RESEARCH HANDBOOK ON Feminist Jurisprudence

Edited by Robin West • Cynthia Grant Bowman
24. International law and feminism
Adrien K. Wing

This chapter provides an overview of the intersection between international law and feminism. It predominantly discusses scholarly writing, but also some major documents and institutions. The US has been notoriously narrow in its understanding of and respect for international law. It is not a required course in most law schools, and American courts often refuse to acknowledge relevant international law at all. This myopia has extended to US feminist legal theory. Many feminist scholars focus on US law in their specialty and never mention the international implications. Some feminist scholarship may not even contain one article on international law. Interestingly, collections produced in other countries contain more international material, probably paralleling the acknowledgment of international law within their own legal systems. In the future, it would be significant if US feminists extended their coverage or at least cited more fully to the robust international literature.²

This chapter first shows how feminism has developed within various international law subfields. It then focuses on a major offshoot from traditional international law: Feminist Approaches to International Law (TWAIL). Finally, it highlights global critical race feminism (CRF), with its emphasis on women of color, an area that intersects with every area previously reviewed. The conclusion notes that much work remains to be done.

1. FEMINIST INTERVENTIONS INTO INTERNATIONAL LAW

The first major feminist intervention into international law was the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), which the United Nations (UN) General Assembly approved in 1979. The treaty came into effect in 1981 when 20 countries ratified it.³ It now has 189 state parties. The subsequentlydrafted CEDAW Optional Protocol permits the CEDAW Committee to hear individual complaints of treaty violations if a country has ratified the Protocol.⁴ Before CEDAW,

For an exception to this trend, see CRITICAL RACE FEMINISM: A READER (Adrien K. Wing ed., 1st ed. 1997, 2d ed. 2003).
² Comparative law has also suffered from a narrowness in focus, in that most of the scholarship has ignored gender, but a consideration of that related but different field is beyond the scope of this chapter, which focuses on international law.
³ For a history of the process, see http://www.un.org/womenwatch/daw/cedaw/history.htm.

the international law treatment of women was nonexistent or fragmentary. Women's perspectives did dominate the UN Commission on the Status of Women, which drafted CEDAW, as well as informing the earlier treaties on women's rights, including the 1953 Convention on the Political Rights of Women, the 1957 Convention on the Nationality of Married Women and the 1962 Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages.⁶ CEDAW, however, was a major advance over these earlier agreements because the major international human rights treaties—the International Covenant for Civil and Political Rights (ICCPR)⁷ and the International Covenant on Economic, Social and Cultural Rights (ICESCR),⁸ both adopted in the 1960s—lacked the specificity on gender issues that CEDAW represented.

When I joined the American Society of International Law (ASIL) in 1982, there were very few female members. Founded in 1906, ASIL consisted mainly of elite white East Coast professors and practitioners. The women members started an annual luncheon, which consisted of a few tables of female international lawyers. We took note of our small numbers and our exclusion from all the important aspects of the organization. Few women were found worthy of being panelists at the Annual Meeting. The topics chosen for discussion ignored women's issues. The ASIL leadership was entirely white and male, as were the editors of the flagship peer-reviewed publication, the American Journal of International Law (AJIL). As more women became international law scholars in the 1980s and 1990s, some decided to focus on feminist theory. Various women may have been inspired in part by developments in the US. Others developed expertise in traditional fields of international law and then subsequently or simultaneously realized that gender was never mentioned and decided to learn about feminism from that experience. Eventually, the very active ASIL Women's Interest Group (WILIG)⁹ grew large enough to have year-round programs and needed an entire luncheon for the Annual Meeting luncheon. European feminists developed the parallel Feminism and International Law Interest Group of the European Society of International Law.¹⁰ A blog called InLawGirls celebrated its tenth anniversary in 2017.¹¹ There have now been six female ASIL presidents, as well as a number of women on the AJIL Board and in other ASIL leadership positions.

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This chapter first shows how feminism has developed within various international law subfields. It then focuses on a major offshoot from traditional international legal scholarship known as Third World Approaches to International Law (TWAIL). Finally, it highlights global critical race feminism (CRF), with its emphasis on women of color, an area that intersects with every area previously reviewed. The conclusion notes that much work remains to be done.

I. FEMINIST INTERVENTIONS INTO INTERNATIONAL LAW

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The first major feminist scholarly breakthrough came in 1991 when Hilary Charlesworth, Christine Chinkin and Shelley Wright published Feminist Approaches to
International Law in AJIL. The authors noted that female participation in international law institutions was very deficient, due both to the lack of overall numbers and to the fact that males dominated the higher echelons of the international law profession. They urged the application of domestic feminist legal theories and methods to international law. Moreover, international law was mainly about the relationships between states, that is, events happening in the public sphere. Yet feminist discourse, whether national or international in orientation, was about breaking beyond the public sphere, into the private sphere, including areas of life that historically had been considered entirely outside the purview of law. For example, a subject like domestic violence had historically been seen as a private family matter outside of international or domestic law.

