

The ‘war on terror’ and extremism: assessing the relevance of the Women, Peace and Security agenda

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The Women, Peace and Security (WPS) agenda has become the dominant discourse framing women’s advocacy and action in international affairs over the past 15 years. The engagement of the United Nations Security Council through a series of high-profile resolutions¹ has created a visible presence for women in the ‘war and peace’ terrain. It has produced a political vocabulary of requirement and benchmarking, and resulted in substantial state positioning on the centrality of harm done by and to women to the enterprise of regulating armed conflict.² That visibility was further illustrated by the passage of UNSCR 2242 on 13 October 2015, marking the 15th anniversary of the launch of the WPS agenda. This new resolution is distinguished by a couple of extraordinary statistics. A record number of states (68) gave statements to the Security Council debate, as did the North Atlantic Treaty Organization, the League of Arab States, the Organization of American States, the African Union and the Organization for Security and Cooperation in Europe. The Security Council meeting lasted a marathon nine hours; there were 111 registered speakers in the open debate and 72 countries co-sponsored the resolution. The celebration and self-congratulation on display affirmed appreciation for the efforts and achievements of the WPS agenda.

This article urges some cautionary restraint on the enthusiasm attending this latest resolution and the visibility of the WPS agenda. Feminist legal and political scholars have neatly pinpointed the problems associated with it, including the weight of international attention laid on sexual harms to women in war without due consideration to the conditions and inequalities that produce such harms in the first place.³ The WPS agenda aims to foreground the positions occupied by

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¹ UN Security Council Resolutions 1325 (Oct. 2000), 1820 (June 2008), 1888 (Sept. 2009), 1889 (Oct. 2009), 1960 (Dec. 2010), 2106 (June 2013), 2122 (Oct. 2013) and 2242 (Oct. 2015).

² On ‘mainstreaming’, see e.g. Carol Cohn, ‘Mainstreaming gender in UN security policy: a path to political transformation’, in Shirin M. Rai and Georgina Waylen, eds, *Global governance: feminist perspectives* (New York: Palgrave Macmillan, 2008), pp. 185–206; Jutta Joachim and Andrea Schneider, ‘Changing discourses, changing practices? Gender mainstreaming and security’, *Comparative European Politics* 10: 5, Dec. 2012, pp. 528–63.

³ See e.g. Fionnuala Ní Aoláin, ‘The gender politics of fact-finding in the context of the Women, Peace and Security Agenda’, in Philip Alston and Sarah Knuckey, eds, *The future of human rights fact-finding* (Oxford: Oxford University Press, 2015); Nicola Pratt, ‘Reconceptualizing gender, reinscribing racial–sexual bounda-

women in the arena of war and peace. On one level, this engagement with peace and conflict seems a straightforward proposition. However, it is not always entirely clear what ‘peace’ and ‘conflict’ mean, or what particular kinds of conflicts and sites are covered by the WPS mandate.⁴

Until relatively recently, the conflicts considered to fall within the scope of the WPS agenda have been narrowly defined along the lines of conventional armed conflict. This narrow definition has excluded a number of conflict-afflicted locations and contexts where women have been shut out from conflict resolution and where the harms they experience are rendered almost entirely invisible to the WPS agenda. In parallel, advocacy by transnational feminist groups to expand application of the WPS agenda has tended to concentrate on these traditional conflict sites, with virtual silence on the relevance of WPS to terrorism and counterterrorism settings. By contrast, the most recent WPS resolution portends a widening of the range of conflicts and insecure settings to which the WPS agenda might apply by expanding the agenda to include the context of terrorism and counterterrorism. Despite this apparently inclusive move, I argue that the shift brings with it real risks of creating greater insecurity and gender essentialism in the management of war, conflict and security for women. That danger is the greater precisely because the terms of inclusion have been set by male-dominated security institutions and states whose interest in a robust dialogue about the definition of terrorism, the causes conducive to the production of terrorism, and the relationship between terrorism and legitimate claims for self-determination by collective groups has been virtually nil. The expansion of WPS to include women in the counterterrorism domain does not mean that women will be included in defining what constitutes terrorism and what counterterrorism strategies are compliant with human rights and equality, or that all the harms inflicted on women as a result of terrorism and counterterrorism strategies will be addressed even-handedly. The wider legitimacy conferred on the use of multilateral force across a range of fragile states, insecure environments and zones of both high- and low-intensity conflict, and the increased status and deference given to maintaining and extending international security regimes by recourse to the rhetorical assertion of expanded terrorist threats, all increase the risk that women will be exposed to greater insecurity.

While recognizing the dominant critique of sexual essentialism in WPS, this article moves beyond that familiar narrative to address the narrowness of the frames of conflict that have been engaged by the WPS agenda. These narrow conflict frames minimize the reach of the WPS agenda, focusing on a small selection of locations and contexts that bring women to international attention. The article particularly explores the relevance of WPS to counterterrorist measures adopted

ries in international security: the case of UN Security Council Resolution 1325 on “Women, Peace and Security”, *International Studies Quarterly* 57: 4, Dec. 2013, pp. 772–83.

⁴ Laura McLeod, ‘Configurations of post-conflict: impacts of representations of conflict and post-conflict upon the (political) translations of gender security within UNSCR 1325’, *International Feminist Journal of Politics* 13: 4, Dec. 2011, pp. 594–611 (discussing the difficulty of pinning down what ‘post-conflict’ means in eastern Europe).

by states and supported by key international institutions. I sketch out what it means for the WPS agenda to be anchored to countering violent extremism, and the attendant real risks of commodification, agenda hijacking and deepened gendered insecurity in some of the most precarious territories and communities in the world.

The events of 11 September 2001 brought new urgency and vibrancy to state action against terrorism. This momentum was illustrated both by the response of national legal systems and by concerted efforts to achieve multilateral and multi-level counterterrorism action on the international plane.⁵ From a feminist perspective, it is notable that terrorism and counterterrorism have long been of only marginal interest to mainstream feminist legal theorists, and while much attention has been directed at WPS, the same kind of analytical scrutiny has not been applied to the terrorism, radicalism and counterterrorism discourses.⁶ These are, of course, generalizations, and there are exceptions. A number of commentators have evidenced scholarly and policy interest in the category of female combatants. Female terrorists—particularly those associated with the violent politics of extremist jihadist groupings—have also elicited attention.⁷ However, the preoccupation with the violent (and as such generally presumed to be aberrational) female is, in itself, the product of an essentialist discourse that requires a critical eye.

