1. Introduction to the *Research Handbook on Feminist Engagement with International Law*

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Without hope, solidarity and imagination, change is impossible.

Dianne Otto

I. INTRODUCTION

For feminist international law scholars, practitioners and advocates, the first two decades of the new Millennium have produced moments of elation and disenchantment. It has been the best and worst of times, in the truly Dickensian sense. With respect to international law victories for women, there have been successful campaigns to further entrench women's rights in international and regional instruments. For example, in 2002 the Rome Statute came into force, which includes sexual violence in the definition of a crime against humanity. The Maputo Protocol on the Rights of Women in Africa and the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence came into force in 2003 and 2014 respectively. Women's achievements in the international sphere have been recognised and celebrated: since the turn of this century, seven women have been awarded the Nobel Peace Prize for work relating to peace-building, democracy and human rights. International institutions have demonstrated greater awareness of and commitment to women's rights and empowerment. This is perhaps best demonstrated by the United Nation's (UN) eight resolutions on women, peace and security adopted between 2000 and 2015.¹ Another institutional highlight was the creation of UN Women in 2010 – an organisation dedicated to gender equality and the empowerment of women. In some quarters of the academic community, there has been optimism about feminist international legal scholarship's growth and potential for influence.²

* We would like to thank Matilda Gillis for her research assistance.

¹ SC Res 1325, 4213th mtg, UN Doc S/RES/1325 (31 October 2000); SC Res 1820, 5916th mtg, UN Doc S/RES/1820 (19 June 2008); SC Res 1888, 6195th mtg, UN Doc S/RES/1888 (30 September 2009); SC Res 1889, 6196th mtg, UN Doc S/RES/1889 (5 October 2010); SC Res 1960, 6453rd mtg, UN Doc S/RES/1960 (16 December 2010); SC Res 2106, 6984th mtg, UN Doc S/RES/2106 (24 June 2013); SC Res 2122, 7044th mtg, UN Doc SC/RES/2122 (18 October 2013); and SC Res 2242, 7533rd mtg, UN Doc S/RES/2242 (13 October 2015).

² Sari Kouvo and Zoe Pearson assert that 'feminist perspectives have developed into a flourishing discourse within the discourse of international law': Sari Kouvo and Zoe Pearson, 'Introduction' in Sari Kouvo and Zoe Pearson (eds), *Feminist Perspectives on Contemporary International Law: Between Resistance and Compliance* (Hart Publishing, 2014) 1.

Yet alongside these and other successes, the first two decades of the new millennium have also provided reasons for despair. A woman has not been appointed to the position of Secretary-General of the United Nations. This is despite a campaign to elect a woman to replace Ban Ki Moon as the ninth Secretary-General³ and seven of the candidates being highly qualified women.⁴ The representation of women in the UN remains parlous at senior levels.⁵ In 2016, the UN appointed Wonder Woman to the position of ambassador for the empowerment of women and girls – a fictional and hyper-sexualised white woman often depicted draped in an American flag.⁶ Donald Trump was elected President of the United States of America, beating the far more qualified Hillary Clinton even after video evidence emerged of him boasting of his sexual assaults of women. With respect to the academy, a sense of pessimism has started to grow within the field of international feminist legal scholarship. There have been observations of the unintended consequences of feminist ‘victories’,⁷ criticism of the field’s homogeneity due to it being dominated by western feminists,⁸ frustration at the minimal progress that has been made to penetrate international law’s foundational concepts and core institutions,⁹ and even a suggestion that international lawyers should take a break from feminism.¹⁰

This juxtaposition of progress, stagnation and regression raises uncertainties about the future directions of feminist engagement with international law. Is it time to take a break from feminist approaches to international law and, if so, when should feminist perspectives be resurrected? Should feminist international legal scholarship acknowledge, accept and truly absorb critiques from critical race theorists and third world scholars? How do we make feminist ideas more inclusive, diverse and influential? Will

³ BBC, ‘Why wasn’t a woman elected as UN secretary general?’, 6 October 2016 <<https://www.bbc.com/news/world-europe-37574307>>.

⁴ Irina Bokava, Helen Clark, Kristalina Georgieva, Natalia Gherman, Susana Malcorra, Vesna Pusić (withdrawn) and Christiana Figueres (withdrawn).

⁵ UN Women data from 2014 indicates that the three highest pay levels in the UN Secretariat show inequity: women make up 26.2 per cent of staff at D-2 (Director); 21.3 per cent at Assistant Secretary-General (ASG); and 28.6 per cent at Under Secretary-General (USG) level. CEB HR Report (2005), OHRM (2015). Prepared by the Focal Point for Women, UN System Coordination Division <<http://www.unwomen.org/en/how-we-work/un-system-coordination/women-in-the-united-nations/current-status-of-women>>.