Two of the authors of the major article, Charlesworth and Chinkin, subsequently wrote a book-length treatment, The Boundaries of International Law: A Feminist Analysis. They reviewed the structure, processes and substance of the major topics of international law. In 2005, Wright joined her previous coauthors, and the three women authored an article which noted that, while there was more visibility on feminist issues than there had been in the past, women on the ground were not necessarily reaping the benefits.

In addition to a broad array of articles, several anthologies on feminist approaches to international law have been produced on subjects including, according to one listing, domestic violence, violence in the workplace, sexual harassment, trafficking in women, female genital mutilation (FGM), and issues related to employment, education, environment, and housing; international courts; international organizations; selected regional and cultural periods such as cultural relativism, female slavery, commercial sex workers, abuse burning.


See Centros, supra note 14; Hilary Charlesworth, Talking to Ourselves? Feminist Scholarship in International Law, in FEMINIST PERSPECTIVES ON CONTEMPORARY INTERNATIONAL LAW: BETWEEN RESISTANCE AND COMPLIANCE 17 (Sari Kouvo and Zoe Pearson eds., 2011) [hereinafter FEMINIST PERSPECTIVES].


My own approach, Global Critical Race Feminism: An International Reader, focused on feminist, antiracist and postcolonial struggles. AJIL Unbound, a recent addition to AJIL, has also recently tackled subjects relating to women.

Many subfields of international law have also produced feminist scholarship. These areas include: public international law; use of force (jus ad bellum); self-determination, state sovereignty and state responsibility; peacekeeping, peacekeeping and peace-building; law and development; international institutions; international humanitarian law (jus in bello); international criminal law; international human rights law; international refugee law, female migration and trafficking; international labor law; and international economic/trade law. Public international law, in particular, has produced a large number of articles since the initial pathbreaking AJIL piece. Intra-feminist divisions have also begun to thrive. Some writers have argued that supporting women’s rights could be used to legitimate imperialism and male hegemony; others have worried about the apparent emergence of ‘governance feminism,’ the idea that feminists and feminism are wielding significant power in various areas of international law and institutional practice with negative outcomes. The subfield known as use of force (jus ad bellum) and its prohibition has also been a fruitful area for feminist analysis. Orford and Hechtce have both written treatises.

Chinkin and others have published in this area as well. Some feminist scholars have advocated greater humanitarian intervention to stop human rights abuses during
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15 See *GLOBAL CRITICAL RACE FEMINISM: AN INTERNATIONAL READER* (Adrienne C. Wing ed., 2000) [hereinafter GCREF].


from Bosnia to Black America, stereotypes and perpetuated male frames of reference. A number of articles have focused on the use of force is justified to protect women in the post-9/11 era.27

The subfield defined by the right to self-determination ranges in its coverage from the rights of groups who want or have some level of political autonomy from the central government, to those who want to overthrow a corrupt regime, to those seeking to gain independence. No matter which form it takes, feminists writing in this area have worried that women's issues are subordinated to the greater national struggle, which in turn is almost always defined as what men want, as Karen Koop and others have noted.28 Regarding the question of state sovereignty, feminists have seen the Western state as a site of privileged masculinity and thus have articulated a need to reconceptualize the notion of sovereignty to include women's concerns.29 With respect to state responsibility, feminists have argued that governments have not been held responsible in areas involving the behavior of private actors that violate women's rights. Thus, there is a need to become more inclusive of female concerns.30

In the subfield of peacekeeping, peacekeeping and peacebuilding, women are often portrayed as victims of armed conflict, especially of the sexual violence to which armed conflict gives rise.31 The UN Security Council has passed resolutions that emphasize the need to involve women and a gender perspective; but change is glacial, and the resolutions have often reinforced gender stereotypes.32 The impunity of UN troops and others who have abused women has also been a subject of scholarship.33 Sari Kouvo has written how attempts at gender mainstreaming (the integration of gender perspectives in all policymaking) in places like Afghanistan have not worked due to inadequate involvement by women.34 Mainstreaming was adopted as a UN-wide strategy at the 1995 Fourth World Conference on Women. It involves all areas of human rights.35 Unfortunately, it has faced widespread resistance.36