Through close textual analysis of UNSC Chapter VII resolutions, which are those based on that part of the United Nations Charter regulating the legitimate use of force by nation-states, generated between January 2013 and May 2015, I show the consistently uneven evocation of the WPS agenda in resolutions addressing situations of collective, cyclical and extremist violence. I argue that this selectivity overwhelmingly shows states' willingness to invoke WPS in 'old' but not 'new' wars,⁸ and in particular reveals the ways in which the WPS agenda has been substantially removed from contemporary conversations on terrorism, counterterrorism and countering violent extremism.

There are some signs of latent change in this pattern. Three significant developments during autumn 2015 suggest that terrorism and counterterrorism may be on a fast track towards incorporation into the WPS agenda. First, the UN Counter-Terrorism Committee (CTC) held its first open session briefing member states on the role of women in countering terrorism and violent extremism.⁹ Second,

⁵ See Fionnuala Ní Aoláin, 'Balancing human rights: international legal responses to terrorism in the wake of September 11', *Israel Yearbook of Human Rights* 33, 2003, pp. 63–84.

⁶ But see Judith Gardam, 'War, law, terror, nothing new for women', *Australian Feminist Law Journal* 32: 1, June 2010, pp. 61–76; Fionnuala Ní Aoláin, 'Situating women in counterterrorism discourses: undulating masculinities and luminal femininities', *Boston University Law Review* 93: 3, May 2013, pp. 1085–1122; Laura Sjoberg and Caron E. Gentry, *Mothers, monsters, whores* (New York: Zed, 2007); Paige Whaley Eager, *From freedom fighters to terrorists* (Aldershot: Ashgate, 2008); Swati Parashar, 'Gender, jihad, and jingoism: women as perpetrators, planners and patrons of militancy in Kashmir', *Studies in Conflict and Terrorism* 34: 4, 2011, pp. 295–317.

⁷ Janny Groen and Annieke Kranenberg, *Women warriors for Allah: an Islamist network in the Netherlands* (Philadelphia: University of Pennsylvania Press, 2010); Brigitte L. Nacos, 'The portrayal of female terrorists in the media: similar framing patterns in the news coverage of women in politics and in terrorism', *Studies in Conflict and Terrorism* 28: 5, 2005, pp. 435–51.

⁸ Mary Kaldor, *New and old wars: organized violence in a global era* (Cambridge: Polity, 1987).

⁹ Security Council Counter-Terrorism Committee (CTC), 'In a first for the Counter-Terrorism Committee, the Security Council body holds open briefing on the role of women in countering terrorism and violent

UNSCR 2129, which renewed the mandate of the UN Counter-Terrorism Executive Directorate (CTED), made the link between the Security Council's work, counterterrorism and the WPS agenda. Finally, the newly minted UNSCR 2242 explicitly highlights the role of women in countering violent extremism, and addresses the impact of the rise of extremism on the lives of women through displacement, as well as direct and indirect violence. Nevertheless, despite these ad hoc developments, which raise the prospect of new challenges, essentialisms and forms of commodification for women in the context of a global 'war on terrorism', by and large terrorism remains outside the core purview of the WPS agenda.

It is in debates on terrorism and counterterrorism that many currently meaningful and relevant interstate security and conflict conversations are taking place, and the irrelevance of the WPS agenda to this arena underscores its overall marginality. By addressing the decision-making structure on terrorism and counterterrorism within the UN system, I show that the absence to date of the WPS agenda from any meaningful engagement with the CTC renders it not only normatively limited in its reach but distinctly and institutionally peripheral. Despite the inclusion of language in UNSCR Resolution 2242 requesting the CTC and the CTED to integrate gender as a cross-cutting issue throughout the activities within their mandate, the integration of women into national security planning, prioritizing and execution remains unlikely at both state and international levels. As a stocktaking exercise 15 years on from the first WPS resolution, I posit that transnational feminist advocacy needs to take notice of where the 'real' security action has taken place in the past 15 years and to scrutinize more closely its perceived achievements in addressing women's security.

It is also clear that we are facing a shift in language and priorities as WPS is selectively bolted on to the actions of states in delegitimizing terrorism and advancing counterterrorism activity. While accepting the real harm caused by terrorism and counterterrorism for women in many parts of the world, it is important nevertheless to give serious consideration to the potential negative effect on the WPS agenda of its becoming harnessed to the pursuit of broader military and ideological goals. I accept that the decision whether to be within or without the terrorism and counterterrorism sphere is a form of Hobson's choice for feminist activists. The 'exile of inclusion'¹⁰ forces compromise, requires concessions and entails forgoing the option of objection to many of the basic premises of the collective security system. To remain outside is to forfeit the possibility of exercising any influence on the decisions and actions that affect the lives of millions of women and girls across the globe living through situations of extremity and violence.

extremism', Sept. 2015, http://www.un.org/en/sc/ctc/news/2015-08-20_Role_of_Women.html. (Unless otherwise noted at point of citation, all URLs cited in this article were accessible on 18 Jan. 2016.)

¹⁰ This phrase is borrowed from Dianne Otto, 'The exile of inclusion: reflections on gender issues in international law over the last decade', *Melbourne Journal of International Law* 10: 1, May 2009, p. 11.

Where do the UN WPS resolutions apply?

UNSCR 1325 has directed significant attention to examination of the experiences of women during hostilities and the articulation of a range of measures seeking to include women in the prevention, management and resolution of conflict.¹¹ Yet despite this apparent breadth, its substantive success remains highly questionable by empirical measures and policy standards alike.¹²

After the passage of UNSCR 1325 further Security Council resolutions followed, all demonstrating a particular preoccupation with sexual violence over all other aspects of the agenda for action encompassed by the first resolution. Many feminist critics are cynical and underwhelmed by the scope of these resolutions, noting the lack of gendered vision premised on principles of equality and autonomy for women. Moreover, in line with a broader fragmentation critique, the seemingly inevitable and even organic development of a fragmented set of norms relieves powerful states of having to 'assume responsibility for the shortcomings of a global legal system that they themselves have played a major role in creating'.¹³

In my view, the application of the eight WPS UNSCRs has been exclusively relevant to those conflicts recognized as armed conflicts under the law of armed conflict (LOAC).¹⁴ These are, in short, interstate armed conflicts covered by the four Geneva Conventions of 1949, whose common article 2 defines the material field of application. In addition, internal armed conflicts that formally (or, more usually, informally) meet the threshold of Protocol II Additional to the Geneva Convention of 1977 have sometimes come within the framework of the WPS agenda. Intrastate conflicts as defined in common article 3 of the four 1949 Geneva Conventions have largely been excluded. A persistent challenge is that formal invocation of the LOAC by states and non-state actors in non-international armed conflicts has been notoriously unreliable.