⁶ Wonder Woman was appointed by the UN as an ambassador for women and girls in October 2016 but her appointment was cancelled after two months in response to protests regarding the inappropriateness of the appointment.

⁷ See, for example, Judith Gardam, ‘War, Law, Terror, Nothing New for Women’ (2010) 32 *Australian Feminist Law Journal* 61; Karen Engle, ‘Feminism and its (Dis)Contents: Criminalizing Wartime Rape in Bosnia and Herzegovina’ (2005) 99 *American Journal of International Law* 778.

⁸ See, for example, Ratna Kapur, ‘The Tragedy of Victimization Rhetoric: Resurrecting the “Native” Subject in International/Post-Colonial Feminist Legal Politics’ (2002) 15 *Harvard Human Rights Law Journal* 1.

⁹ Hilary Charlesworth, Christine Chinkin and Shelly Wright, ‘Feminist Approaches to International Law: Reflections from Another Century’ in Doris Buss and Ambreena Manji (eds), *International Law: Modern Feminist Approaches* (Hart Publishing, 2005).

¹⁰ Janet Halley, *Split Decisions: How and Why to Take a Break from Feminism* (Princeton University Press, 2006).

having more women in international institutions result in fundamental changes to international law, or result instead in mere tinkering at its peripheries? Is there room for feminist examinations of international law beyond subject areas such as international human rights law? Can we challenge the masculinist hierarchical ordering of some areas of international law as ‘soft’?

These moments of triumph and despondency and resulting questions about feminism’s role in international law, prompted this project to deliberate the future of feminist engagement with international law. Looking towards the future is an integral aspect of feminist international legal scholarship, which has been described as a ‘project of imagination and vision’.¹¹ It is through future-gazing that we keep ‘feminist imaginaries of a better world alive’¹² and harness ideas for reconstructing international law with a dedication to political change.¹³ Contemplating future directions in research and advocacy also means that this volume follows on from the most recent collection of voices on feminist theory and international law. In *Feminist Perspectives on Contemporary International Law: Between Resistance and Compliance*, editors Kouvo and Pearson present a “stock-take” of where feminist perspectives on international law are today’,¹⁴ with the final chapter briefly outlining the contributors’ hopes for the field through postcards written to the future. This book picks up where Kouvo and Pearson’s important contribution left off through drawing together different ideas about and reflections on the future of feminism and international law.

To increase the diversity of perspectives, the contributions in this volume were drawn from invited submissions as well as an open call for submissions to achieve an organic feel to the *Research Handbook*. This collection includes contributions by authors from Africa, Asia-Pacific, Europe, North America, South America and the Middle East. Men and women were invited to participate in the project, although as events progressed, only women constitute the contributing authors. Some of the contributors have a background in feminist legal theory, others are experts in a specific field of international law who are broadening their lens of enquiry to include feminist perspectives and methods. Our authors include scholars beginning their career, in the middle and at the end. To enhance the diversity of insights, each section of the *Research Handbook* includes a contribution from a practitioner who has worked on issues of gender equality and women’s empowerment in the international sphere.

While the *Research Handbook* addresses many of the pertinent issues confronting women in the field of international law, we do not hold out this volume to be exhaustive. Despite our very determined efforts, we were not able to secure a discussion of feminism and international law with respect to consequential issues such as the law of the sea or cyber security. These omissions in themselves speak to the

¹¹ Dianne Otto, ‘Feminist Approaches to International Law’ in Anne Orford and Florian Hoffman (eds), *Oxford Handbook of the Theory of International Law* (Oxford University Press, 2016).

¹² Ibid.

¹³ Hilary Charlesworth, ‘Feminist Critiques of International Law and Their Critics’ (1994) 13 *Third World Legal Studies* 1, 5; Hilary Charlesworth and Christine Chinkin, *The Boundaries of International Law; A Feminist Analysis* (Manchester University Press, 2000) 20.

¹⁴ Kouvo and Pearson, above n 2, 1.

future directions of feminist engagement with international law – in particular the need to apply feminist perspectives to a broader range of international law issues.

Ideas about the future directions of feminism and international law were discussed by the contributors and other participants at two international workshops – one Southern Hemisphere workshop (Brisbane, Australia in July 2016) and one Northern Hemisphere workshop (Geneva, Switzerland in September 2016). Funding was provided to enable participation by scholars and practitioners working in developing countries as well as graduate students and early career academics. Some visions for the future of feminist engagement with international law raised at the workshops were as follows.

