915 gathered women from warring nations to call for an immediate end to World War 1 and was a watershed in several respects. From the resolutions adopted by the Conference, clear priority is given to disarmament and to the establishment of structures for 'permanent peace',<sup>34</sup> which included calls for 'a permanent International Court of Justice to settle questions or differences of a justiciable character, such as arise on the interpretation of treaties or of the law of nations',<sup>35</sup> a 'permanent International Conference holding regular meetings in which women should take part, to deal not with the rules of warfare but with practical proposals for further international co-operation among the States'<sup>36</sup>; and 'general disarmament', ie:

<sup>26</sup> Ingrid Sharp, 'Feminist Peace Activism 1915 and 2010: Are We Nearly there Yet?' (2013) 38 *Peace & Change* 155; Catia Confortini, *Intelligent Compassion: Feminist Critical Methodology in the Women's International League for Peace and Freedom* (OUP 2012); Catherine Eschle, 'Feminism and Peace Movements: Engendering anti-nuclear activism' In Tarja Väyrynen and others (eds) *Routledge Handbook of Feminist Peace Research* (Routledge 2021) 250–59.

<sup>27</sup> Giovanni Capocchia, 'Critical Junctures' in Orfeo Fioretos, Tullia G Falletti and Adam Sheingate (eds) *The Oxford Handbook of Historical Institutionalism* (OUP 2016) 89–106.

<sup>28</sup> Women's International League for Peace and Freedom, 'Resolutions from WILPF Triennial Congresses, 1915 The Hague, Netherlands' <<https://wilpf.org/resolutions-from-wilpfs-triennial-congresses/>> accessed 21 December 2023.

<sup>29</sup> Susana Fried and others, *Report of the Women's Human Rights Caucus at the Fourth World Conference on Women: Beijing 1995* (Center for Women's Global Leadership 1995).

<sup>30</sup> Carol Cohn and others, 'Women, Peace and Security: Resolution 1325' (2004) 6 *International Feminist Journal of Politics* 130 (involves reflections from directly key activists who advocated for the resolution). In addition, there are extensive secondary accounts of this advocacy, focused on interviews with key feminist protagonists. See especially Cynthia Cockburn, *From Where We Stand* (Zed Books 2007).

<sup>31</sup> Catherine O'Rourke, "'Walk[ing] the Halls of Power'? Understanding Women's Participation in International Peace and Security' (2014) 15 *Melbourne Journal of International Law* 128; Catherine Turner and Aisling Swaine, 'Aligning Participation and Protection in the Women, Peace and Security Agenda' (2023) 72 *International & Comparative Law Quarterly* 477.

<sup>32</sup> Treasa Dunworth, *Humanitarian Disarmament: An Historical Enquiry*. Cambridge and New York (CUP 2020) 48.

<sup>33</sup> *ibid.*

<sup>34</sup> Women's International League for Peace and Freedom (n 28), III. Principles of a Permanent Peace.

<sup>35</sup> *ibid.*, IV.11.a.

<sup>36</sup> *ibid.*, IV.11.b.

The International Congress of Women, advocating universal disarmament and realising that it can only be secured by international agreement, urges, as a step to this end, that all countries should, by such an international agreement, take over the manufacture of arms and munitions of war and should control all international traffic in the same. It sees in the private profits accruing from the great armament factories a powerful hindrance to the abolition of war.<sup>37</sup>

In hindsight, it is perhaps surprising, but these commitments to disarmament and this articulated vision of structures to ensure ‘permanent peace’ would come to be reflected in important ways in the Covenant of the League of Nations, though ultimately come to become undone in key respects by Charter of the United Nations.

## **Institutionalizing disarmament in international law**

### **Disarmament in the Covenant of the League of Nations and the UN Charter**

Disarmament as a shared international priority infused the provisions of the Covenant of the League. The very first article of the Covenant required members of the League to accept ‘such regulations as may be prescribed by the League with regard to its military, naval, and air forces and armament’. Complementing this, Article 8 of the Covenant began with a general statement about the relationship between peace and disarmament. It provided:

The Members of the League recognise that the maintenance of peace requires the reduction of national armaments to the lowest point consistent with national safety and the enforcement by common action of international obligations.

Article 8 went on to elaborate how these general statements about disarmament were to be translated into action. The League Council was to formulate implementation plans, which would be revised at least every 10 years. The Council was also to advise on the problem of the private arms trade, and member states undertook to exchange information on their armaments, military programmes and war industries. Article 9 anticipated the creation of a Commission to advise the Council on disarmament matters. Articles 22 and 23 addressed the regulation of the global arms trade. Taken as a whole, the Covenant was the most ambitious and far-reaching attempt at international disarmament at the time, and indeed remains so today.<sup>38</sup>

Whereas the League’s approach was to achieve peace through disarmament (‘disarmament-then-peace’), in the UN Charter, the approach was to pursue peace through a robust collective security system, and in time create the necessary conditions to discuss disarmament (‘peace-then-disarmament’).<sup>39</sup> The differences between the two systems are also revealed by considering the contrasts in their references to ‘security’ and ‘peace’. The word security appears only once in the Covenant (in the preamble) and, even then, it is linked to peace. In contrast, security is the epicentre of the UN Charter, with the term ‘international peace and security’ used thirty-two times. Indeed, the ‘inherent’ right of self-defence in Article 51 of the Charter is meaningless without the corresponding right to

<sup>37</sup> Women’s International League for Peace and Freedom (n 28), IV.12.

<sup>38</sup> Andrew Webster points out that the Covenant itself does not itself use the expression ‘disarmament’, instead referring to the ‘regulation’, ‘reduction’, or ‘limitation’ of armaments: Andrew Webster, ‘Making Disarmament Work: The Implementation of the International Disarmament Provisions in the League of Nations Covenant, 1919–1925’ (2005) 16 *Diplomacy and Statecraft* 551. Webster points out that issue of terminology reflected and perpetuated the significant differences in understanding what the League was to do. Andrew Webster, ‘Piecing Together the Inter-war Disarmament Puzzle: Trends and Possibilities’ (2003-4) 59 *International Journal of Civil Society Law* 187.

<sup>39</sup> Dunworth (n 32) 61.

possess weapons. Articles 1 and 2 of the Charter, setting out the principles and purposes of the United Nations, make no reference whatsoever to disarmament.

### Disarmament at the Security Council

The UN Charter as a whole contains only three references to disarmament. These references inaugurate in important ways a notable division of labour on the matter between the Security Council and the General Assembly, the latter which is formally attributed responsibility for leading global developments on disarmament under the UN Charter.<sup>40</sup> Article 11 provides:

The General Assembly may consider the general principles of cooperation in the maintenance of international peace and security, including the principles governing disarmament and the regulation of armaments, and may make recommendations with regard to such principles to the Members or to the Security Council or to both.

This provision is notably weaker in formulation than the language of Article 8 of the Covenant, and even that was included at the suggestion of the Soviet Union with the UK and the USA opposed to its inclusion.<sup>41</sup> Article 24 of the Charter, dealing with the Security Council's responsibilities for maintaining international peace and security, makes no mention of disarmament. Ultimately, even the limited provision for a Security Council role in disarmament in Article 26 eluded implementation,<sup>42</sup> as the Security Council repeatedly failed to overcome Cold War-induced stalemate.