¹¹ One additional important mechanism to advance strategic feminist intervention has been the Arria formula, which has enabled international NGOs and experts to interact with the UN Security Council about international peace and security issues. The creation in 1995 of the NGO Working Group on the Security Council has also been particularly significant to UNSCR 1325. On the principle that UNSCR 1325 is legally binding, see Carol Cohn, Sheri Gibbins and Helen Kinsella, 'Women, Peace and Security', *International Feminist Journal of Politics* 6: 1, March 2004, p. 130.

¹² United Nations Development Fund for Women (UNIFEM), *Women's participation in peace negotiations: connections between presence and influence*, Aug. 2010, http://www.unwomen.org/~media/headquarters/media/publications/unifem/0302_womensparticipationinpeacenegotiations_en.pdf?v=1&d=20140917T101001; Sabrina Karim and Kyle Beardsley, 'Female peacekeepers and gender balancing: token gestures or informed policy?', *International Interactions* 39: 4, Sept.–Oct. 2013, pp. 461–88; Sahla Aroussi, "'Women, Peace and Security': addressing accountability for wartime sexual violence", *International Feminist Journal of Politics* 13: 4, Dec. 2011, pp. 576–93.

¹³ Eyal Benvenisti and George W. Downs, 'The empire's new clothes: political economy and the fragmentation of international law', *Stanford Law Review* 60: 2, Nov. 2007, p. 600. They also note that powerful states pursue a number of 'fragmentation strategies', which include (1) avoiding broad, integrative agreements in favor of a large number of narrow agreements that are functionally defined; (2) formulating agreements in the context of one-time or infrequently convened multilateral negotiations; (3) avoiding whenever possible the creation of a bureaucracy or judiciary with significant, independent policymaking authority and circumscribing such authority when its creation is unavoidable; and (4) creating or shifting to an alternative venue when the original one becomes too responsive to the interests of weaker states and their agents' (p. 596).

¹⁴ Note in particular the position of the UK government that the WPS agenda does not apply to Northern Ireland, as the violence there did not rise to a sufficient level to constitute a 'conflict' covered by the WPS agenda.

There are many reasons why states do not want to be defined as experiencing armed conflict. Primarily, when states are engaged in armed conflict—whether an ‘international’ armed conflict that is subject to common article 2 of the Geneva Conventions, a ‘non-international’ armed conflict that is subject to common article 3, or a ‘transnational non-international’ armed conflict—they are formally subject to a comprehensive normative framework designed to restrict and circumscribe state action in respect of the methods and means of warfare. These well-articulated rules figure prominently in questions of targeting, civilian protection, weapons use and treatment of those persons *hors de combat*. Conversely, since 9/11 state practice on the categorization of armed conflict, the use of human rights-based derogation mechanisms whereby a state can formally declare a situation of emergency and limit the application of its human rights obligations when experiencing armed conflict, and the invocation of war rhetoric has been in continuous flux.

Consider the usage of the adjective ‘global’ to describe the substantive and geographical scope of the ‘war on terror’ by the United States since 9/11.¹⁵ On the one hand, it seemed to confer legitimacy on the breadth and scale of the responses to the 9/11 attacks, and was designed to undercut the traditional armed conflict rules specifying the actors and territory concerned. By suggesting multilateral action rather than unilateral operations, the word ‘global’ informed Americans (and others) that they were not alone in the fight. At the same time, the Bush administration used the term ‘global’ to put pressure on other governments to join the United States in the war. The war frame also opened the way to certain claims, such as those of self-defence, to justify the war in Iraq and make it more acceptable. In many ways, post-9/11 states, especially the most powerful of them, want it all their own way: they want to invoke the power of war to justify the scope and breadth of their military action, and they want less constraint when they go to war. They simultaneously want to avoid the full application of the rules that come with the formal status of armed conflict under international law and have thus equivocated on whether they are at war in particular conflict spaces (e.g. Yemen).¹⁶ Those states that were engaged in armed conflict in Iraq and Afghanistan moved quickly to avoid the legal tag of being occupying forces by formally handing over power to local political entities, notwithstanding widespread political understandings that in many cases local and weak governments were de facto puppet regimes for western states involved in ongoing intervention and statebuilding. In many of these sites, states assiduously avoided the formal application of human rights norms and argued that the extraterritoriality doctrines of advanced human rights systems were inapplicable on the ground. In short, these states have created black holes of practice and grey zones of law in sites where the thresholds of collective violence are high, where armed groups are engaged in ongoing hostilities against the territorial state and others, and where

¹⁵ Oren Gross and Fionnuala Ní Aoláin, ‘The rhetoric of war: words, conflict and categorization post 9/11’, *Cornell Journal of Law and Public Policy* 24: 2, 2014, pp. 241–90.

¹⁶ See e.g. Amrit Singh, ‘Death by drone: civilian harm caused by US targeted killings in Yemen’, Open Society Justice Initiative, 2015, available at <https://www.opensocietyfoundations.org/reports/death-drone>.

territory is inconsistently controlled by functional governments. It is important to bear these contexts and practices in mind when we consider the implications of harnessing the WPS agenda to address terrorism, counterterrorism and countering extremism in sites that have an ambiguously defined status of armed conflict by conventional definitions.

I also claim that states have moved to create and strengthen a new legal apparatus that meets their emerging post-9/11 needs to address violent, transnational, non-state actors including but not limited to Al-Qaeda and Islamic State in Iraq and Syria (ISIS).¹⁷ This new international security regime is the bulwark of these states' normative actions.¹⁸ It was ushered in by UNSCR 1373 (2001) and the creation of the CTC, in conjunction with the European Union's 'regulations on combating terrorism'. Both the EU and the UN approaches had antecedents dating from the previous patchwork of multilateral anti-terrorism conventions and resolutions assembled over several decades, but their scope, content and institutional power have increased considerably in the world we inhabit after 9/11.