- *Cataclysm and rapture* – international law will collapse after war or economic or climate crisis, and with it, there will be the prospect of a rebirth with more promise of a system designed to fit women's lived experience.
- *Diffusion* – more areas of international law currently resistant to feminist analysis or methodologies will receive that attention (for example trade law, law of the sea and space law).
- *Inclusion and continuity* – modest and incremental changes to international law will occur without disrupting international law's main assumptions, structures and institutions.
- *Abandonment* – feminists might abandon international law and go 'below the state' (for example, what would a feminist city look like?)
- *Absorb valid critiques* – feminist international law scholarship might not recover from critiques made by scholars writing from other perspectives, such as third world approaches to international law (TWAIL). Any intellectual space could be ceded to those TWAIL or queer scholars taking an intersectional and critical approach to gender issues. An alternative perspective would be that mainstream feminist thought would truly merge with other critical legal scholarship.
- *Stronger over time* – international law might be incrementally reformed with substantive gender equality taken seriously through institutional reform.
- *Normative victories that ring hollow* – feminist international lawyers may win ideational contests but these victories may never become realised in policy implementation.
- *Shift in focus* – feminist international lawyers might shift their focus from states and instead analyse international actors and micro-processes such as diplomats or civil society actors.

These ideas present both sanguine and bleak outlooks for the future of feminist engagement with international law and are perhaps reflective of the turbulent nature of the fight for gender equality in the international sphere. In the rest of this chapter, we provide a brief overview of the history of the field, present empirical data on the trajectory of feminist international legal scholarship and outline an agenda for future feminist engagement with international law based on the diverse contributions to this *Research Handbook*.

II. FEMINIST CONTRIBUTIONS TO INTERNATIONAL LAW

It is not possible to comprehensively outline the many contributions that feminist scholars have made to the study of international law in this introductory chapter.¹⁵ Rather what follows is an overview of the field's inception and evolution with a focus on the main themes and debates. In the 1970s through to the early 1990s, there emerged a handful of feminist critiques of international human rights law,¹⁶ international labour law,¹⁷ sex-discrimination in international law¹⁸ and the status of women in international law.¹⁹ Through these publications, the male bias of international law was exposed and examined for the first time.²⁰ For example, writing in 1990, Bunch highlights that gender is the primary factor behind many human rights violations experienced by women, yet the debates on human rights post 1948 largely ignore questions of gender.²¹ In a study published in 1992, Engle similarly asserts that women's rights exist at the peripheries of human rights debates.²² She analyses the different ways in which women's human rights advocates negotiate the difficulties in both critiquing as well as relying on traditional human rights discourse.²³

However, the field of feminist international legal scholarship is generally understood to have commenced in the early 1990s with seminal publications such as Charlesworth, Chinkin and Wright's 1991 article,²⁴ which, for the first time, applied a feminist lens to international law more generally and outlined what feminist approaches to international law may encompass. Charlesworth, Chinkin and Wright draw attention to the fact that

¹⁵ More detailed overviews of feminist international law scholarship are provided elsewhere. See for example Otto, above n 11.

¹⁶ For example, see Charlotte Bunch, 'Women's Rights as Human Rights: Toward a Revision of Human Rights' (1990) 12 *Human Rights Quarterly* 486; Andrew Byrnes, 'Women, Feminism and International Human Rights Law – Methodological Myopia, Fundamental Flaws of Meaningful Marginalisation? Some Current Issues' (1988) 12 *Australian Yearbook of International Law* 205; Karen Engle, 'International Human Rights and Feminism: Where Discourses Meet' (1992) 13 *Michigan Journal of International Law* 517; Helen Holmes, 'A Feminist Analysis of the Universal Declaration of Human Rights' in Carol Gould (ed), *Beyond Domination: New Perspectives on Women and Philosophy* (Rowman and Allanheld, 1983); Yougindra Khushalani, *The Dignity and Honour of Women as Basic and Fundamental Human Rights* (Martinus Nijhoff Publishers, 1982).

¹⁷ Léon-Éli Troclet, *La Femme Devant le Droit Social International* (Women Before International Labour Law) (Fernand Nathan Press, 1975).

¹⁸ Myres McDougal, Harold Lasswell and Lung-chu Chen, 'Human Rights for Women and World Public Order: the Outlawing of Sex-based Discrimination' (1975) 69 *American Journal of International Law* 497; Howard Taubenfeld and Rita Taubenfeld, *Sex-based Discrimination: International Law and Organization* (Oceana, 1978).

¹⁹ Natalie Hevener, 'International Law and the Status of Women: an Analysis of International Legal Instruments Related to the Treatment of Women' (1978) 1 *Harvard Women's Law Journal* 131; Natalie Hevener, *International Law and the Status of Women* (Westview Press, 1983).

²⁰ Kouvo and Pearson, above n 2, 3.