On the specific matter of disarmament, the composition of the Security Council has proven inauspicious. In its early days, any potential Security Council leadership on disarmament was mired in disagreement between the USA—the then only nuclear power—and the USSR. Whilst the USA sought an international system of control to limit further development of nuclear weapons, the USSR insisted first on the destruction of the US nuclear weapons before agreeing to an international system of control.<sup>43</sup> This fundamental disagreement spilled over into Security Council efforts to regulate conventional weapons also. Both the Security-Council-established Atomic Energy Commission and Commission on Conventional Weapons therefore became inactive and were formally dissolved in 1952, never to be restored or reincarnated within the Council.<sup>44</sup> In contemporary times, the five permanent members of the UN Security Council are amongst the world's largest producers and exporters of arms.<sup>45</sup>

### Disarmament at the General Assembly

In contrast with the narrow and securitized mandate of the Security Council, the UN Charter gives the General Assembly authority to discuss 'any questions or matters within

<sup>40</sup> Charter of the United Nations (adopted 24 October 1945) 1 UNTS XVI [hereinafter UN Charter], art 11.

<sup>41</sup> Dunworth (n 32).

<sup>42</sup> There is a passing reference in the UN Charter (n 40), art 26:

In order to promote the establishment and maintenance of international peace and security with the least diversion of armaments of the world's human and economic resources, the Security Council shall be responsible for formulating with the assistance of the Military Staff Committee referred to in Article 47, plans to be submitted to the Members of the United Nations for the establishment of a system for the regulation of armaments.

Thus, the provisions taken together are much weaker than the sweeping nature of arts 8 and 9 of the Covenant.

<sup>43</sup> See further Dunworth (n 32) 66.

<sup>44</sup> *ibid.* See also Alva Myrdal, 'Game of Disarmament' (1972) 22 *Impact of Science on Society* 217.

<sup>45</sup> SIPRI Arms Industry Database <<https://www.sipri.org/databases/armsindustry>> accessed 21 December 2023.

the scope' of the Charter.<sup>46</sup> As noted, Article 11 provides that General Assembly may consider the matters including disarmament and make recommendations accordingly.<sup>47</sup> Moreover, the broader remit of the General Assembly has already been influential in establishing a legal and normative framework for disarmament that does not privilege state security, but instead considers disarmament in the context of global development.

The General Assembly maintained an impressive output in terms of resolutions on disarmament-related issues, starting from its very first session.<sup>48</sup> As the years went on, the General Assembly took an active role in disarmament matters, passing increasing numbers of resolutions each year dealing with a broad range of disarmament matters, including *inter alia* the re-framing of disarmament away from being exclusively a matter of state security.<sup>49</sup> For example, in 1960, the General Assembly requested the Secretary-General to appoint a group of experts to assist him in a study of the national, social and economic consequences of disarmament, resulting in an extensive and unanimous report.<sup>50</sup> A further such initiative from the General Assembly aimed at re-framing the legalities of nuclear weapons—away from an exclusive focus on state security and self-defence, to consider also the environment, international human rights and humanitarian law implications—was the formal request to the ICJ to render an advisory opinion on whether the threat or use of nuclear weapons was in any circumstances permitted under international law.<sup>51</sup> The Court held that the threat or use of nuclear weapons would generally be contrary to the rules of international law applicable in armed conflict.<sup>52</sup> However, the Court could not conclude definitively whether the threat or use of nuclear weapons would be lawful or unlawful in an extreme circumstance of self-defence, in which the very survival of a state would be at stake.<sup>53</sup> Despite the ambiguous wording, the decision underscored that the threat and use of nuclear weapons would generally be unlawful,<sup>54</sup> as well as the responsibility of all states to engage in good faith in disarmament negotiations, grounded in article VI of the Non-Proliferation Treaty.<sup>55</sup> This General Assembly initiative succeeded in re-framing the legalities away from an exclusive focus on state security, to broader environmental and human rights considerations.

General Assembly initiatives to reframe disarmament have also involved many explicit references to women. The General Assembly demonstrated its singular role and authority in promoting cooperation on equality, peace and development with the convening of landmark global conferences in thematic areas such as human rights,<sup>56</sup> women's rights,<sup>57</sup> and international development<sup>58</sup> in the 1990s. These conferences were unique in the gathering

<sup>46</sup> UN Charter (n 42), art 10.

<sup>47</sup> *ibid*, art 11. Further, art 13 provides *inter alia* for General Assembly to 'initiate studies and make recommendations for the purpose of ... promoting international co-operation in the economic, social, cultural, educational, and health fields, and assisting in the realization of human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion', art 13(1)(b).

<sup>48</sup> Establishment of a Commission of Deal with the Problems raised by the Discovery of Atomic Energy; Principles Governing the General Regulation and reduction of armaments, UNGA Res 41(1) (14 December 1946) UN Doc A/RES/41/1.

<sup>49</sup> Dunworth (n 32) 67.

<sup>50</sup> Report of the Secretary-General Transmitting the report of his consultative Group, Economic and Social Consequences of Disarmament (28 February 1962) UN Doc E/3593/Rev.1.

<sup>51</sup> UNGA RES 49/75k (15 December 1994) UN Doc A/RES/49/75k.

<sup>52</sup> *ibid*. *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, ICGJ 205 (ICJ 1996), 8 July 1996 [hereinafter *Nuclear Weapons*], para 105, A and B; para 105, E.

<sup>53</sup> *ibid*.

<sup>54</sup> For full account, see further Dunworth (n 32) 194.

<sup>55</sup> *Nuclear Weapons* (n 52), para 105, F.

<sup>56</sup> The World Conference on Human Rights, Vienna Declaration and Programme of Action (25 June 1993) UN Doc A/CONF.157/23.

<sup>57</sup> The Fourth World Conference on Women, Beijing Declaration and Platform of Action (27 October 1995) UN Doc A/CONF.177 and A/CONF. 177/20/Add. 1 [hereinafter *Beijing*].

<sup>58</sup> The International Conference on Population and Development, Cairo Programme of Action (13 September 1994) UN Doc A/CONF. 171/13.

of all the world's nations, with unprecedented civil society involvement, to agree priorities and set a global agenda for the enhancement of rights and development. In an echo of women's demands in 1915 (and in recognition of the leading role played by women in the peace movement), the Beijing Platform for Action also looks for reduction in excessive military expenditure and regulation of armaments and posits that governments 'work actively towards general and complete disarmament under strict and effective inter-national control'.<sup>59</sup> Furthermore, the document sought promotion of 'women's contribution to fostering a culture of peace'.<sup>60</sup> The General Assembly is the unique organ in international law with authority to convene such thematic consensus-building and norm-generating global meetings.