The new measures have enabled democratic states to make use of emergency powers by invoking human rights regimes, and to do so with less justification or excuse than would previously have been deemed necessary. International security regimes enable the use of force to eliminate or weaken terrorist threats without some of the structural constraints that follow from engaging the LOAC. The mechanism for activating multilateral security regimes is enabled primarily but not exclusively by the UN Security Council. These frameworks empower new civilian actors, particularly the intelligence agencies of many states, to become central partners in the identification and control of actions occurring in new conflict spaces. As I show below, this new international security regime is largely closed off to civil society, human rights and gender activism. UNSC Resolution 2242 should not be read as a remaking of this closed security space, rendering it gender-friendly and open to new ways of doing business; rather, it might prompt critical inquiry into how the international security regime, and the states that support it, can derive legitimizing benefits from co-opting the WPS agenda to its operating framework.

Security Council resolutions on terrorism and counterterrorism show the continued dominance of a masculine paradigm in those arenas central to international security, where the heart of the international peace and security agenda lies.¹⁹ Close examination of the 43 Security Council resolutions broadly addressing terrorism and counterterrorism passed between January 2013 and May 2015 demon-

¹⁷ Note particularly the reference to 'Associated Forces' and the expanded scope of the 2015 Authorization for Use of Military Forces (AUMF) against ISIS or ISIL (Islamic State in Iraq and the Levant), which appears to have been provided with the potential to address future threats from smaller groupings of violent Islamist militants in Libya, Yemen and North African countries.

¹⁸ I note the centrality of the Security Council to the development and enforcement of this new regime. The regime also reflects broader patterns of Security Council exceptionalism. See Jared Schott, 'Chapter VII as exception: Security Council action and the regulative ideal of emergency', *Northwestern Journal of International Human Rights* 6: 1, Fall 2007, p. 25.

¹⁹ See Laura Sjoberg, 'Seeing sex, gender and sexuality in international security', *International Journal* 70: 3, Sept. 2015, pp. 434–53.

strates the dearth of gender sensitivity.²⁰ Only a handful make comprehensive references to women and/or maternal and/or sexual harms (meaning more than a mere invocation of WPS or UNSCR 1325), and such specificity can generally be explained by the particular geopolitical context of the regions and countries in question.²¹ Terrorism-focused resolutions not only constitute a particular form of condemnation politics; they are critical to enabling the use of force and the resources of multiple states to target phenomena labelled, sometimes with dubious accuracy, as terrorism in their own and other states. In explaining the lack of reference to women, we should understand that security partnerships of key countries are at play in these resolutions, which means the texts are written with the sensibilities of partner countries (read culturally relativist positions) on gender issues in mind. The result has been the consistent marginalization of women's issues in the pursuit of broader geopolitical issues.²² This background should warn against any naive reading of a fundamental change to terrorism and counterterrorism security imperatives in the call of Resolution 2242 for, *inter alia*, 'the participation of women and women's organizations in developing strategies to counter terrorism and violent extremism which can be conducive to terrorism, including through countering incitement to commit terrorist acts, creating counter narratives and other appropriate interventions'. Rather, the pattern of selective entreaty in multiple Security Council resolutions, as well as the language of 2242 essentializing women as either wicked purveyors of extremist violence or virtuous saviours of sons, husbands and communities, underscores the inconsistency in using women and the WPS agenda to advance the sustained protection of women and their rights in situations of armed conflict and collective violence.

The UN institutional infrastructure on terrorism and its gender interface

On 12 September 2001, in the aftermath of the 9/11 attacks, the Security Council adopted Resolution 1368, which called upon the international community to 'redouble its efforts' to prevent and suppress terrorist acts. The resolution also explicitly recognized the right of self-defence, and expressed the unanimous Security Council view that the United States would be justified in taking 'all

²⁰ Over the relevant period, 139 resolutions were passed. Screening of all these yielded 43 mentioning or related to terrorism. Of those 43, 15 mentioned the WPS agenda explicitly; two of those mentioned both terrorism and the WPS agenda (2129 and 2195) whereas the remaining 13 related to specific countries or regions (2100, 2120, 2145, 2164, 2210, 2095, 2185, 2122, 2096, 2110, 2140, 2144 and 2169). Of the resolutions mentioning terrorism, 23 also mentioned some form of gender-based violence (2100, 2120, 2145, 2164, 2210, 2095, 2185, 2093, 2102, 2117, 2139, 2158, 2170, 2171, 2191, 2199, 2220, 2182, 2122, 2165, 2143, 2192, 2175).

²¹ Those UNSCRs with comprehensive references include Somalia (2093, 2102, 2158 and 2182); Libya (2095 and 2144); Afghanistan (2120, 2145, 2210 and 2096); the Middle East (2139, 2140 and 2191); Iraq (2110 and 2169); and Mali (2100 and 2164). The point is underscored by scholarly analysis that has pinpointed the strategic use of women to legitimize the use of force and the selective use of harms to women in certain conflicts and geographies, and as a means to demonize certain groups and ideologies over others. See Ratna Kapur, 'The tragedy of victimization rhetoric: implications for international rights and post-colonial feminist legal politics', *Harvard Human Rights Journal*, vol. 15, 2002, pp. 1–39.

²² See Deniz Kandiyoti, *The politics of gender and reconstruction in Afghanistan* (Geneva: The United Nations Research Institute for Social Development, 2005); See also Renee Black, 'Mainstreaming Resolution 1325? Evaluating the impact of Security Council Resolution 1325 on country specific UN resolutions', *Journal of Military and Strategic Studies* 11: 4, Summer 2009, pp. 1–30.

necessary steps' to respond to the attacks. Close on its heels came Resolution 1373, adopted on 28 September 2001 under Chapter VII of the UN Charter. It requires states to, among other things, criminalize terrorist activities, freeze the funds and financial assets of terrorists and their supporters, ban others from making funds available to terrorists, and deny safe haven to terrorists. In some ways Resolution 1373 can be described as a 'super-resolution', its mandatory requirements adding to its perceived political weight for states, making compliance with it a high priority.²³ This is pointedly illustrated by the speed with which states have fulfilled their reporting requirements under this resolution, compared with the long delays in fulfilling their human rights reporting obligations. Resolution 1373 has also gained high visibility as the international vehicle by which states can prove their commitment to combating terrorism, again standing in marked contrast to state compliance across a range of other arenas. Resolution 1373's lack of integration with the human rights mandate of the United Nations was not just a symbolic matter, but of enormous significance for the enforcement of such rights in a counterterrorism context. As Paul Szasz has noted, Resolution 1373 also manifests an unusual legislative character in that it mandates compulsory action of a general nature for states with binding intent, and is unrelated to a specific situation of conflict affecting international peace and security.²⁴ He identifies this legislative mode as both unusual and momentous for the Security Council, effectively creating a new form of legally binding international obligation. That motif has been followed by the Security Council's spawning the international security regime which I address here.