²¹ Bunch, above n 16, 886–87.

²² Engle, above n 16, 519.

²³ Ibid.

²⁴ Hilary Charlesworth, Christine Chinkin and Shelley Wright, 'Feminist Approaches to International Law' (1991) 85 *American Journal of International Law* 613.

the primary subjects of international law (states and international organisations) are overwhelmingly ‘peopled by men’,²⁵ that the fundamental premises of international law are assumed to be gender neutral but have different consequences for men and women²⁶ and that international law, far from being universal, is founded on western legal thinking.²⁷ They assert that a feminist approach to international law involves much more than reform existing law – it requires rethinking and rebuilding international law’s central norms and structures.²⁸

This early scholarship recognises the inherent difficulties associated with conducting feminist analyses of international law. Engle speaks of the tension between recognising the need to attack the ‘core’ of international law and a concern that ‘if we push too hard, it might dissolve and become useless too us’.²⁹ Charlesworth, Chinkin and Wright question whether even fundamental changes to international law could lead to meaningful changes to women’s lives when taking into account that ‘most forms of power continue to be controlled by men’.³⁰ Nevertheless, in these early publications there is a sense of optimism about international law’s emancipatory potential for women and a belief that feminist theory can ‘contribute to the progressive development of international law’.³¹

These publications gave rise to a growing body of feminist international law scholarship. During the 1990s and 2000s, scholars applied a feminist lens to subjects such as refugee law, international humanitarian law and international criminal law. There was also greater consideration and discussion of research methods feminist researchers deploy to expose and critique the gender divisions in international law.³² However, this same period witnessed a more critical turn. Concerns were raised with respect to western feminist scholars essentialising gender and speaking for women from the Global South.³³ One of the most well-known contributions from this period is Ratna Kapur’s critical appraisal of the ways in which western feminist discourse depicts women from the developing world as in need of saving. Kapur argues that this implies that women from the developing world are vulnerable and ignorant and thus reproduces rather than challenges patriarchal structures.³⁴

During this period there was also a recognition that feminist engagement with international law was having minimal influence on international law, international institutions and women’s everyday lives.³⁵ Charlesworth and Harris Rimmer lament

²⁵ Ibid 625.

²⁶ Ibid 625.

²⁷ Ibid 644.

²⁸ Ibid 644.

²⁹ Engle above n 16, 605.

³⁰ Charlesworth, Chinkin and Wright above n 24, 645.

³¹ Ibid 615.

³² See, for example, Hilary Charlesworth, ‘Feminist Methods in International Law’ (1999) 93 *American Journal of International Law* 379; Charlesworth and Chinkin, above n 13.

³³ Kouvo and Pearson, above n 2, 4.

³⁴ Kapur, above n 8. Although, it is important to note that writing in 1991 Charlesworth, Chinkin and Wright acknowledge that ‘feminist concerns in the Third World are largely ignored or misunderstood by western feminists’: Charlesworth, Chinkin and Wright, above n 24, 619.

³⁵ Kouvo and Pearson, above n 2, 4.

that feminist perspectives remained merely an ‘optional extra’ to the study of international law rather than being considered an essential part of the discipline.³⁶ Charlesworth suggests that feminist scholars specialising in international law are having conversations amongst themselves that are largely being ignored by others in the field.³⁷ Kouvo and Pearson observe that during the 1990s and early 2000s, feminist lawyers began to be invited to contribute to international law-making but only to provide a ‘women’s voice’ – not to challenge international law’s fundamental structure, assumptions and institutions.³⁸

Another concern is that feminist international law victories may have had unintended consequences. For example, while feminist scholars and advocates fought hard to have sexual violence recognised as a human rights abuse and international crime, this has been accompanied by feminist critique regarding an unjustifiable fixation on sexual violence³⁹ and disempowering representations of victims of sexual violence.⁴⁰ Also, while international institutions have sometimes responded to feminist concerns, feminist agendas are often thwarted in this process or ‘rendered so bland they have no transformative bite’.⁴¹ For example, Kouvo highlights that the invasion of Afghanistan was partly based on women’s rights but Afghan women were ignored post invasion.⁴² Another example of feminist agendas being coopted is presented in Otto’s analysis of UN Security Council Resolutions on women, peace and security.⁴³

These critical voices and partial victories are demonstrative of feminist international legal scholarship’s trajectory of ‘hope and despair’.⁴⁴ They also point to the ‘tensions between resistance and compliance’ in feminist approaches to international law⁴⁵ through exemplifying the difficulties inherent in both criticising international law’s gendered norms, language and institutions and at the same time utilising international law to obtain greater substantive equality for women.⁴⁶ Further, these examples

³⁶ Hilary Charlesworth and Susan Harris Rimmer, ‘Feminist Internationalisms’ (2010) 32 *Australian Feminist Law Journal* 3, 4.