In recent decades, the General Assembly has been at the centre of a putative 'new' era of humanitarian disarmament, grounded in the adoption of several disarmament treaties. This 'new' era commenced with 1971 Biological Weapons Convention, though is more commonly associated with the 1992 Chemical Weapons Convention, the 1997 Anti-Personnel Mine Ban Convention, the 2008 Convention on Cluster Munitions and the 2017 Treaty on the Prohibition of Nuclear Weapons. Broad trends which can be discerned from these treaties is, first, to outlaw all and any use of weapons by disarmament treaty, without first instituting a prohibition on their use under international humanitarian law. Secondly, reporting obligations, meetings of States Parties and treaty-related institutions are generally created, either directly by treaty or by subsequent state party decisions. Thirdly, there is a tendency to make the treaty's entry into force easier, and the withdrawal more difficult. Casey-Maslen and Vestner argue that these trends arise from states' attempt to establish more easily disarmament treaties, design more robust disarmament treaties and more effectively protect civilians.<sup>61</sup> The General Assembly has proven a productive site for advancing these priorities.

The central role of civil society in establishing the momentum towards, and even influencing treaty terms, has had important gender implications also. Whilst the 1971 Biological Weapons Convention reflects more traditional inter-state and reciprocal state security-based thinking, the 1997 Treaty in particular is widely celebrated as a high-watermark of feminist civil society efficacy in international law-making. Adopted in Ottawa in December 1997, the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction (APLM Convention) is widely hailed among states and civil society alike as a triumph of humanitarian disarmament.<sup>62</sup> The assessment rests on two core claims. The first is the way in which anti-personnel landmines came to be framed as a 'humanitarian problem' rather than as a security issue. The second is the way in which civil society partnered with 'like-minded' states and enjoyed unprecedented access and influence in the lead-up to the treaty negotiations and in the actual negotiations themselves. Indeed, some have gone so far as to say that the APLM Convention only came about because of civil society, a view that would seem to be widely held given the award of the Nobel Peace Prize in 1997 to the umbrella civil society campaign, the International Campaign to Ban Landmines. Noteworthy also is that the 2017 Nuclear Weapons Prohibition Treaty resulted in the award of the Nobel Prize to the civil society alliance which successfully pressed for its adoption.

For practical, legal, and strategic reasons, the General Assembly has provided the preferred platform for the advancement of legally binding obligations on disarmament. These reasons are usefully illustrated through the choice of the General Assembly as the preferred

<sup>59</sup> *Beijing* (n 57).

<sup>60</sup> Christine Chinkin, *The Law of Women, Peace and Security* (CUP 2022) 12.

<sup>61</sup> Stuart Casey-Maslen and Tobias Vestner, 'Trends in Global Disarmament Treaties' (2020) 25 *Journal of Conflict and Security Law* 449.

<sup>62</sup> Kenneth Anderson, 'The Ottawa Convention Banning Landmines, the Role of International Non-Governmental Organizations and the Idea of International Civil Society' (2000) 11 *European Journal of International Law* 91.



forum for the negotiation of the Nuclear Weapons Prohibition Treaty. In the case of nuclear weapons, once the momentum towards some kind of a prohibition treaty had rekindled, the Conference on Disarmament was a potential institutional avenue for the treaty negotiations. The Conference on Disarmament is a multilateral disarmament forum established in 1979 (then called the Committee on Disarmament) to negotiate arms control and disarmament agreements. Nuclear disarmament had been a permanent feature of the Conference's agenda from the beginning and in that sense then, it was a natural home. However, while there had been some achievements over the decades, by the mid-1990s, it was clear that no progress could be made on nuclear disarmament (or any other disarmament negotiations) in that forum. In fact, even the UN Secretary-General acknowledged this in the 2018 Agenda for Disarmament, stating that the Conference has 'not lived up to [its] promise for quite some time'.<sup>63</sup>

In addition, the General Assembly's universal composition was important to its selection. Only 65 states are members of the Conference, less than one-third of the states in the world. Given the repeated insistence that nuclear disarmament was the responsibility of all states, a less than universal forum was inappropriate as a negotiation forum. Furthermore, echoing noted challenges in advancing disarmament through the UN Security Council, the Conference on Disarmament continued to be mired in a consensus-based decision-making framework, which essentially meant that it would have been impossible to move forward on nuclear disarmament in that framework. In addition to its long record of activity for nuclear disarmament,<sup>64</sup> the General Assembly allowed for universal participation in negotiations, avoided consensus decision-making and allowed for greater civil society engagement. Together these factors provide powerful evidence of the General Assembly's unique institutional efficacy in advancing disarmament.

## Disarmament in the WPS agenda

The antecedents of UN Security Council Resolution 1325 lie in the transnational feminist momentum leading to the UN's Fourth World Conference on Women in Beijing.<sup>65</sup> The desire for clear legally-binding obligations on states was a key motivation for moving feminist demands from the international human rights system and UN General Assembly to the Security Council, as well as the desire to influence the Security Council's response to threats to international peace and security, and ultimately the wish to challenge and reframe the underpinning notions of peace and security.<sup>66</sup> While critical questions might be asked as to the efficacy and wisdom of this strategy, it nevertheless was a clear strategy to exploit the diversity of institutions regulating women's rights in conflict. The dedicated activity of the Security Council on issues of WPS since the adoption of Resolution 1325 in 2000 moved the Security Council to the epicentre of policy and advocacy concerning women's rights in conflict under international law. Due to its origins in women's peace activism, the adoption of Resolution 1325 has been described as 'the most remarkable institutional achievement of women's anti-war movements to date'.<sup>67</sup>

In accounts of the mobilization and negotiation leading to the adoption of Resolution 1325, one of the most commonly noted compromises of the resolution language is the dropping of any reference to disarmament. As Cynthia Cockburn recounts:

<sup>63</sup> United Nations Secretary-General, *Agenda for Disarmament* (United Nations 2018).

<sup>64</sup> Since its inception, the General Assembly had dealt with issues of nuclear disarmament, including the request for an ICJ advisory opinion on the threat or use of nuclear weapons, the adoption of the Comprehensive Test Ban Treaty and the annual adoption of resolutions calling for nuclear disarmament, see further Dunworth (n 32).

<sup>65</sup> See further, Cockburn (n 30).

<sup>66</sup> *ibid* 132–55.

<sup>67</sup> *ibid* 138.

WILPF, however, regretted the absence of two major themes in the resolution. It spoke only fleetingly of women's role in preventing war, and made no mention of *ending war itself*, which, after all, was the main reason the United Nations was established and precisely the Security Council's brief.<sup>68</sup>

Thus, while feminist anti-militarism was central to advocacy for the Security Council's initial adoption of the WPS agenda, the agenda has moved far from those intentions, with no explicit call for disarmament or arms control within the relevant Security Council resolutions. To the extent that disarmament does feature in the WPS resolutions, it is to call for localized demobilization, disarmament and reintegration programmes to be gender-sensitive.<sup>69</sup> This call, however, is made with little apparent regard to the origin of the illegal arms involved, which is often through secondary sales of initially legal arms transfers from the global north. Whilst secondary illegal arms sales are acknowledged to be an important and fatal escalating factor in many contemporary civil wars and conflicts involving non-state armed groups,<sup>70</sup> their origins in legal arms transfers remain unaddressed in the WPS agenda.