Resolution 1373 is framed by its affirmation that terrorist acts and acts of international terrorism constitute a threat to international peace and security, and yet the resolution lacks a clear definition of what constitutes terrorism. This reflects an ongoing tension at the UN about that definition—a tension that has arguably abated as the international security regimes have grown in strength and state consensus.²⁵ In practice, an agreed definition of terrorism has become unnecessary as states have self-defined their terrorist threats with little mediation from the Security Council or other states. In parallel, there has been broad agreement on the methods and means that can be used to combat terrorism.

Notably, UNSCR 2242 suffers from the same generic defect as UNSCR 1373: violent extremism, terrorism and terrorist acts are all condemned but their scope remains undefined. If nothing else, one would hope that a feminist response to

²³ Other such resolutions include UNSCR 1624, 14 Sept. 2005.

²⁴ See P. C. Szasz, 'The Security Council starts legislating', *American Journal of International Law* 96: 4, Oct. 2002, pp. 901–905. Szasz identifies the unusual legislative character of Resolution 1373, and also specifically notes that many conventions languishing for want of state ratification suddenly have the force of international law.

²⁵ Until then the Sixth Legal Committee of the United Nations, which is the primary forum for the consideration of legal questions for the General Assembly, had been working on several conventions related to terrorism. See E. Rosand, 'Security Council Resolution 1373, the Counter-Terrorism Committee, and the fight against terrorism', *American Journal of International Law* 97: 2, April 2003, pp. 333–41. Conventions drafted by the Sixth Committee include the International Convention for the Suppression of Terrorist Bombings, General Assembly Resolution 52/164 (15 Dec. 1997), 37 ILM 249 (9 Jan. 1998); and the International Convention for the Suppression of the Financing of Terrorism, General Assembly Resolution 54/109 (9 Dec. 1999), 39 ILM 270 (25 Feb. 2000).

the ambiguity of the terms ‘terrorist’ and ‘terrorism’ would underscore the potential exploitation that can follow from indiscriminate and unmediated application of the label in the service of political expediency. Resolution 1373 offered the familiar ‘suppression’ solution to the terrorism challenge, namely, to place greater emphasis on certain positive acts by states, such as the suppression of sources of finance and support for terrorism, while retaining constructive ambiguity in the definition of who was a terrorist. The resolution then went further, creating a set of positive and specific obligations in respect of state behaviour. None of these requirements engaged gender, the protection of women, or the recognition that this peace and security arena implicated the rights and safety of women. As the years have passed and it has become increasingly evident that both terrorism and counterterrorism strategies create further insecurity in women’s lives, there has been little incentive or desire to address the knock-on gender effects or to more clearly define and constrain the terminology.

The measures first affirmed by Resolution 1373 had far-reaching implications for the protection of human rights, but the resolution made no comprehensive or even specific reference to the need for states to comply with human rights standards in the suppression of terrorism.²⁶ Instead, the preamble to the resolution affirms the need to combat terrorist acts ‘by all means, in accordance with the Charter of the United Nations’. As the UN Charter makes substantial references to human rights protection, this reference might constitute an implicit commitment to the promotion of and respect for human rights norms. However, the obliqueness of this positive interpretation only serves to highlight the lack of an explicit statement in the resolution, and ‘leaves the impression that human rights protection is a secondary consideration in the campaign against terrorism, instead of an essential component of any counterterrorism strategy’.²⁷ Moreover, to state the obvious, gender can only be ‘read in’ by assuming that human rights equates to women’s rights, and there was no pathway in the resolution to make states cognizant of gender and the experiences of *men and women* in relation to counterterrorism policy and its impacts. Notably, the only explicit reference to human rights norms in the operative paragraphs of the resolution is made in the context of refugees and asylum-seekers, states being required to take appropriate measures to ensure that such persons have not been involved in the commission of terrorist acts.²⁸

Precisely because it constitutes a ‘super’ resolution within the hierarchy of UN Security Council resolutions, Resolution 1373 has spawned an entire institutional infrastructure based on itself as the foundational norm. By comparison, the WPS resolutions have only minor status and lack a supporting infrastructure of equivalent status or prominence. These structural deficiencies are evidenced by the

²⁶ See International Helsinki Federation for Human Rights, ‘Anti-terrorism measures, security and human rights’, April 2003, pp. 41–2, http://www.cestim.it/argomenti/09razzismo/europa/2003Apr18en_report_anti-terrorism_pdf%5B1%5D.pdf.

²⁷ International Helsinki Federation, ‘Anti-terrorism measures’, p. 42.

²⁸ ‘Take appropriate measures in conformity with the relevant provisions of national and international law, including international standards of human rights ... ensuring that the asylum-seeker has not planned, facilitated or participated in the commission of terrorist acts’: Resolution 1373, para. 3(f), 28 Sept. 2001.

calls in the global study on the implementation of UN Security Council Resolution 1325 for the creation of a Security Council working group to force attention (currently lacking) to be paid to the gender dimensions of all the Council's thematic agenda items, as well as the plea to establish a new high-level position in UN Women—an assistant secretary-general for Women, Peace and Security to give some political clout to the WPS agenda within the UN system.²⁹ These are valid institutional demands, but do not even approach the scale of the institutional furniture occupied by Resolution 1373 and its progeny.