³⁷ Hilary Charlesworth, ‘Talking to Ourselves? Feminist Scholarship in International Law’ in Sari Kouvo and Zoe Pearson (eds), *Feminist Perspectives on Contemporary International Law: Between Resistance and Compliance* (Hart Publishing, 2014).

³⁸ Kouvo and Pearson, above n 2, 4–5.

³⁹ Gardam, above n 7.

⁴⁰ Karen Crawley and Olivera Simic, ‘Unintended Consequences: Representations of Rwandan Women and their Children Born of Rape’ (2012) 36 *Australian Feminist Law Journal* 87; Engle, above n 7; Olivera Simic, ‘Challenging Bosnian Women’s Identity as Rape Victims, as Unending Victims: The Other Sex in Times of War’ (2012) 13 *Journal of International Women’s Studies* 129.

⁴¹ Hilary Charlesworth, ‘The Women Question in International Law’ (2001) 1 *Asian Journal of International Law* 33, 35.

⁴² Sari Kouvo, ‘Taking Women Seriously? Conflict, State-Building and Gender in Afghanistan’ in Sari Kouvo and Zoe Pearson (eds), *Feminist Perspectives on Contemporary International Law: Between Resistance and Compliance* (Hart Publishing, 2014).

⁴³ Dianne Otto, ‘Power and Danger: Feminist Engagement with International Law through the UN Security Council’ (2010) 32 *Australian Feminist Law Journal* 97.

⁴⁴ Otto, above n 11.

⁴⁵ Kouvo and Pearson, above n 2, 9. See also Otto, above n 11.

⁴⁶ Charlesworth, Chinkin and Wright, above n 9.

demonstrate the self-reflective nature of the field. This internal critique has been celebrated as ‘part of the life-blood of feminism’⁴⁷ but concerns have been raised as to whether feminist scholars have been successful in creating a dialogue with mainstream international law scholarship.⁴⁸

There also remains the question of whether feminist international legal scholarship is influencing other disciplines. The field of feminist international relations has often been slightly ahead of the international law curve and saw its breakthroughs occur in the 1980s with the work of Cynthia Enloe, Jan Jindy Pettman and J. Ann Tickner. The influence of international relations, development studies, political science, anthropology, philosophy and sociology on feminist international lawyers is clear from the contributions to this volume. The quantitative turn in international relations⁴⁹ inspired our review of the trajectory of feminist international legal scholarship, set out below.

III. EMPIRICAL OVERVIEW OF FEMINIST VOICES IN INTERNATIONAL LAW: INROADS, GAPS AND CREVASSES

To provide a base for exploring the future directions of feminism and international law, it is necessary to examine its history. As noted above, comprehensive accounts of feminist international legal scholarship’s main themes, ideas and debates already exist. What this chapter provides instead is some empirical data on feminist scholarly contributions to international law. There are conflicting perspectives on feminist international legal scholarship’s reach and position within the wider field of international law. For example, Kouvo and Pearson assert that feminist approaches to international law are ‘flourishing’. Similarly, Otto states that this ‘burgeoning’ field is ‘vast and diverse’⁵⁰ and represented in ‘every sub-discipline of international law’.⁵¹ She laments the continued association of feminist scholarship with the campaign to have violence against women recognised as a violation of international human rights because it betrays ‘the diversity of feminist voices in international law’.⁵² Conversely, there are also concerns that the field is becoming a ‘scholarly ghetto’⁵³ and that feminist perspectives may, in some areas of law, have reached their zenith and are no longer in vogue.⁵⁴

⁴⁷ Otto, above n 11.

⁴⁸ Charlesworth, above n 37.

⁴⁹ The past two decades have seen the study of international relations in the US dominated by quantitative methods using large data sets. Techniques include public opinion surveys, events data, and experimental methods. See further Edward Mansfield and Jon Pevehouse, ‘Quantitative Approaches’ in Christian Reus-Smit and Duncan Snidal (eds), *The Oxford Handbook of International Relations* (Oxford University Press, 2010).

⁵⁰ Otto, above n 11.

⁵¹ Ibid.

⁵² Ibid.

⁵³ Charlesworth, above n 41, 35.

⁵⁴ Efrat Arbel, Catherine Dauvergne and Jenni Millbank, ‘Introduction, Gender in Refugee Law – From the Margins to the Centre’ in Efrat Arbel, Catherine Dauvergne and Jenni Millbank (eds), *Gender in Refugee Law: From the Margins to the Centre* (Routledge, 2014) 10.