In the law and development subfield, various UN entities such as the Commission on the Status of Women, the Development Programme and various world conferences have tried to enhance the status of women. Feminists like Margaret Snyder have emphasized the importance of women's participation in development programs and the benefits flowing from it,37 but also how efforts at development have not alleviated the situation. Celestine Nyamu has highlighted a role for customary law to support equality.38 Some scholars have argued that neoliberal economic policies have hurt women.39 Kerry Rittich has written about how women's equality has been considered important for economic gain rather than for its intrinsic value.40

Regarding the international institutions subfield, elite men have historically dominated these entities, and the "universal" values developed reflect their views, often ignoring gender perspectives.41 The CEDAW Committee and the UN Commission on the Status of Women are two attempts to create institutions with a gender focus.42 Kouvo notes that another effort has been gender mainstreaming throughout the entire UN system.43 The international humanitarian law (IHL) (just in bello) subfield focuses on the rules that apply during armed conflict. This is an area where feminist scholarship has flourished.44 The law is definitely gendered in this area, typically viewing women as

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25 See generally Orford, supra note 22.
28 See, e.g., Karen Koop, Diversity and Self-Determination in International Law (2002).
37 See Margaret Snyder, Unlikely Godmother: The UN and the Global Women’s Movement, in GLOBAL EMANCIPATION: INTERNATIONAL WOMEN’S ACTIVISM, ORGANIZING, AND HUMAN RIGHTS 24 (Myra Marx Ferree and Ali Mari Tripp eds., 2006).
42 See Margaret Rally, International Enforcement of Women’s Rights, 6 HUM. RTS. Q. 463 (1994).
44 See, e.g., LISTENING TO THE SILENCES: WOMEN AND WAR (Helen Durham and Tracy Gard eds., 2005).
wrist. Others have argued that 'humanitarian warfare' has reinstated colonial stereotypes and perpetuated material exploitation.23 Charlesworth has illustrated how the doctrine specifying the 'duty to protect' was based on male frames of reference.24 A number of articles have focused on when the use of force is justified to protect women in the post-9/11 era.25

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powerless victims. Some scholars such as Judith Gardam have proposed new law, while others have called for reinterpretations of the existing law, or both.

With respect to the international criminal law subfield, rape is now a war crime due to new developments in the prosecution of war crimes. The statutes establishing the Ad Hoc International Criminal Tribunals for the Former Yugoslavia (ICTY) and Rwanda (ICTR) explicitly included rape as crimes against humanity but did not list other crimes of sexual violence. The Rome Statute establishing the International Criminal Court (ICC) included gender in all aspects of the law and the institutions of the Court, although the definition of gender itself was contentious, as Oosterveld and others have noted. These developments have helped address concerns about both the substance of the law and the prosecutorial reluctance to use it. The ICC prosecutor’s failure to include gender-specific charges in the first case from the Democratic Republic of the Congo (DRC) was problematic, illustrating the need to ensure that prosecutorial strategies are committed to gender justice. In addition to criminal trials, which may or may not provide justice, various forms of transitional justice such as truth and reconciliation commissions and community-based initiatives have been created. As Dustin Lewis notes, there is also a need for more attention to be given to the plight of men who experience sexual violence in armed conflict and may experience ongoing silence, shame and homophobia.

The subfield of international human rights has been a major focus for feminists. Various anthologies and treaties have been produced, and several sub-subfields now exist. A number of publications by queer theorists address lesbian rights. International environmental law is a part of human rights law, but major enough in scope to constitute its own subfield. There is a clear need for more feminist analysis that challenges existing frameworks in these areas. The discussion regarding TWAIL and CRF below mainly focuses on human rights.

International refugee law, female migration and trafficking are also subfields within international law that have spawned feminist scholarship. Women in the developing world have been particularly studied for the ways in which international law, or the absence of it, affects their life prospects. Many face exploitation and abuse, especially

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59 See, e.g., Perspectives, supra note 17; WOMEN’S RIGHTS, INTERNATIONAL FEMINIST PERSPECTIVES (Julie Peters and Andrea Wolper eds., 1995); FROM BASIC NEEDS TO BASIC RIGHTS: WOMEN’S CLAIM TO HUMAN RIGHTS (Margaret Schuler ed., 1995); Askin and Koenig, supra note 17.
60 See, e.g., Rebecca COKER & SIMONE CUSACK, GENDER STEREOTYPING: TRANSNATIONAL LEGAL PERSPECTIVES (2009).
62 See, e.g., Anne Rochette, Transcending the Conquest of Women and a Feminist Perspective on International Environmental Law, in Buss and Manji, supra note 17, at 203.
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in the domestic worker industry, export-processing zones and in the sex industry. According to James Hathaway, the focus on trafficking for the sex work has caused developed countries to tighten migration and to pressure developing countries. Anne Gallagher has argued that the issue of trafficking has been taken much more seriously since being seen as a border control problem and that including a human rights approach into antitrafficking treaties has been very successful. Kapur posits that developing nations like India restrict cross-border movement of women as part of their ideology, which relies on regressive ideas about women as submissive and modest. Feminist engagement in refugee law has resulted in an enhanced intersection with international human rights. On the one hand, there are more gender-inclusive interpretations of 'persecution', while there are continued threats to marginalize women's experiences, on the other hand.