Institutionally, one of the most important elements of Resolution 1373 is located in paragraph 6, which provided for the creation of a committee of the Security Council (the CTC) to monitor its implementation. The CTC is one of the most critically important elements of the international security system. States were initially required to report to it within 90 days, outlining what measures they had taken to conform with the resolution's requirements.³⁰ Neither the CTC's 2015 open briefing on the role of women in countering terrorism and countering violent extremism, nor the passage of UNSC Resolution 2242, fundamentally recalibrates the marginal status of gender and human rights issues within the CTC's mandate. For example, as well as addressing the use of sexual violence by terrorist groups, and the relationship between sex trafficking, slave trading, ransom payments and women's safety, the CTC identified the role that women, particularly mothers, might play in preventing the radicalization of their children, with little sensitivity to the problems associated with engaging mothers as the front-line actors in preventing radicalism. Given the often marginal status of women in the contexts where they are expected to become the 'minders and informers' of their sons and daughters for the state, the potential harms to the women themselves have been grossly underestimated or ignored by the CTC. This does not augur well for the gender mainstreaming demanded for the CTC's mandate by UNSCR 2242. The rather naive view of women's capacity, in highly fraught communities and societies, where as a practical matter their status is limited, and their equality not guaranteed, also permeates UNSCR 2242. More worrying, in view of the link inexorably being forged between the WPS and the CTC, is the lack of recognition by supporters of Resolution 2242 that the CTC has remained consistently hostile to mainstreaming human rights claims, continues to be unreceptive to recognizing the rule of law dimensions of countering terrorism, and is closed off to any critical attention to the root causes conducive to the production of violence in the first place. It seems the height of credulity to assume that calls for adherence to and advancement of women's human rights will have greater traction than a

²⁹ Radhika Coomaraswamy et al., *Preventing conflict, transforming justice, securing the peace: a global study on the implementation of United Nations Security Council Resolution 1325* (New York: UN Women, 2015); see also Rob Jenkins, 'The practical is the political: the UN's global study on Women, Peace and Security', *Global Peace Operations Review*, 12 Nov. 2015, <http://peaceoperationsreview.org/thematic-essays/practical-political-un-global-study-women-peace-security/>.

³⁰ In October 2001, the CTC approved a note offering guidance to states on the reporting requirements of the resolution. See Office of the High Commissioner for Human Rights (OHCHR), 'Note to the chair of the Counter-Terrorism Committee: a human rights perspective on counter-terrorist measures', 2001, http://www.un.org/en/sc/ctc/docs/rights/2002_09_23_ctcchair_note.pdf.

decade and more of failed human rights interventions with the CTC have had. However, there is little doubt that sporadic references to women in the context of the CTC's mandate serve important legitimacy and symbolic functions for the CTC, in precisely the same way that the WPS agenda has had a legitimizing utility for the Security Council.

The CTC is made up of representatives of the 15 countries currently sitting on the Security Council: the five permanent members (China, France, Russia, the United Kingdom and the United States) plus the ten non-permanent members. In 2004, the Security Council issued Resolution 1535, establishing the CTED to assist the CTC in carrying out its work and coordinate 'the process of monitoring the implementation of Resolution 1373'. The CTED says it 'carries out the policy decisions of the Committee, conducts expert assessments of each Member State and facilitates counterterrorism technical assistance to countries'.³¹ Unlike UNSCR 1325, which encourages states to ensure gender representation in negotiation, mediation and engagement in peace and conflict-ending processes, Resolution 1373 has no such ambitions, and the bodies that operationalize the mandate (CTC and the CTED) remain distinctly masculine spaces. There is little evidence that the current efforts to address women's roles in preventing radicalization extend to making any supranational decision-making processes on countering extremism more gender-representative.

It should be recognized that the creation of the CTC with its specific mandate has significant institutional consequences within the UN. Along with the Security Council, the CTC sits at the apex of the UN's institutional hierarchy, but receives far less scrutiny for its role and is far less accessible to advocacy and input. Indeed, it could be said to function as a mini-Security Council with a powerful direct line to the Security Council itself. Given all the attention paid by the feminist activists to the Security Council, the failure to 'see' the importance of the CTC (or, perhaps more aptly, to consider the implications of its creation and the consolidation of its power for international peace and security regulation) has been a stunning omission in WPS activism and advocacy. This recalibration of the internal institutional hierarchy of the UN after 9/11 was exacerbated by the single-issue focus of the committee, which is not balanced by any other committee or body of similar stature specifically mandated to oversee the protection of human rights or women's rights. Organizational recalibration of this kind, with power shifting to the 'executive' elements of government, has been well documented in domestic contexts, where we know that the effect of emergencies is to centralize decision-making and to empower certain branches of the executive. Interestingly, the current exigency of transnational terrorism is having the same effect upon international institutional structures. Unlike the populist or democratic forces in states, which may function as a counterweight to the concentration of power, such elements are far more dispersed and frequently absent in international organizations which by their nature suffer from a democratic deficit. The continued realities of terrorist atrocities in multiple sites across the globe makes it exceedingly

³¹ CTC, 'Our mandate', <http://www.un.org/en/sc/ctc/aboutus.html>.

unlikely that the operation and mandate of the CTC will be reined in or made more broadly democratic and representative. The commitment in UNSCR 2242 to 'integrate gender as a cross-cutting issue' through the CTC and the CTED mandate does not go anywhere near addressing gender representation and broader civic participation in these structures.

Gender and other lacunae in the operation of UNSCR 1373

From early in the Security Council's consideration of the measures required to respond to the events of 11 September 2001, concerns were raised about its failure to adopt a human rights framework that would require any measures taken to comply with human rights standards.³² These did not, however, specifically identify gender as an area requiring consideration. Concern was further heightened when the Security Council declined to appoint human rights experts to the CTC. The lack of a human rights dimension in the substantive work of the committee was confirmed by the absence of any reference to states' human rights obligations in the guidelines on reporting on their anti-terrorist measures in the early years of the CTC's operation. The committee consistently declined to adopt proposals put forward by the UN High Commissioner for Human Rights to integrate a human rights dimension into the state reporting requirement.³³ The Office of the High Commissioner (OHCHR) expressed its concerns that measures taken to eliminate terrorism would be put into action in such a way as to infringe fundamental freedoms.³⁴ When it carried out a preliminary review of state reports under UNSCR 1373, it noted a broad range of issues demonstrating fundamental failures to respect the human rights of persons in the course of implementing anti-terrorism measures.³⁵ It is worth noting that while there were many laudable aspects to the UNHCR's intervention, it failed to integrate a gender analysis in the assessment of limitations on the enjoyment of human rights, and this gap remains unfilled to the present day.