Whilst critical reflection is one of the hallmarks of the field, what has not been attempted is an overarching examination of the prevalence and diversity of feminist analysis of international law and its position within wider international law scholarship. Before embarking on our project to contemplate the future directions of feminist engagement with international law, we had queries that we felt may be best illuminated by empirical data. For example, what were the earliest publications on women and international law? Has feminist engagement with international law grown considerably since these early works? Are feminist perspectives on international law becoming more prevalent in international law scholarship and feminist scholarship? Has the field covered a wide range of topics or has it overwhelmingly focussed on a few selected issues? What proportion of feminist literature on international law can be described as intersectional in that it considers not only gender, but also other factors such as nationality, race, religion and sexuality?

To investigate these questions we undertook a survey of scholarship on the topics of women/gender/feminism and international law from January 1950 to July 2016. We surveyed books (both monographs and edited collections) written in either English or French⁵⁵ that fit within the topics of 'women and international law', 'gender and international law' or 'feminism and international law'.⁵⁶ We also searched journal articles on these topics published in leading international law journals⁵⁷ and feminist law journals⁵⁸ from January 1950 to July 2016. In addition, we examined textbooks on international law written in English and French and published between January 2000 and July 2016 to determine if they had a section devoted to the topics of women/gender/feminism and international law.

We acknowledge that one of the limitations of this research design is that it does not capture feminist perspectives on international law published in less traditional fora such as blogs or open access journals. Also, we are aware that what are considered to be leading journals are predominantly published in the Global North. Both these factors mean that there are contributions to feminist scholarship on international law not represented in our dataset. However, the research design was chosen to enable us to draw some conclusions about the prevalence of feminist international law scholarship in mainstream international law publications.

⁵⁵ Our enquiries into monographs and edited collections in other languages, including Mandarin, Arabic and Russian, indicated that there are no relevant publications.

⁵⁶ We used women, gender and feminism as search terms to ensure that our identification of relevant publications was as comprehensive as possible.

⁵⁷ American Journal of International Law, Australian International Law Journal, Australian Yearbook of International Law, Berkeley Journal of International Law, European Journal of International Law, Fordham Journal of International Law, Georgetown Journal of International Law, Harvard International Law Journal, Journal of International Law – University of Pennsylvania, Leiden Journal of International Law, Melbourne Journal of International Law, Michigan Journal of International Law, NYU Journal of International Law and Politics, Stanford Journal of International Law, The Asian Journal of International Law, The Chicago Journal of International Law, The Yale Journal of International Law.

⁵⁸ Australian Feminist Law Journal, Berkeley Journal of Gender, Law and Justice, Georgetown Journal of Gender and the Law, Harvard Journal of Law and Gender, Yale Journal of Law and Feminism.

The earliest book on women and international law our study unearthed was *La Femme Devant le Droit Social International* (Women Before International Labour Law) published in 1975.⁵⁹ The only other book on the topic of women/gender/feminism and international law published in that decade was *Sex-based Discrimination: International Law and Organization* in 1978.⁶⁰ There was not an increase in the 1980s, with only two more books published on the topic of women and international law.⁶¹ A modest growth occurred in the 1990s and the first decade of the twenty-first century – our study indicated that 15 and 36 monographs and edited collections were published in these decades respectively, addressing women/gender/feminism and international law. The upward trajectory continues in the current decade, with 70 books on these topics published from January 2010 to July 2016.

The earliest journal article published on the topic of women/gender/feminism and international law we identified was ‘Human Rights for Women and World Public Order: the Outlawing of Sex-based Discrimination’ published in the *American Journal of International Law* in 1975.⁶² The only other article in our dataset from that decade was published in 1978 and titled ‘International Law and the Status of Women: an Analysis of International Legal Instruments Related to the Treatment of Women’.⁶³ The number of articles on women, gender or feminism and international law in international law journals increased to 16 in the 1980s, 47 in the 1990s, 85 in the first decade of the twenty-first century and 46 from January 2010 to July 2016.

That the number of both books and articles started to noticeably increase in the 1990s is consistent with the above observation that the field of feminist international legal scholarship began in the early 1990s. Nevertheless, while the raw numbers may indicate an increase in the prevalence of international feminist legal scholarship from the 1990s onwards, this must be factored against the overall increase in articles published by these journals.⁶⁴ Articles on women/gender/feminism and international law as a percentage of articles published in these journals indicates a less optimistic trajectory. In the 1970s, 0.1 per cent of all articles in international law journals were on the topics of women, gender or feminism. This increased to 1 per cent in the 1980s and 1.8 per cent in the 1990s. There was a further modest increase in the 2000s, with 2.3 per cent of articles in international law journals being on the topic of women, gender or feminism. This proportion has dropped slightly to 1.9 per cent in the current decade.