Concerning the international labor law subfield, globalization has led to some women having more opportunities, but many women have ended up in more precarious situations. While economic globalization has increased women's employment opportunities in many parts of the world, it has also led to the concentration of female workers having insecure employment. Juanita Elias claims that neoliberal economics rely on female inequality rather than equality. Feminists criticize the nature of more recent International Labour Organization standards, including the Part-Time Work Convention, the Core Labour Standards and the Convention on Domestic Workers, as being aligned more with efficiency than with social justice.

Feminists are also exploring gendered inequalities in the international economic law/trade law subfield. Kerry Rittich has noted the privileging of economies over social development in areas such as reproductive and caring work. There are still many opportunities for new feminist interventions in the field of international law. Some of this scholarship has the transformative goal of calling for a total rethinking of the international economic order.

II. THIRD WORLD AND CRITICAL RACE FEMINIST APPROACHES TO INTERNATIONAL LAW

In 1995, TWAIL held its first conference on post-colonialism, critical race theory (CRT), and law and development. Many of those attracted were people of color teaching or attending law school and specializing in international law. They critiqued white elite male-dominant notions of international law that marginalized all other groups, 'teasing out encounters of difference along many axes - race, class, gender, sex, ethnicity, economics, trade, etc.' - and in inter-disciplinary ways - social, theoretical, epistemological, ontological and so on. One of TWAIL's central goals has been to push for international law's transformation into a tool of emancipation to achieve global justice. The participants have included those that may ally themselves with CLS, CRT, postcolonial theory, literary theory, modernism and Marxism as well as feminism.

A number of women have written feminist analyses from a TWAIL perspective. Some are critical of the 'arrogance' of various Western feminist approaches to addressing women's human rights issues in the developing world. Vasuki Nesiah has published several pieces intersecting TWAIL with feminist theory, noting the heterogeneous feminism. TWAIL theory intertwined with Latino critical theory (LATCRIT) in Paulina García-Del Moral's scholarship on feminicidio (femicide). She discussed how Mexican grassroots feminist activists used international human rights law to highlight the abuse and kidnapping of women and girls in Ciudad Juárez, Mexico. Other TWAIL-affiliated authors producing feminist theory include Celestine Nyama

69 See generally Kapur, supra note 66.
72 See Leah Vorgan, Managing the Margins: Gender, Citizenship and the International Regulation of Precarious Employment (2009).
75 See, e.g., Fiona Beveridge, Feminist Perspectives in International Economic Law, in Bass and Manji, supra note 17, at 173.
82 See García-Del Moral, supra note 19.
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progressive postmodern tenets of CLS86 which challenge conceptions of law as objective and neutral, and uses this framework to expose how the law has served as a tool in perpetuating not only class but also unjust race and gender hierarchies, CRF, as part of CRT, challenges conventional strategies of providing social and economic justice by using an anti-essentialization approach that brings race discourse into progressive class analysis.87 CRF uses some tenets of feminism, yet distinguishes the unique and varied experiences of women of color88 from those of white women. Similarly, CRF has drawn from the energy and ideas of Black feminism and ‘womanist’ feminism outside of law to address concerns for equality and the treatment of women of color. Thus, CRF is a gender intervention in CRT illustrating that women of color may have different perspectives on race and ethnicity issues than their male peers.

CRF also introduces its own distinct analytical contributions. Most notable is the concept of anti-essentialism. CRF counters the traditional feminist ideology of the ‘essential female voice’ and relies upon the theory of intersectionality, by which CRF demarginalizes the anti-essentialist plight of women of color by analyzing the intersection of their race and gender identities.89 A related term is ‘multiple consciousness,’ which Mari Matsuda used to describe the intersectional identities of women of color.90 Matsuda has also called for scholars to ‘look to the bottom,’ to the lives of women themselves.91 In earlier scholarship, I have chosen to use the word ‘multiplicative’ to configure identity that can also include class, age, disability, religion, sexual orientation, parental status, marital status or nationality.92

Global CRF extends some of the concepts described above into the realms of international and comparative law.89 CRF has contributed to global feminism and postcolonial theory by moving women of color away from the margins, in both a theoretical and a practical sense. Some of the authors may consider themselves affiliated with TWAIL.