Since 2001, sustained activism by the OHCHR, UN treaty bodies and NGOs eventually resulted in the appointment of a human rights adviser to the CTC, a mechanism to invite a representative of the Human Rights Committee to brief the CTC,³⁶ and an agreement that the CTC (specifically, its Technical Assistance Team) would refer states who asked for human rights advice on the relationship between human rights norms and counterterrorism measures to the OHCHR. The OHCHR has continued to monitor the effects of anti-terrorism measures on

³² See Amnesty International, 'A human rights framework for responding to terrorism', AI Index IOR 41/007/2002, 22 March 2002; CTC briefings, 24 Sept. 2002, <http://www.un.org/en/sc/ctc/rights.html>.

³³ OHCHR, 'Note to the chair of the Counter-Terrorism Committee: a human rights perspective on counter-terrorist measures', 23 Sept. 2002. Notably in this context, the web page of the CTC, while referring in its directory section to information on best practice in relation to the fight against terrorism, makes no reference whatsoever to applicable human rights norms. The web page can be visited at <http://www.un.org/en/sc/ctc/>.

³⁴ See OHCHR, 'A digest of jurisprudence on the protection of human rights while countering terrorism', 28 July 2003, <http://www.ohchr.org/Documents/Publications/DigestJurisprudenceen.pdf>.

³⁵ OHCHR, 'Digest of jurisprudence', p. 6.

³⁶ Here, the CTC noted the OHCHR's intention to prepare a factual note of concern on the intersection of human rights and counterterrorism measures.

the observance of human rights, but the CTC remains an inhospitable zone for the articulation and mainstreaming of human rights norms.³⁷

In 2004 the UN Human Rights Commission also established the office of Independent Expert on the Prosecution of Human Rights and Fundamental Freedoms while Countering Terrorism to engage the CTC, the Security Council and other security entities within the UN system on human rights. This expert does not have a gender mandate and has generally not addressed the gender dimensions of human rights violations perpetrated while countering terrorism. The post has since evolved into the position of Special Rapporteur on Human Rights and Counter-Terrorism.³⁸ The rapporteur's recommendations have been valuable, but with one notable exception remain largely void of any gender analysis or evaluation.³⁹ External bodies such as the International Commission of Jurists and the Coordinating Body of National Human Rights Institutions have consistently asserted the need to uphold human rights and the rule of law in combating terrorism.⁴⁰ However, the apparent overall picture tells us that specialist UN human rights institutions have had limited and weak input into the counterterrorism apparatus at the UN. There has been little or no gender advocacy in these contexts, and the WPS agenda simply does not feature in these intersectional conversations.

Up to September 2015, public communications by the CTC have made no direct reference to sexual violence against women, and there is a paucity of direct references to women and harms against women. Such references as exist are patchy, incoherent and marginal. For example, the annex to a report by the CTC to the Security Council, to inform the latter's consideration of the work of the CTED from 2011 to 2013, discusses the development of regional and thematic issues, and notes that the committee must

[bear] in mind the evolving global situation and [focus] on key topics such as the use and abuse of new information and communications technologies, protecting the rights of victims of terrorism, emerging challenges in the prosecution of terrorism, the development of strategic partnerships with relevant non-governmental actors (including *women* and youth groups, religious leaders, the media and the private sector), protection of the tourism infrastructure, kidnapping for ransom, countering violent extremism and the crimes that fund terrorism.⁴¹

³⁷ In March 2001, Mary Robinson, then UN High Commissioner for Human Rights, proposed to the 58th annual session of the UN Human Rights Commission that the commission take up a role defending human rights to balance the role and position of the CTC.

³⁸ OHCHR, 'Independent expert on terrorism', <http://www.ohchr.org/EN/Issues/Terrorism/Pages/IETerrorism.aspx>.

³⁹ Martin Scheinen was appointed as the first UN Special Rapporteur on Human Rights and Counter-Terrorism, holding the position until July 2011. The current post holder is Ben Emmerson; <http://www.ohchr.org/EN/Issues/Terrorism/Pages/BenEmmerson.aspx>.

⁴⁰ See International Commission of Jurists, Berlin Declaration (ICJ Declaration on Upholding Human Rights and the Rule of Law in Combating Terrorism), adopted 28 Aug. 2004, and Seoul Declaration (Seventh International Conference for National Institution for the Promotion and Protection of Human Rights) adopted at the Seoul Conference, 4–17 Sept. 2004.

⁴¹ CTC, *Report of the CTC to the Security Council for its comprehensive consideration of the work of the CTED from 2011 to 2013*, UN Doc. S/2013/722, 10 Dec. 2013, pp. 7–8 (emphasis added).

Similarly, a review of the CTED, including recommendations for future activities, made a vague commitment to 'empowering youth and women socially and economically, including through targeted education programmes'.⁴² Since 2001, as illustrated in the 2011 global survey of the implementation of Security Council Resolution 1373,⁴³ the appearance of women in the articulation of successes and challenges in pursuing the counterterrorism mandate has been negligible. If women appear at all, they appear in highly essentialized ways. The sexual female subject is marginally present via the acknowledgement of trafficking and sexual exploitation in the course of analysing porous borders and the broader challenges to effective counterterrorism from transnational migration and inept border management protocols.⁴⁴

What does this marginality tell us? Not least that the superficial inclusion of references to women in the context of addressing terrorism and advancing counterterrorism strategies should not be read as a form of meaningful intersection between the WPS agenda and by now well-established post 9/11 international security regimes. It should be understood that international security regimes are at the heart of contemporary security regulation, and structurally intrinsic to conversations about conflict and peace across the globe. Moreover, even where the Security Council appears to address classic interstate or internal armed conflict scenarios, international security regimes are squarely in the frame of regulation, oversight and management. The parallel reality is that, despite over a decade of intrusion into the peace and security arena, women find themselves (yet again) at the wrong party. The birth of the WPS agenda predated the events of 9/11, but the events of that day profoundly recalibrated the war and peace terrain in ways that the WPS agenda failed to fully integrate into its discourses and advocacy. Now, international security has discovered WPS, and it remains an open question whether this will serve the interests of women caught up in and affected by the new and ever-shifting battlefields of our age.