This data indicates that scholarly feminist engagement with international law, while seeing slight increases in its representation in the literature, is far from becoming a prevalent focus or approach in mainstream international law literature. This is supported by our examination of international law textbooks. There are a few examples of

⁵⁹ Troclet, above n 17.

⁶⁰ Taubenfeld and Taubenfeld, above n 18.

⁶¹ Khushalani, above n 16; Hevener, *International Law and the Status of Women*, above n 19.

⁶² McDougal, Lasswell and Chen, above n 18.

⁶³ Hevener, ‘International Law and the Status of Women’, above n 19.

⁶⁴ In the journals surveyed, overall there were 838 articles published from 1970 to 1979 and this increased to 3,713 in 2000–2009. Only substantive articles were counted. We excluded case notes and book reviews.

international law textbooks that include discussions of women's rights⁶⁵ and feminist theory in international law.⁶⁶ However, the majority make no mention of feminist international legal scholarship or women and international law with the exception of brief references to the Convention on the Elimination of all forms of Discrimination against Women (CEDAW).⁶⁷ No international law textbook has a dedicated chapter on women or gender and international law.

We can only speculate as to why there has been a decrease in the percentage of journal articles addressing women/gender/feminism and international law in the current decade. Ntina Tzouvala's contribution to this volume regarding the growing neoliberal environment in universities and the negative impact this may have on feminist international law research provides some insights. Also providing some possible explanations is Arbel, Dauvergne and Millbank's analysis of the trajectory of feminist engagement with refugee law. They indicate that after a period of growth in feminist scholarship, there is a danger that feminist contributions (in particular from graduate students) can decrease because of assumptions that feminist work has been 'done' and there are no longer any new issues to investigate.⁶⁸ Drawing on this insight, these statistics may at the very least provide an early warning to monitor the momentum of feminist international legal scholarship – a field that 'has barely begun'.⁶⁹

⁶⁵ For example, John O'Brien, *International Law* (Routledge, 2001) includes a sub-chapter on 'Discrimination against women' in the chapter on international human rights (chapter 15) – see pp 493–96. See also Donald Anton, Penelope Mathew and Wayne Morgan, *International Law: Cases and Materials* (Oxford University Press, 2005), which includes a section on feminist perspectives of human rights. Conway Henderson, *Understanding International Law* (Wiley-Blackwell, 2010) includes a brief discussion of women's rights (pp 301–2). Gillian Triggs, *International Law: Contemporary Principles and Practices* (LexisNexis Butterworths, 2nd edn, 2011) includes discussions on violence against women and the ICCPR and women. Stephen Hall, *Principles of International Law* (LexisNexis, 5th edn, 2016) includes a brief discussion on discrimination against women. Malcolm Shaw, *International Law* (Cambridge University Press, 6th edn, 2008) includes discussion of gender discrimination and women's rights.

⁶⁶ Anton, Mathew and Morgan, above n 65, discusses feminine imaginary (pp 19–20) and women and globalisation (pp 20–24). Gideon Boas, *Public International Law: Contemporary Principles and Perspectives* (Edward Elgar Publishing, 2012) includes feminist theories on international law under the heading 'Theories of International Law'. Barry Carter and Allen Weiner, *International Law* (Aspen Publishers, 6th edn, 2011) includes a section on feminist jurisprudence (pp 53–57).

⁶⁷ Antonio Cassese, *International Law* (Oxford University Press, 2nd edn, 2005) (CEDAW is referenced a couple of times just as a treaty example for such issues as state compliance); Martin Dixon, *Textbook on International Law* (Oxford University Press, 7th edn, 2013) (contains only a brief discussion of CEDAW); Jan Klabbers, *International Law* (Cambridge University Press, 2013); Martti Koskeniemi (ed), *The Politics of International Law* (Hart Publishing, 2011); Vaughan Lowe, *International Law* (Oxford University Press, 2007); Donald Rothwell, Stuart Kaye, Afshin Akhtarkhavi and Ruth Davis, *International Law: Cases and Materials with Australian Perspectives* (Cambridge University Press, 2nd edn, 2014) (there is a small section on CEDAW (in terms of Australia's reservations to it)); Steven Wheatley, *The Democratic Legitimacy of International Law* (Hart Publishing, 2010) (CEDAW is mentioned as an example in a long list of treaties on p 206).

⁶⁸ Arbel, Dauvergne and Millbank, above n 54, 10.

⁶⁹ Otto, above n 11.