I use here a demarginalizing and intersectional approach to illustrate how Black women’s issues and Black women themselves are not silent, but rather at the forefront in human rights. By looking to the bottom, Black women’s problems are uncovered, so that appropriate solutions can be created. The problems facing African women involve customary law, family law (polygamy), inheritance law and property law, and stem from the fact that women have remained marginalized with regard to international law generally, whether as subjects, authors or participants. Their issues and perspectives have been subsumed under the rubric of all people, all women or all people of color. I will focus here on Black women and their involvement in one main subfield—international human rights law, looking predominantly at documents and scholarly contributions. Needless to say, the discussion is not exhaustive; both experiences of and contributions by other women of color remain to be elaborated.93 The perspective utilized is CRF, a jurisprudential theme that emphasizes the legal status of women of color both domestically and internationally and intersects with all the subfields as well as TWAIL. These women are disproportionately stalled at the bottom of every society—economically, socially and politically. As Dorothy Roberts discusses in her chapter in this volume, CRF seeks to identify their problems, but also formulate relevant solutions as well.

CRF originated out of a much broader set of legal and social movements—most notably critical CLS, CRT and feminist jurisprudence. CRF agrees with some of the

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84 See Nyamu, supra note 38.
90 See Adrien K. Wing, Brief Reflections towards a Multiplicative Theory and Praxis of Being, 6 BERK. WOMEN’S L. 181 (1990–91) [hereinafter Brief Reflections].
93 For anthologies on CRT, see, e.g., Introduction, in CRITICAL RACE THEORY: THE KEY WRITINGS THAT FORMED THE MOVEMENT xix (Kimberlé Crenshaw et al. eds., 1996).
94 See Angela P. Harris, Race and Essentialism in Feminist Legal Theory, 42 STAN. L. REV. 581 (1990).
96 See, e.g., NYAMA, supra note 18.
Even post TWAIL, however, women of color have remained marginal within international law generally, whether as subjects, authors or participants. Their issues and perspectives have been subsumed under the rubric of all people, all women or all people of color. I will focus here on Black women and their involvement in one main subfield - international human rights law, looking predominantly at documents and scholarly contributions. Needless to say, the discussion is not exhaustive; both experiences of and contributions by other women of color remain to be elaborated.

The perspective utilized is CRF, a jurisprudential theme that emphasizes the involvement of people of color.

Fagbongbe and this author, Adrie K. Musembi, have argued that CRF, a feminist legal approach to international law, has been able to address the intersection of race and gender, and that CRF counters the traditional feminist ideology of the ‘essential female voice’ and relies upon the theory of intersectionality, by which CRF demarginalizes the anti-essentialist plight of women of color by analyzing the intersection of their race and gender identities. A related term is ‘multiple consciousness,’ which Mari Matsuda used to describe the intersectional identities of women of color. Matsuda has also called for scholars to ‘look to the bottom,’ to the lives of women themselves. In earlier scholarship, I have chosen to use the word ‘multiplicitive’ to configure identity that can also include class, age, disability, religion, sexual orientation, parental status, marital status or nationality.

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progressive postmodern tenets of CLS which challenge conceptions of law as objective and neutral, and uses this framework to explore how the law has served as a tool in perpetuating not only class but also unjust race and gender hierarchies. CRF, as part of CRT, challenges conventional strategies of providing social and economic justice by using an anti-essentialism approach that brings race discourse into progressive class analysis. CRF uses some tenets of feminism, yet distinguishes the unique and varied experiences of women of color from those of white women. Similarly, CRF has drawn from the energy and ideas of Black feminism and ‘womanist’ feminism outside of law to address concerns for equality and the treatment of women of color. Thus, CRF is a gender intervention in CRT illustrating that women of color may have different perspectives on race and ethnicity issues than their male peers.

CRF also introduces its own distinct analytical contributions. Most notable is the concept of anti-essentialism. CRF counters the traditional feminist ideology of the ‘essential female voice’ and relies upon the theory of intersectionality, by which CRF demarginalizes the anti-essentialist plight of women of color by analyzing the intersection of their race and gender identities. A related term is ‘multiple consciousness,’ which Mari Matsuda used to describe the intersectional identities of women of color. Matsuda has also called for scholars to ‘look to the bottom,’ to the lives of women themselves. In earlier scholarship, I have chosen to use the word ‘multiplicitive’ to configure identity that can also include class, age, disability, religion, sexual orientation, parental status, marital status or nationality.