Efforts to read disarmament into the text of WPS resolutions have relied primarily on references to the Arms Trade Treaty (an arms control, rather than disarmament, treaty) within preambles (the so-called 'dumping ground' for proposals not acceptable for operative provisions<sup>71</sup>) to some of the later resolutions.<sup>72</sup> Resolution 2122 (2013), for example, includes text to the following effect:

Acknowledging the adoption of the Arms Trade Treaty and noting the provisions in Article 7(4) of the Treaty that exporting States Parties shall take into account the risk of covered conventional arms or items being used to commit or facilitate serious acts of gender-based violence or serious acts of violence against women and children,

Looking forward to the important contribution that implementation of the Arms Trade Treaty can make to reducing violence perpetrated against women and girls in armed conflict and post-conflict situations.<sup>73</sup>

Whilst the first paragraph is repeated in Preambles to resolutions 2106 and 2467, the second paragraph is repeated nowhere in the WPS resolutions.<sup>74</sup> Formal reference to disarmament in the WPS resolutions is, therefore, scant.

## **Disarmament at the United Nations: understanding broader institutional factors**

### **Security Council composition, decision-making, and law-making**

The composition of the UN Security Council is a central factor for understanding its limitations as an institution for the advancement of disarmament. Reflecting the power dynamics that defined the end to World War II, the anachronism of the Security Council's P-5 composition is but one of its most apparent limitations. More telling is the Council's manifest

<sup>68</sup> *ibid* (emphasis in original).

<sup>69</sup> UN Doc S/RES/2106 (n 17); UN Doc S/RES/2222 (n 17); UN Doc S/RES/2467 (n 17); UN Doc S/RES/2493 (n 17).

<sup>70</sup> Stefano DellaVigna and Eliana La Ferrara, 'Detecting Illegal Arms Trade' (2010) 2 *American Economic Journal: Economic Policy* 26.

<sup>71</sup> Michael C Wood, 'The Interpretation of Security Council Resolutions' (1998) 2 *Max Planck Yearbook of United Nations Law Online* 73, 86.

<sup>72</sup> See especially Ray Acheson and Maria Butler, 'WPS and the Arms Trade Treaty' in Sarah Davies and Jacqui True (eds), *Oxford Handbook on Women, Peace and Security* (OUP 2018).

<sup>73</sup> UN Doc S/RES/2122 (n 17), Preamble.

<sup>74</sup> UN Doc S/RES/2467 (n 17), Preamble; UN Doc S/RES/2106 (n 17), Preamble.

failures to respond meaningfully to even the most narrowly defined manifestations of threats to international peace and security, including Russian aggression in Ukraine, massive civilian casualties in the conflict in Syria, and alleged genocide on the Bangladesh–Myanmar border. Whilst these crises of international peace and security have prompted responses from several other institutions of international law, including the ICJ and the ICC, the operation of P-5 veto power has effectively marginalized the Security Council as an actor of significance in responding to these acute and ongoing threats to international peace and security. Ultimately, that permanent members can veto any resolution that affects its interests or those of its allies results in grave inconsistencies in the operation of the Council.

The Security Council has unique recommendatory and enforcement powers, under Chapters VI (Peaceful Settlement of Disputes) and VII (Threats to International Peace and Security) of the UN Charter. Nevertheless, the Security Council consists of a small unrepresentative subgroup of states and, as such, is unentitled to engage in norm development. In its mission creep towards growing legislative-like thematic activity since the 1990s,<sup>75</sup> the legal status of the so-called ‘thematic’ resolutions, such as WPS—and indeed the ‘lawmaking’ capacity of the Security Council—has been the subject of heavy contestation.<sup>76</sup> Such thematic activity commenced with ostensibly humanitarian and ‘human security’ focused concerns, namely the protection of civilians, women, and children in armed conflict.<sup>77</sup> In its response to the terrorist attacks on the USA of 11 September 2001, however, the Council has proceeded to legislate for counter-terrorism in a far more direct way: it has created obligations for states to take action against terrorism in general and has enacted many of the provisions contained in earlier conventions against terrorism under Chapter VII, without confining itself to the concrete case.<sup>78</sup> Although the Council action has been unanimous, without the objection of any state, it remains difficult to justify under the UN Charter. If, however, states continue to endorse the exercise of true legislative functions by the Council, the original Charter conception might undergo significant change, as it has already done in other areas.<sup>79</sup>

There are several reasons to be concerned about the Security Council’s development of legislative and quasi-legislative functions, based on accountability, participation, procedural fairness and transparency of decision-making.<sup>80</sup> Boyle and Chinkin note that the Security Council is not a representative body and, as a result, its legislative action can lack legitimacy and acceptability to non-members.<sup>81</sup> Procedurally, its negotiations are in private, involving Security Council member states only.<sup>82</sup> The power that this gives the Security Council, in particular the permanent members, violates the principle of sovereign equality of states and the principal that states must consent to new obligations under international law.<sup>83</sup> There is no real scope for challenging or judicially reviewing the Security Council’s decisions.<sup>84</sup> These concerns and flaws in Security Council law-making are particularly worrying to states in the global south, whose interests are represented in the Council by only a handful of non-permanent members:

<sup>75</sup> Paul C Szasz, ‘The Security Council Starts Legislating’ (2002) 96 *American Journal of International Law* 901.

<sup>76</sup> *ibid.*

<sup>77</sup> Bruno Simma and others, *The Charter of the United Nations: A Commentary* (OUP 2002) 709.

<sup>78</sup> UNSC Res 1373 (28 September 2001) UN Doc S/RES/1373. See further *ibid.*

<sup>79</sup> Simma and others (n 77) 709.

<sup>80</sup> Alan Boyle and Christine Chinkin, *The Making of International Law* (OUP 2007) 114–15, 229–32.

<sup>81</sup> *ibid.* 114.

<sup>82</sup> *ibid.*

<sup>83</sup> *ibid.*

<sup>84</sup> *ibid.* Efforts by some smaller states to include a provision in the Charter to permit ICJ review of Security Council decisions affecting the essential rights of states was rejected, Simma and others (n 77) 703.

The Security Council is a seriously deficient vehicle for the exercise of legislative competence. Dominated by the permanent members, or sometimes by only one or two of them, unrepresentative and undemocratic, its quasi-legislative powers can only be justified by reference to the paramount urgency and importance of its responsibility for the maintenance of international peace and security.<sup>85</sup>

Importantly, Boyle and Chinkin note, 'the increasing prominence of the Security Council in the dynamics of international law-making marks an important shift of power and influence away from the General Assembly'.<sup>86</sup>

### General Assembly composition, decision-making, and law-making

At a time of increasingly acute questioning about international law's continuing colonial imprint,<sup>87</sup> the General Assembly is made up of all UN Member States on a basis of sovereign equality, in which the majority world constitutes the majority of members. The universal composition of the General Assembly and absence of a veto for any state should in the long term ensure a broader legitimacy to WPS priorities. Furthermore, if the motivation for the women's movement to approach the Security Council was the desire for legally-binding outcomes, then greater consideration of the General Assembly's role in informing, crystallizing and even making customary international law is appropriate. Neither the UN Security Council nor the General Assembly is a legislative body in any sense. Nevertheless, the General Assembly's universal membership, its ability to adopt resolutions on any subject, convene law-making conferences, adopt treaties and initiate codification projects has given it a central role in the development of international law.<sup>88</sup> There are several examples of this developmental role leading to improved protections of women's rights and the advancement of disarmament under international law. Furthermore, the adoption of a resolution by the General Assembly may represent state *opinio juris*, generate state practice, or have effect as soft law.<sup>89</sup>

Quite apart from discussions of their customary status, there are many examples of the adoption of a General Assembly resolution being an early step towards the eventual conclusion of a treaty. On women's rights, for example, the adoption of CEDAW was preceded by the General Assembly's Declaration on the Elimination of All Forms of Discrimination Against Women.<sup>90</sup> As Boyle and Chinkin observe:

Accordingly in many instances NGOs lobby for a GA resolution on a particular topic and seek to participate in its drafting and adoption in the same ways as in treaty-making. Special interest NGOs seeking to develop international law in accordance with their own agendas may make a strategic determination that a formally non-binding General Assembly resolution is more achievable—at least in the short term—than a treaty and campaign accordingly. Success in this objective may be a step towards the eventual negotiation of a treaty.<sup>91</sup>

For manifold reasons, therefore, the General Assembly may offer a productive avenue for the international law-making that codifies a comprehensive vision of women, peace and security.