The global regulation of terrorism and counterterrorism has been at the forefront of states' political preoccupations since 2001. Yet terrorism is not a new phenomenon,⁴⁵ and its influence on shaping foreign and domestic affairs has been consolidating from the end of the Cold War onwards, further illuminating the traction that non-state actor violence has exercised on states in the aftermath of the atrocities of New York, Washington and Pennsylvania. This elongated history partly explains the layers of meaning pervading the invocation by states of terrorism and counterterrorism; acknowledgement of it helps us to avoid the

⁴² CTC, *Report of the CTED on the activities and achievements of the CTC and CTED from 2011 to 2012, including recommendations for future activities*, UN Doc. S/2012/465, 20 June 2012, p. 6.

⁴³ CTC, *Global survey of the implementation of Security Council Resolution 1373 (2002) by member states*, UN Doc. S/2011/463, 1 Sept. 2011.

⁴⁴ CTC, *Global survey of the implementation of Security Council Resolution 1373*, UN Doc. S/2012/16. Note references to the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children (2002): see esp. on Africa and trafficking (p. 12), East Africa (p. 15), southern Africa (p. 19), Asia (pp. 28–45), South America (p. 53), Europe and North America (p. 59), eastern Europe (p. 61).

⁴⁵ Oren Gross and Fionnuala Ní Aoláin, *Law in times of crisis: emergency powers in theory and practice* (New York: Cambridge University Press, 2006).

mis-step of viewing contemporary deployment of terrorism scripts in the context of use of force, armed conflict and security strategies as unconnected to a sustained growth in supranational regulation of politically motivated violence since the late 1970s. While the United Kingdom and other countries have grappled with the legal and political complexities of managing and responding to political violence for decades,⁴⁶ a combination of political and institutional factors helps to explain the current ascendancy of security-led counterterrorism strategies by multiple states. The readiness of states to identify terrorism and counterterrorism as the dominant motif of concern across a range of country settings has been remarkable. This can be described as classic ‘mission creep’ by terrorism to the apex of peace and security debates and as the major project of the United Nations Security Council since 9/11. While UNSCR 1325 made remarkable headway in identifying peace and conflict as an exclusionary zone for women, the exclusions were not only sustained in the classic wars between and within states. Rather, as the security agenda shifted in 2001, these states were also entrenched and solidified in the new security regimes and rules being established by states to regulate the new wars and their latent preoccupations. The institutional and practical (including bureaucratic) incentives to include women in these new settings have been few, and the costs to states of doing so are perceived as high. Hence my claim that WPS sits on the very margins of some of the most important security conversations of our time, corroborating the intergovernmental and bureaucratic gender tensions within the United Nations (and other international organizations). This in turn underscores the necessity of the WPS agenda to speak directly to terrorism and counterterrorism imperatives, and not on the terms set by the CTC or individual states.

Conclusion

Scripting women into the normative framework of war and peace regulation is a departure for which there are few antecedents.⁴⁷ As Gina Heathcote so aptly notes:

Not until the hierarchical social relations, including gender relations, that have been hidden by realism’s frequently depersonalized discourse are brought to light can we begin to construct a language of national security that speaks out of the multiple experiences of both men and women.⁴⁸

The WPS agenda speaks volumes to the idea of the first, second (UN secretariat) and third United Nations (here, NGOs, independent commissions, experts, academics and consultants)⁴⁹ and advances an engagement and capacity that cannot

⁴⁶ Fionnuala Ní Aoláin, *The politics of force: conflict management and state violence in Northern Ireland* (Belfast: Blackstaff, 2000).

⁴⁷ J. Ann Tickner, *Gender in international relations: feminist perspectives on achieving global security* (New York: Columbia University Press, 1992), p. 66.

⁴⁸ Gina Heathcote, ‘Naming and shaming: human rights accountability in Security Council Resolution 1960 (2010) on Women, Peace and Security’, *Journal of Human Rights Practice* 4: 1, 2012, pp. 82–105.

⁴⁹ On the ‘third UN’, see Thomas G. Weiss, *International Affairs* 91: 6, Nov. 2015, p. 1230.

fully be understood from the terms of the United Nations Charter alone.⁵⁰ Scholars have maintained that the third UN is increasingly having influence, and arguably the advancement of the WPS agenda is testament to that success. However, when attention is paid to all the spaces in which security, war and peace regulation transpire in the United Nations and within collective state practice, a more nuanced understanding of the limits of and constraints on that influence emerges. The fact, for example, that the WPS agenda has largely played out in thematic resolutions (previously a vehicle used only sparingly by the UNSC, but now strongly connected with resolutions on women and children) ought to highlight a certain kind of constrained pattern of invocation that requires interrogation. The invocation of women is not a success in its own right, and the language of the Security Council varies significantly in its tone and weight. The Council is capable of using and does use strong normative language, and in certain operative modes expects and demands compliance.⁵¹ It has done so in the area of terrorism and counterterrorism since the events of 9/11. We should take careful note of when women do, and do not, figure in the regulation of, intervention in and condemnation of certain kinds of violence. To be alert in this way is to take seriously Steven Ratner's proposition that the effect of the Council has to be judged not only by the law on paper but by the 'law on the ground'.⁵² The law on the ground would suggest that in those spaces where new wars and/or the systematic use of force by states against non-state actors or fragile/dysfunctional territories are in play, the WPS agenda is well off the radar screen and its mandate is largely irrelevant. This suggests that our story of WPS success is highly partial and limited. There is work to be done on making sex, sexuality, gender and harm relevant in all wars, conflicts and substantive military engagements, including the prominent realities of terrorism and counterterrorism spaces that both stand separately from and simultaneously weave into the traditional categories of conflict that have defined the WPS agenda since its inception.

⁵⁰ See generally Laura J. Shepherd, *Gender, violence and security* (London: Zed, 2008), pp. 133–74.

⁵¹ On the strength of language in some UNSCRs, see e.g. UNSCR 1452 (20 Dec. 2002) on 'Threats to international peace and security caused by terrorist acts', which demands decisive and specific action-orientated responses five times in six paragraphs.

⁵² Steven R. Ratner, 'The Security Council and international law', in David M. Malone, ed., *The United Nations Security Council from the Cold War to the 21st century* (Boulder, CO: Lynne Rienner, 2004), p. 595.