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from religious practices, external and family violence, FGS, their status as refugees, education, employment, health care, trafficking, slavery and lack of representation in the political and economic spheres.\textsuperscript{104} Authors address these and other issues within the broad fields and disciplines of multiple subfields of international law.

The denial of women's rights in the domestic and public spheres results in 'spirit injuries,' a critical race feminist term that contemplates the psychological, spiritual and cultural effects of multiple assaults upon women.\textsuperscript{105} The spirit injuries inflicted upon Black women as a result of decades of repression should not be taken as a sign of hopelessness, however. Instead, they should serve as a reminder of and an inspiration for urgently addressing all violations against Black women.

Two profoundly important documents involving Black women attempt to provide solutions to some of the problems confronting them. First, Africa made an important contribution to the international human rights of women by enacting the Women's Protocol\textsuperscript{106} of the African Charter on Human and Peoples' Rights.\textsuperscript{107} The Women's Protocol, which came into effect in November 2005,\textsuperscript{108} makes significant contributions to African women's rights, at least on paper. Second, in 2000, the Committee on Elimination of Race Discrimination (CERD Committee), the UN treaty body that provides oversight for the Convention for the Elimination of Race Discrimination (CERD), issued General Recommendation No. 25, which concerns gender.\textsuperscript{109} I will take these up in that order.\textsuperscript{110}

The Banjul Charter of the Organization of African Unity (OAU) was adopted in 1981 and entered into force in 1986.\textsuperscript{111} While the Charter does make direct reference to gender issues, including an antidiscrimination clause that includes ‘sex,’ \textsuperscript{112} the ‘tradition’ and ‘culture’ provisions which aspire to preserve African tradition and culture proved to open the floodgates for human rights violations. These sections institutionalized myriad practices of gender discrimination inherent in African culture.

The African Union (AU), which came into being in 2001 as the successor to the OAU, has among its objectives protecting human rights, including gender equality.\textsuperscript{113} The Women's Protocol is perhaps the most promising vehicle at the AU's disposal for promoting and protecting African women's rights.\textsuperscript{114} It was the first international treaty intended to protect Black women specifically. As of 2018, 36 countries had ratified it.\textsuperscript{115}

The Women's Protocol requires that states use education and communication 'to modify the social and cultural patterns of conduct' which perpetuate sex discrimination.\textsuperscript{116} It encourages education for more women.\textsuperscript{117} Women are entitled to a right to dignity, which precludes exploitation or degradation.\textsuperscript{118} Similar to the South African Constitution, the Protocol prohibits violence from both public and private sources.\textsuperscript{119} Female refugees have an equal status to male refugees.\textsuperscript{120} Women must be protected in armed conflict.\textsuperscript{121} FGS is listed as a harmful practice that must be prohibited.\textsuperscript{122} The Women’s Protocol does not ban polygamy, but it declares a preference for monogamy as a form of marriage.\textsuperscript{123} Women are entitled to keep their own names and nationality and to acquire property.\textsuperscript{124} They have the same ability to separate or terminate marriages as their husbands and to obtain marital property.\textsuperscript{125} Widows can get custody of their children, rather than it being presumed that fathers own them.\textsuperscript{126} Moreover, widows have a right to inheritance and to live in the matrimonial house, instead of presuming that the husband’s family owns his possessions after death.\textsuperscript{127} Finally, widows can remarry the person of their choice, undercutting forced marriage practices. The Protocol encourages female political participation through affirmative action and encourages equal pay and benefits.\textsuperscript{128} It calls for a minimum age for work as well as paid pre- and post-natal maternity leave.\textsuperscript{129} Women should be provided with adequate food, water and housing\textsuperscript{130} as well as a healthy and sustainable environment, along with sustainable development.\textsuperscript{131}

\textsuperscript{104} See Wing and Smith, supra note 94, for more elaboration of these issues.

\textsuperscript{105} See Wing, Brief Reflections, supra note 102, for more on the concept of spirit injury.


\textsuperscript{108} The Women's Protocol came into force on November 27, 2005.


\textsuperscript{111} See Banjul Charter, supra note 107, art. 30.

\textsuperscript{112} Id. art. 2.


\textsuperscript{116} Women's Protocol, supra note 106, at art. 2(2).

\textsuperscript{117} Id. art. 12.

\textsuperscript{118} Id. art. 3.

\textsuperscript{119} Id. art. 4(2)(a); S. Afr. Const., art. 12.

\textsuperscript{120} Women's Protocol, supra note 106, art. 20(1).