<sup>85</sup> *ibid* 115.

<sup>86</sup> *ibid*.

<sup>87</sup> See eg, Henry Jones, 'Property, Territory, and Colonialism: An International Legal History of Enclosure' (2019) 39 *Legal Studies* 187.

<sup>88</sup> See generally, Christopher C Joyner, *The United Nations and International Law* (CUP 1997).

<sup>89</sup> The ICJ has been critiqued for inconsistent jurisprudence on this question, see eg, Boyle and Chinkin (n 80) ch 5.

<sup>90</sup> *ibid* 5.1.

<sup>91</sup> *ibid*.

Beyond its role in norm development, the General Assembly's more direct responses to threats to international peace and security, such as measures proposed through the Uniting for Peace mechanism,<sup>92</sup> have been both significant and wide-ranging. Revived most recently in response to Security Council inability to agree a response to Russian aggression in Ukraine,<sup>93</sup> the Uniting for Peace procedure is itself a powerful indicator of the challenges posed by the composition and operation of the Security Council. Uniting for Peace has existed since 1950 to respond to situations in which the Security Council is deadlocked and has failed to accomplish its primary responsibility of maintaining international peace and security.<sup>94</sup> Whilst the legality of the doctrine remains somewhat contested,<sup>95</sup> initiatives such as Uniting for Peace constitute efforts to circumvent the power politics of the P-5. The text of the Uniting for Peace resolution specifies:

The General Assembly ... resolves that if the Security Council, because of lack of unanimity of the permanent members, fails to exercise its primary responsibility for the maintenance of international peace and security in any case where there appears to be a threat to the peace, breach of the peace, or act of aggression, the General Assembly shall consider the matter immediately with a view to making appropriate recommendations to Members for collective measures ...<sup>96</sup>

Uniting for Peace has had particular significance when the Council has been blocked by veto. Advocates for revisiting and reviving Uniting for Peace more broadly to, for example, improve accountability for international crimes<sup>97</sup> or more meaningful international action to end the conflict in Syria<sup>98</sup> likewise ground their proposals in the deficient and politicized operation of the veto power at the Council.

Illustrating the breadth of measures proposed, resolutions emanating from the Uniting for Peace sessions have dealt with, for example, establishing peacekeeping operations.<sup>99</sup> Other Uniting for Peace-based sessions have resulted in the Assembly taking a variety of non-use of force measures, such as establishing a commission of inquiry (Hungary 1956), calling for the withdrawal of foreign troops from Jordan and Lebanon (1958), calling for the rescission by Israel of unilateral measures in Jerusalem (1967), providing assistance to East Pakistani refugees (1971), calling for the withdrawal of foreign troops from Afghanistan (1980) and for the withdrawal of Israel from territories occupied since 1967 (1980), condemning South Africa for the occupation of Namibia and calling for assistance to the liberation struggle (1981), and requesting an advisory opinion of the ICJ on the legal consequences of the construction of a wall in the occupied Palestinian territory (1997). In addition, Uniting for Peace-based sessions have resulted in the adoption of what might be termed 'voluntary sanctions', such as the 1960 Resolution calling on states 'to refrain from the direct and indirect provisions of arms or other materials of war and military personnel and other assistance for military purposes in the Congo',<sup>100</sup> the 1982 Resolution calling on states to 'refrain from supplying Israel with any weapons and related equipment and to

<sup>92</sup> For origins and surrounding debates on legality, see Juraj Andrassy, 'Uniting for Peace' (1956) 50 *American Journal of International Law* 563.

<sup>93</sup> UNGA Res ES-11 (1 March 2022) UN Doc A/ES-11/L.1.

<sup>94</sup> See further, Andrassy (n 92).

<sup>95</sup> See eg, Jean Krasno and Mitushi Das, 'The Uniting for Peace Resolution and Other Ways of Circumventing the Authority of the Security Council' in Bruce Cronin and Ian Hurd (eds), *The UN Security Council and the Politics of International Authority* (Routledge 2008) 173–95.

<sup>96</sup> UNGA Res 377(V) (3 November 1950) UN Doc A/RES/377.

<sup>97</sup> Michael Ramsden and Tomas Hamilton, 'Uniting Against Impunity: The UN General Assembly as a Catalyst for Action at the ICC' (2017) 66 *International and Comparative Law Quarterly* 893.

<sup>98</sup> Nahlawi (n 3).

<sup>99</sup> Such as the First United Nations Emergency Force in 1956 and the United Nations Operation in the Congo in 1960.

<sup>100</sup> UNGA Res 1474 (ES-IV) (20 September 1960) UN Doc S/RES/1474.

suspend any military assistance which Israel receives from them...'<sup>101</sup> The General Assembly's consistent approach to Article 11(2) has therefore been to read it expansively, in ways that empowers its actions on peace and security.

Proposals for the elevation of the General Assembly in matters of peace and security are not without drawbacks or criticisms. Critics point to the historical political biases in the General Assembly, it being soft on human rights in the global south,<sup>102</sup> how the non-binding character of resolutions enables autocratic regimes to push false rhetoric at little political cost, and its disproportionate emphasis on Israel as a decoy for abusive states.<sup>103</sup> Nevertheless, the universal composition of the General Assembly and absence of a veto for any state should in the long term enhance accountability for human rights and alleviate the 'accountability blind-spots' created by Security Council politics,<sup>104</sup> in ways that are instructive also for broader normative peace agendas. The DPKK, Israel and Syria inquiries established by resolution of the General Assembly asserted the need for perpetrators in these states to be held to account, despite the shielding from scrutiny of these situations by different Security Council permanent members.<sup>105</sup>

The General Assembly's universal membership can also have an important ongoing role in ensuring more democratic approaches to the WPS agenda, which prioritize disarmament. Even when it does not itself promote the negotiation of new treaties or other instruments, the General Assembly's power to coordinate the legal and policy agendas of specialized agencies and other UN bodies gives it a continuing role at the heart of the law-making process. With so many different bodies potentially involved in international law-making, the task of allocating responsibilities and coordinating policy is an increasingly important feature of the General Assembly's role. Moreover, the choice of forum may affect not only the perspective from which the issues are approached but also the constituencies most likely to become involved and whose interests are most strongly favoured by the governmental representatives concerned. The influence of developing countries within a specialized agency may not be as strong as it is in the General Assembly. Specialized agencies, both national and international, tend to be strongly influenced by special interests and particular ministries. These dynamics are evident also on the issue of disarmament. Whereas progress on regulating nuclear weapons was mired at the Security Council by the stalemate between the USA and USSR, the members of the Non-Aligned Movement at the General Assembly have driven many of the most significant developments on disarmament.

## **Institutionalizing feminist peace agendas through an inter-organ Security Council-General Assembly relationship**

In understanding efforts to institutionalize feminist peace agendas, there is an important empirical and theoretical stream in international relations scholarship focused on the significance of women's movements and feminist advocacy in influencing international law.<sup>106</sup> This influence can be achieved both in consuming and formally engaging with international law through prescribed avenues, and also in generating, amending,<sup>107</sup> and diffusing such norms. Women's movements have important potential as 'norm

<sup>101</sup> UNGA Res ES-9/1 (5 February 1982) UN Doc S/RES/ES-9/1.

<sup>102</sup> See eg, Roland Burke, *Decolonization and the Evolution of International Human Rights* (University of Pennsylvania Press 2011) 130.

<sup>103</sup> *ibid.*

<sup>104</sup> Ramsden and Hamilton (n) 97.

<sup>105</sup> *ibid.* 920.

<sup>106</sup> See eg, Margaret E Keck and Kathryn Sikkink, *Activists beyond Borders: Advocacy Networks in International Politics* (Cornell University Press 1998) and its case study of movement to end violence against women.

<sup>107</sup> Mona Lena Krook and Jacqui True, 'Rethinking the Life Cycles of International Norms: The United Nations and the Global Promotion of Gender Equality' (2012) 18 *European Journal of International Relations* 103.

entrepreneurs',<sup>108</sup> pushing subaltern feminist values into the international domain and ultimately working towards their codification in international law. Furthermore, there is ample and geographically diverse evidence of women's movements building alliances with broader human rights and international justice advocates locally and globally for changes to international law.<sup>109</sup> Because advocacy by women's movements impacts international law, strategic decisions about where to concentrate attention and resources can have both positive and adverse implications.<sup>110</sup> This section looks forward to consider options for institutionalizing feminist peace agendas through an inter-organ Security Council-General Assembly relationship.

### An inter-organ dialogue on the women, peace and security agenda

In a spectrum of modest to radical proposals for re-envisioning the Security Council-General Assembly relationship to advance disarmament in the WPS agenda, one might start with an *inter-organ dialogue* on peace and security between the Security Council and the General Assembly as an opportunity to move the Security Council closer to feminist conceptions of both peace and security. Elements of this inter-organ dialogue may include inter-organ scrutiny and accountability, in which the General Assembly scrutinizes the Security Council for the exercise of its coercive powers, and potentially condemns it for misuse of those powers. The UN Charter bestows a power on the UNGA to make recommendations to the UNSC, which has been modified by decades of practice to allow plenary recommendations even where the UNSC is acting on a given situation.<sup>111</sup> The UNGA has used its powers to make recommendations to the UNSC in a variety of areas. For example, the UNGA recommended that the UNSC uphold procedural fairness in its terrorist sanctions regime and in criticizing the disproportionality of enforcement action.<sup>112</sup> There are examples of the UNGA and UNSC forming habits of cooperation and dialogue on human rights and security issues. For example, from what originated as a British proposal in the UNGA to eliminate trade in 'blood diamonds', the UNSC 'welcomed' the UNGA's resolution to support its Chapter VII decisions in drawing a link between the escalation of conflict and the diamonds trade in Sierra Leone and Liberia.<sup>113</sup> Also available are examples of the General Assembly acting as an additional enforcer of Security Council decisions, for example noting in a resolution a state's failure to comply.<sup>114</sup> Furthermore, although no resolution was drafted or vote taken, the UNGA's calls to address DPRK impunity prompted the UNSC to meet in closed session; a necessary first step in broadening UNSC consideration of DPRK issues, from disarmament to human rights.<sup>115</sup> There are also examples of inter-organ scrutiny, in which the UNGA can call attention to and condemn activity by the UNSC. In rare instances, the UNGA has gone further, to condemn UNSC inaction, 'deploring the failure' of the UNSC to ease the humanitarian crisis in Syria.<sup>116</sup>

Applying a strategy of inter-organ dialogue between the General Assembly and Security Council, the General Assembly could prove to be a valuable avenue for highlighting—and challenging—some of the most problematic aspects of the WPS agenda at the Security

<sup>108</sup> See further, Martha Finnemore and Kathryn Sikkink, 'International Norms Dynamics and Political Change' (1998) 52 *International Organization* 887.

<sup>109</sup> Niamh Reilly, *Women's Human Rights: Seeking Gender Justice in a Globalizing Age* (Cambridge & Malden, Polity 2009).

<sup>110</sup> O'Rourke (n 19).

<sup>111</sup> See further, Andrew Carswell, 'Unlocking the UN Security Council: The Uniting for Peace Resolution' (2013) 18 *Journal of Conflict and Security Law* 453.

<sup>112</sup> UNGA Res 70/14 (17 December 2015) UN Doc A/RES/70/14, para 12; UNGA Res 69/122 (10 December 2014) UN Doc A/70/14.

<sup>113</sup> UNSC Res 1343 (7 March 2001) UN Doc S/RES/1343.

<sup>114</sup> UNGA Res 67/25 (30 November 2012) UN Doc A/RES/67/25, concerning the Syrian Golan.

<sup>115</sup> See eg, UNSC Res 2270 (2 March 2016) UN Doc S/RES/2270; Michael Schmidt, 'UN General Assembly' in Alex Bellamy and Tim Dunner (eds), *Oxford Handbook on the Responsibility to Protect* (OUP 2016) 27–80.

<sup>116</sup> UNGA Res 66/253B (3 August 2012) UN Doc A/RES/253B.

Council. For example, the General Assembly could call attention to failures by the Security Council to integrate its WPS commitments into its country-specific activities. Furthermore, the General Assembly might encourage the Security Council to improve its overall monitoring of the WPS agenda, by endorsing the most effective tool at supporting national-level implementation of the WPS agenda, namely National Action Plans on WPS.<sup>117</sup> (The Security Council has so far carefully declined to do this.) Similarly, the General Assembly could endorse the WPS Indicators<sup>118</sup>—developed at the request of the Security Council, but never subsequently endorsed or adopted by the Security Council—to enhance implementation and accountability for WPS commitments. Furthermore, the General Assembly might challenge the Security Council's tendency to extract sexual violence in armed conflict from broader gender patterns of inequality, harm, and violence, by calling for attention and accountability to the fuller breadth of violence against women in conflict as reflected in the General Assembly's own outputs on gender-based violence. Finally, the General Assembly might condemn the Security Council's ongoing refusal to establish a Working Group on WPS, unlike its activity on children and armed conflict, which does have the institutional and resource commitment of a dedicated Working Group at the Security Council.