\textsuperscript{121} Id. art. 11.

\textsuperscript{122} Id. art. 5.

\textsuperscript{123} Id. art. 6.

\textsuperscript{124} Id. art. 7.

\textsuperscript{125} Id. art. 20.

\textsuperscript{126} Id. art. 21.

\textsuperscript{127} Id. art. 13.

\textsuperscript{128} Id. art. 15.

\textsuperscript{129} Id. art. 18, 19.

\textsuperscript{130} Id.
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Most notable is the provision in the reproductive rights article that authorizes abortion in cases of rape, incest and to preserve the health of the mother.\textsuperscript{132} Significantly, this is the first explicit mention of abortion in international law.\textsuperscript{133} Even though the Women’s Protocol does not promote abortion rights on demand, it does go further than many national laws in Africa on the subject.

The potential theoretical and practical contribution of the Women’s Protocol to international law and the achievement of women’s rights is great. Success in interpretation and implementation of the Women’s Protocol, however, depends in large part on the African Court on Human and Peoples’ Rights.\textsuperscript{134} NGOs or individuals can apply to the Court for relief if the Court permits.\textsuperscript{135} The main challenges facing implementation of the Women’s Protocol, however, include the following: gaps and ambiguities; general lack of awareness of the document; weakening of the women’s movement in the region; lack of political will on the part of governments; strength of patriarchy, tradition, culture and religion; public/private dichotomies; and lack of resources.\textsuperscript{136}

African women and men must be involved in confronting these challenges in the future to enable the Women’s Protocol to live up to its potential.

The second significant document affecting Black women, CERD General Recommendation No. 25, reflects a critical race feminist approach on race issues of the Women’s Protocol, however, include the following: gaps and ambiguities; general lack of awareness of the document; weakening of the women’s movement in the region; lack of political will on the part of governments; strength of patriarchy, tradition, culture and religion; public/private dichotomies; and lack of resources.\textsuperscript{138} The Recommendation contains a four-point intersectionality questionnaire asking about the form a violation takes, the circumstances in which it occurs, the consequences of a violation, and the availability and accessibility of remedies and complaint mechanisms.\textsuperscript{139} The CERD Committee asked that states disaggregate the data so that the situation of women facing race discrimination will be clear. Then the CERD Committee and the states will be able to take steps to provide remedies for women specifically.\textsuperscript{140}

In addition to the Women’s Protocol and CERD Recommendation No. 25, there are two international institutions that have handled issues relating to injustices committed against Black women, greatly contributing to international human rights law for Black women and for everyone. The ICTR defined rape under international law in the 1998 Akayesu case, which was the first to punish sexual violence in a civil war and the first where rape was found to be used as an act of genocide as well as an act of torture.\textsuperscript{141} The Sierra Leone Truth and Reconciliation Commission (TRC) was a rare example of a TRC where the concerns of Black women were at the forefront.\textsuperscript{142} Unlike in the South African TRC, violence in the private sphere was analyzed.

Moreover, Black women have been playing major roles in international human rights. Former Liberian President Ellen Johnson Sirleaf was the first female president on the African continent. She was committed to using her powerful positions to enhance the status of women. She won the 2011 Nobel Peace Prize for her efforts in peace-making, which led to the end of civil war. Leymah Gbowee, who also helped stop the civil war, won the Nobel Prize in 2011 as well. Wangari Maathai’s Green Belt activism to restore green spaces for the environment in Kenya also led to a Nobel Prize. Judge Gabrielle Kirk McDonald is the most notable African American woman jurist on the international level. A former US federal district judge in Texas, she was named one of the first 11 judges to serve on the ICTY in 1993. As presiding judge of Chamber II, she issued the decision against Duško Tadić, which was the first international war crimes case involving sexual violence charges. She was the President of the ICTY between 1997 and 1999 and the only woman to have held that position. She later became one of three American arbitrators on the Iran-US Claims Tribunal at The Hague.

Judge Julia Sebutinde joined the International Court of Justice in 2012. Many Black women have served as judges on the ICC, including Fatoumata Démé Diarra, Akua Kueneyehia and Joyce Aluoch. Black women have also served on the ICTR and the African Court on Human and Peoples’ Rights. Gambian Fatou Bensouda was named Prosecutor at the ICC in 2012. Patricia Visser Sellers was named a special adviser to the ICC in 2012. Soyata Maiga is the Chairperson for the African Commission on Human Rights.

A number of Black women have served on the various human rights treaty bodies that supervise implementation of the international human rights treaties, including the CERD Committee, the Human Rights Committee affiliated with the ICCPR, the UN Committee on the Rights of Persons with Disabilities, the Committee on Migrant Workers, the Committee on the Rights of the Child and the CEDAW Committee.

Finally, Black women have become professors of international human rights. They have made wonderful contributions to teaching, scholarship and service. Some have

\textsuperscript{132} Id. art. 14(2).


\textsuperscript{134} Women’s Protocol, supra note 106, at art. 27.


\textsuperscript{138} CERD, supra note 109, para. 2.

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The CERD Committee asked that states disengage from the Women’s Protocol to live up to its potential. The second significant document affecting Black women, CERD General Recommendation No. 25, reflects a critical race feminist approach on race issues for the CERD Committee. It accepted the intersectionality approach and embraced the idea that women of color may face different realities than men of color.137 It recognized that women of color can face specific harms based on gender, such as sexual violence, forced sterilization, abuse in informal sectors or as domestic workers abroad, and inability to access complaint mechanisms due to the gender-biased nature of those systems.138 The Recommendation contains a four-point intersectionality questionnaire asking about the form a violation takes, the circumstances in which it occurs, the consequences of a violation, and the availability and accessibility of remedies and complaint mechanisms.139 The CERD Committee asked that states disaggregate the data so that the situation of women facing race discrimination will be clear. Then the CERD Committee and the states will be able to take steps to provide remedies for women specifically.140

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138 CERD, supra note 109, para. 2.
139 Id. para. 6.
142 See Maisel, supra note 142, at 167.
emphasized women's issues in their work. The foremost of Black women in the field was Professor Goler Tel B. Butcher, who passed away in 1993. Her career included stints at the Office of the Legal Advisor at the State Department and as a consultant to the House Foreign Affairs Committee's Subcommittee on Africa. She worked for the Africa unit in the US Agency for International Development (USAID) as well as on the Clinton transition team for USAID. She spent many years as a law professor at Howard, her law school alma mater. \[^{144}\] Others include Professors Leslye Obiara, Chantal Thomas and the late Hope Lewis, who co-authored Human Rights and the Global Marketplace: Economic, Social, and Cultural Dimensions with Jeanne Woods, Ruth Gordon, Erika George, Karen Bravo and myself.

III. CONCLUSION

There have been enormous achievements over the last 40 years in the topics covered in this chapter on international law and feminism. On the one hand, there are important treaties and documents, major institutions and an amazing growth in the number of participants. Increasing numbers of women are scholars producing significant works. Jurisprudential trends like TWAIL and CRF advance our feminist understanding of the complexities and nuances in all major subfields. On the other hand, treaties are often not enforced. The institutions have limited effect and resist gender mainstreaming. Much of the scholarship noted or discussed here has not been integrated into the bulk of international law courses, textbooks and publications. \[^{145}\] Most feminist literature does not extend its coverage to the robust international literature. The leadership of many entities remains predominantly male. Clearly, much work needs to be done over the next century.


In \textit{Opuz v. Turkey}, \[^{1}\] for the first time in the history of the European Court of Human Rights (ECtHR), a state's failure to address domestic violence was held to constitute a form of gender-based discrimination. The influence of feminist critics and their proposals for international law and human rights law was apparent in the reasoning of the judgment. References in the decision to international instruments and precedents that encourage application of a due diligence obligation in determining state responsibility in domestic violence cases are manifestations of this influence. Therefore, the reasoning and the judgment it led to constitute a milestone in the feminist movement's struggle against gender-based violence.

Feminist legal theorists and lawyers have long been critical of the neutrality of legal and adjudicative processes. Neutrality is believed to function in law in at least two ways: the process of making laws and the application of laws. Feminist jurisprudence challenges the former by raising questions about how laws are created and the latter by raising questions about legal reasoning in the application process.

Generally, law is a combination of norms. A norm in turn is a statement which declares what ought to be done. Norms do not provide information. It is therefore not possible to verify or falsify them. But it is possible to evaluate them as fair or unfair. \[^{2}\] Their justification is related to the premises from which they are deduced. Hence, in order to evaluate a legal norm, it is necessary to go back to the premise of the legal norm. If a legal norm was deduced from a patriarchal moral norm, then the legal norm is unfair from a feminist perspective. \[^{3}\] The work of feminist jurists has been to reveal the masked patriarchal bias in law's major premises.

Almost every area of law has been under the scrutiny of feminist legal scholars who have exposed the gendered structure of law. International law has also been subjected to feminist criticism. Feminists mostly criticize the state-centered structure of international law. They assert that the gendered public and private distinction has been reinforced by international law. \[^{4}\] The norms of international human rights law are also often criticized because women's experiences and concerns are not truly translated into the rights discourse.

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