### The General Assembly modelling a different vision of women, peace, and security

More radically, the General Assembly may model an alternative use of Security Council powers, embodying a different type of international peace and security, for example through the Uniting for Peace resolutions. Thus, Uniting for Peace is potentially of value, not for transferring dominant Security Council peace and security paradigm to the General Assembly, but for enabling an alternative vision of peace and security—one connected to human rights, development and disarmament—under international law. Dominik Zaum's discussion of the General Assembly's approach to peacekeeping provides compelling evidence of such modelling, in which General Assembly practice has shaped the development of the core principles of a centrally important UN activity, namely peacekeeping. In the General Assembly debates on peacekeeping in Suez and the Congo in particular, central principles such as host consent, the financing of peacekeeping missions, and impartiality were formulated, which would have been less salient had it not been for the General Assembly's involvement in authorizing these peacekeeping missions.<sup>119</sup>

Drawing on the particular strengths of the General Assembly, a WPS agenda advanced by the General Assembly has the potential to centre disarmament as a priority, both in terms of the immediate cessation of active conflict and longer-term peace and reconstruction. Furthermore, in line with its long-standing work on disarmament, the General Assembly may model a peace and security agenda that adopts a development and human rights framing, as distinct from state security. Finally, General Assembly membership would afford much broader participation and deliberation—including, critically, conflict-affected states in the global south—in setting a WPS agenda.

### Prefiguring a feminist peace and security agenda at the General Assembly

It is important to acknowledge how many of the General Assembly's responses to threats to international peace and security draw directly from the Security Council playbook of responses. Similarly, even the considerable successes of the General Assembly in advancing disarmament treaties have happened by working within silos of established weapons

<sup>117</sup> Swaine (n 22).

<sup>118</sup> Women, Peace and Security Report of the Secretary-General (28 September 2010) UN Doc S/2010/498, annex.

<sup>119</sup> Dominic Zaum, 'The Security Council, the General Assembly and War: The Uniting for Peace Resolution' in Vaughan Lowe (ed), *The United Nations Security Council and War: The Evolution of Thought and Practice Since 1945* (OUP 2010) 154–74.



categories and thus depart from foundational feminist demands for general and complete disarmament.<sup>120</sup> While there is, therefore, scope for positive advancement of a WPS agenda at the General Assembly, conceiving of something more transformative requires us to look beyond an exclusive focus on the past work of the General Assembly in order to prefigure the contours of a *feminist* and anti-militarist peace and security agenda.

To this end, prefigurative feminist legal methodologies may offer promise, in order to produce a WPS agenda ‘as if’<sup>121</sup> the international system was already underpinned by feminist peace agendas. Feminist prefigurative legal approaches are grounded in the belief that we can ‘prefigure’ legal orders before they eventually formally change (or even if they never do).<sup>122</sup> It is possible to act ‘as if’ the legal processes and institutions we want to see in the world are already available. Different strands of prefigurative work emphasize different types of means and ends, but broadly they emphasize the importance of egalitarian means in order to reach egalitarian ends, because all ‘actions inevitably shape the futures’ to which they give rise. More generally, acting ‘as if’ gives political action a boost. This is partly because innovative, utopian or provocative actions happen despite lacking the institutional conditions they seem to require.

Prefigurative feminist legal methodologies involve ‘the adoption of structures and styles of reasoning that [the group] is promoting, a modelling of the desired political and social outcomes’.<sup>123</sup> Examples include the formation of ‘People’s Tribunals’ to model a form of state and individual accountability for misuses of power and to show what gender justice can look like. Importantly, as Charlesworth notes, ‘[p]refiguration is equally an alternative to revolutionary change. If they are to have a chance of changing a system, prefigurative ideas must not only inspire, but also relate to existing institutions in some way’.<sup>124</sup> Feminist legal scholars have engaged prefigurative legal methods to considerable effect. Whilst prefigurative feminist legal methodology has been applied to legislative reform activities,<sup>125</sup> it is most developed in respect of feminist judging.<sup>126</sup> Feminist judging involves re-writing judgments within formal legislative and jurisprudential boundaries and with the same set of facts as in the original judgments, but retold through an emphasis on women’s lived experience of the law, challenging gender bias in the law, and drawing on a broader set of legal sources to interpret the law, including feminist legal scholarship.<sup>126</sup>

Importantly, prefigurative feminist legal methods may have particular promise in international law. The question of sources of international law is much more central and live an issue than in most domains of domestic law.<sup>127</sup> Textbooks in international law will have an extensive discussion of sources.<sup>128</sup> Research has found that the pluralism of international law sources has been used to good effect by feminist actors and O’Rourke has consequently advocated a strategy of ‘fruitful diversity’, namely ‘[w]here the norm—or the feminist articulation of the norm—does not exist, there can be immense power in efforts to create them’.<sup>129</sup> For example, self-styled ‘declarations’ emerging from meetings of civil

<sup>120</sup> See further, Christine Chinkin and Mary Kaldor, *International Law and New Wars* (CUP 2017) 323.

<sup>121</sup> Davina Cooper (2018). ‘Acting as if other law reform options were already on the table? – The Future of Legal Gender.’ <<https://futureoflegalgender.kcl.ac.uk/2018/10/13/acting-as-if-other-law-reform-options-were-already-on-the-table/#more-520>> accessed 20 December 2023.

<sup>122</sup> Hilary Charlesworth, ‘Prefiguring Feminist Judgment in International Law’ in Loveday Hodson and Troy Lavers (eds), *Feminist Judgments in International Law* (OUP 2019) 474–94.

<sup>123</sup> *ibid* 479.

<sup>124</sup> Davina Cooper and others, ‘Introduction to the Special Issue on the Future of Legal Gender’ (*feminists@law*, 2020).

<sup>125</sup> Rosemary Hunter, ‘An Account of Feminist Judging’ in Rosemary Hunter, Erika Rackley and Clare McGlynn (eds), *Feminist Judgments from Theory to Practice* (Hart Publishing 2010) 62–75.

<sup>126</sup> *ibid*.

<sup>127</sup> Hilary Charlesworth, ‘Law-making and Sources’ in James Crawford and Marti Koskeniemi (eds) *The Cambridge Companion to International Law* (CUP 2012) 187–202.

<sup>128</sup> See eg, James Crawford, *Brownlie’s Principles of Public International Law* (OUP 2019); Malcolm Shaw, *International Law* (CUP 2021).

<sup>129</sup> O’Rourke (n 5) 358.

society and/or independent experts have been given legal effect through citation by international courts and adjudication bodies. Consider, for example, the Nairobi Declaration on Women's and Girls' Right to a Remedy and Reparation, developed by a network of women's rights NGOs—to address the silence on gender of the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law—but which went on to be cited by the International Criminal Court in its reparations jurisprudence;<sup>130</sup> or the Montreal Principles on Women's Economic, Social and Cultural Rights which informed the General Comment on the same theme by the Committee on Economic, Social and Cultural Rights.<sup>131</sup> As instruments produced by civil society, these efforts fell outside the formal sources of international law as set out in the Statute of the International Court of Justice, article 38(1). They did not carry even the 'indirect' legal effect of soft law. Rather, they were prepared in the hope that they would be adopted by other international actors, cited and applied by decision- and policymakers and thus come to be accepted as contributing to the corpus of international law. These strategies of engagement, emulation and modelling define much feminist engagement with international law and evidence efforts to constructively engage the pluralism of international law. Thus, whilst the concept of prefiguration is canvassed in scholarship and its application to feminist legal *judging* is developed, including in international law judgment-writing,<sup>132</sup> there remain opportunities for feminist prefigurative engagement with international peace and security.

In the context of the General Assembly, the prefigured feminist WPS agenda might prioritize longer-term structural causes of conflict and insecurity over short-term crisis-led responses. Furthermore, feminist prefigurative legal methods make use of feminist 'common knowledge', as well as feminist scholarship and empirical research.<sup>133</sup> It is likely therefore that a prefigured WPS agenda at the General Assembly would privilege local and feminist accounts of both causes and effects of conflict and insecurity. In addition, feminist prefigurative legal method might ask 'the woman question'<sup>134</sup> and focus on the gendered effects of apparently 'neutral' liberal legal constructs and practices, most notably the very concepts of 'international peace and security' and 'threats' thereto.<sup>135</sup> In doing so, feminist prefigurative methods challenge legal distinctions between 'public' and 'private', for example, in understanding the relationship between disarmament and intra-family relationships.<sup>136</sup> Prefigurative methods, therefore, ask us to suspend belief in the inevitability of current structures and to experiment with putting ideas into practice. Ultimately, prefiguring a feminist WPS agenda at the General Assembly can only really begin by first choosing to centre feminist WPS analysis and advocacy in the General Assembly.

## Conclusion

Feminist peace agendas are not static. Rather, they change and evolve in response to new actors, demands, challenges, and opportunities. It is therefore impressive and important to note the enduring character of disarmament demands in feminist peace activism and

<sup>130</sup> *Prosecutor v Thomas Lubanga Dyilo*, Trial Chamber I, Decision establishing the principles and procedures to be applied to reparations, ICC-01/04-01/06, 7 August 2012, para 185.

<sup>131</sup> 'Montréal Principles on Women's Economic, Social and Cultural Rights' (2004) 26 *Human Rights Quarterly* 760.

<sup>132</sup> Loveday Hodson and Troy Lavers, *Feminist Judgments in International Law* (Hart Publishing 2019) 3–22.

<sup>133</sup> *ibid.*

<sup>134</sup> Cochav Elkayam-Levy, 'A Path to Transformation: Asking "the Woman Question" in International Law' (2020–2021) 42 *Michigan Journal of International Law* 429.

<sup>135</sup> Laura 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.

<sup>136</sup> For a discussion of these dynamics in Colombia, see Kimberly Theidon, 'Reconstructing Masculinities: The Disarmament, Demobilization, and Reintegration of Former Combatants in Colombia' (2009) 31 *Human Rights Quarterly* 1.

engagement with the international system. It is further important to recognize the rupture caused by the ultimate adoption of the WPS agenda by the UN Security Council, where longstanding feminist demands for participation *and* disarmament were separated, with the former being funnelled into the Security Council and the latter being channelled to the General Assembly. At one level, these dynamics reflect strategic feminist engagement with the international system. At another level, however, these dynamics reflect a trade-off that, in light of subsequent challenges and the more recent direction of the Security Council, ought now to be re-considered.

The Security Council is the paradigmatic example of international law's 'crisis tendency'.<sup>137</sup> With a singular mandate to respond to threats to international peace and security, up to and including the authorization of the use of force, the Security Council is an unlikely conduit for a feminist agenda in international peace and security. These tensions are laid bare when we consider the fate of disarmament within the WPS agenda. Resolution 1325 is viewed as the product and outcome of the women's movement and women's peace activism, with origins in the 1915 Hague Women's Conference.<sup>138</sup> Nevertheless, the text of resolution 1325 that was ultimately adopted contained no references at all to disarmament. Subsequent WPS resolutions adopted over the ensuing two decades remained likewise silent on disarmament and, indeed, on structural causes of conflict.

In recent decades, with the revival of so-called 'humanitarian disarmament',<sup>139</sup> the silence of the WPS agenda on disarmament bears striking contrast to the adoption of several disarmament treaties by the UN General Assembly. The entry into force of the Treaty on the Prohibition of Nuclear Weapons continues a trajectory of relative feminist success in international law, as the most recent of a series of disarmament treaties for which feminist and other actors lobbied through the UN General Assembly. The diverging fates of the WPS agenda at the Security Council and disarmament treaties at the General Assembly are a sober reflection of challenges to institutionalizing feminist peace agendas in international law. Feminist efforts to redefine the concepts of peace and security at the heart of the UN Security Council have largely been marked by what Di Otto has characterized as 'selective engagement with feminist ideals' and the consequent re-fashioning of feminist approaches to peace and security to accommodate the established paradigm.<sup>140</sup> This re-fashioning has taken place in both obvious and subtle ways. The WPS agenda itself has been characterized by a pendulum swing from a focus on women's participation in conflict prevention, resolution, and peacebuilding to the much narrower question of preventing and securing accountability for sexual violence in conflict. The latter so-called sexual violence in conflict agenda has been characterized by much narrower concerns of 'naming and shaming' perpetrators of the so-called 'strategic' sexual violence and prioritization of punitive approaches to perpetrators.<sup>141</sup> Such approaches to international peace and security are highly consistent with the Security Council's established paradigm and contrast greatly with more traditional feminist focus on addressing the structural inequalities that foment and sustain conflict violence, such as the global proliferation of arms.<sup>142</sup>

The Security Council's role, legitimacy, and efficacy in maintaining international peace and security are the subject of increasingly acute questioning. This questioning has, understandably, focused primarily on Security Council inaction in the face of threats to peace and security arising in specific situations. This article, by contrast, has engaged directly

<sup>137</sup> Hilary Charlesworth, 'International Law: A Discipline of Crisis' (2002) 65 *Modern Law Review* 377.

<sup>138</sup> See further, Confortini (n 26).

<sup>139</sup> Beth Docherty, 'A 'light for all humanity': the treaty on the prohibition of nuclear weapons and the progress of humanitarian disarmament' (2018) 30 *Glob Chang Peace Sec* 163.

<sup>140</sup> Otto (n 13).

<sup>141</sup> Gina Heathcote, 'Security Council Resolution 2242 on Women, Peace and Security: Progressive Gains or Dangerous Development?' (2018) 32 *Global Society* 374.

<sup>142</sup> Aisling Swaine, 'Beyond Strategic Rape and Between the Public and Private: Violence Against Women in Armed Conflict' (2015) 37 *Human Rights Quarterly* 755.

with Security Council activity on agenda items relating to general and thematic issues, with specific consideration of the WPS agenda. Drawing from very extensive feminist critique of the WPS agenda at the Security Council, the article elucidated the structural institutional problems confronted by efforts to pursue normative thematic agendas through the Security Council. Drawing on legal analysis of the UN Charter and, in particular, scholarship addressed to Uniting for Peace, the article instead established the General Assembly as a superior institutional home for the WPS agenda. The motivations for initial feminist pursuit of the WPS agenda through the Security Council were, *inter alia*, the pursuit of binding legal status for normative commitments, the desire to influence the United Nations' response to threats to international peace and security, and ultimately the wish to challenge and reframe the underpinning notions of peace and security. This article has laid out in considerable technical detail why the General Assembly offers a superior pathway for all of these objectives.