Our analysis of the publications in the dataset also indicates that while there has been some diversity with respect to the international law issues addressed by feminist scholars, feminist engagement with international law has largely remained siloed within particular subject areas.⁷⁰ The area which has received the greatest attention is international human rights law. Well over half (59 per cent) of all of the publications in our dataset on women/gender/feminism and international law specifically address international human rights law. The second most popular subject was international criminal law, with 10 per cent of publications addressing this topic. This was followed by women in work – including sex work (9 per cent), international humanitarian law (5 per cent), transitional justice (5 per cent), women, peace and security (3 per cent), family (2 per cent), development (2 per cent) trade law (1 per cent), environmental law (1 per cent), responsibility to protect (0.2 per cent), intellectual property (0.2 per cent) and conflict of laws (0.1 per cent).⁷¹

With respect to the publications on international human rights law, we similarly can see that they overwhelmingly focus on particular topic areas. The predominant focus was violence against women – 29 per cent of the publications in our dataset addressing human rights law were on this topic.⁷² Approximately half of these publications focussed on sexual violence. Other topics were human trafficking (11 per cent), CEDAW (9 per cent), reproductive rights (8 per cent), women and economic, social and cultural rights (7 per cent), refugee law (6 per cent), forced marriage (2 per cent), nationality (2 per cent), female genital mutilation (2 per cent), slavery (2 per cent) and legal capacity (0.4 per cent). Twenty-three per cent of the publications on human rights addressed human rights generally without focussing on specific human rights topics.

In relation to the diversity of the field, we classified 12 per cent of the publications as ‘intersectional’ because they addresses sex or gender as well as other factors such as race, religion, nationality and sexuality. Out of all the publications in our dataset, just over 5 per cent addressed gender and religion, just over 4 per cent addressed issues of race, approximately 2 per cent identified with third world scholarship and just over 1 per cent addressed sexuality.

Overall, these results indicate that we should pause before we describe feminist international law scholarship as ‘vast and diverse’ or ‘flourishing’. While there has certainly been a growth in feminist international law literature, its growth has been modest at best, especially when considered against the increase in international law scholarship more generally. The data also indicates that feminist approaches to international law have concentrated on select topics and have been slow to move

⁷⁰ Eighty six per cent of the publications in the data set focussed on one or more specific areas of international law. The remaining 14 per cent of publications examined feminism and international law without focussing on specific subject areas or topics.

⁷¹ Some of the publications in the dataset address more than one specific subject area of international law therefore were counted more than once.

⁷² We note the difficulties associated with classifying a publication as addressing violence against women due to the varying definitions of violence. We considered a publication to address violence against women if this is how the author/s framed the subject. We also note that subjects such as human trafficking and female genital mutilation are acts of violence against women. However, publications on these more specific topics were counted separately to give an indication of their prevalence in the wider literature.

beyond traditional concerns such as human rights (in particular violence against women) and international criminal law. Further, the data indicates a lack of diversity of perspectives with, for example, less than 5 per cent considering race and less than 2 per cent addressing sexuality.

IV. WHAT ARE THE FUTURE(S) OF FEMINIST ENGAGEMENT WITH INTERNATIONAL LAW?

At the beginning of this project, it was our hope that reflecting on the above data and the many contributions to this volume would allow us to sketch an agenda for the future of feminist engagement with international law. We had no illusions about the daunting nature of this task. We did not expect the contributors to sing in unison. We were sceptical as to whether an agenda could be mapped when taking into account the contributors' diverse perspectives and feminist theorists' tradition of internal disagreement. Otto has previously written on the difficulties inherent in this task:

My search for more detail about the feminist visions of the future – feminist utopias, if you like – that have informed feminists' engagements with international law has not been very fruitful. This is not because of the lack of feminist imaginings of the future of international law, but because of the diversity of visions. While all visions include an intention to enhance gender equality, beyond this starting point it is difficult to deduce further patterns.⁷³

Searching for patterns beyond a commitment to enhancing gender equality was challenging – we wanted to include each contributor's ideas but also avoid diluting the individual potency of these contributions in an effort to deduce general future directions for the field. Reflecting on the contributions to this volume, we can point to four objectives for the future of feminist engagement with international law. The first is diversifying feminist engagement with international law. Charlesworth and Chinkin observe that, while women are represented (albeit underrepresented) in what are considered to be 'soft' areas of international law such as human rights and criminal law, they are not represented in what are considered to be 'hard' areas of international law such as trade law and law of the sea.⁷⁴ And who decides what is soft and hard law? Our empirical analysis of feminist international law scholarship also indicates that it has been slow to reach beyond what are viewed as 'soft' subjects. In Part I of this volume, we have grouped together chapters that push feminist engagement with international law into new horizons. Some chapters address areas of international law that have had no or minimal examination from a feminist perspective such as climate change law (Rowena Maguire), wildlife law (Katie Woolaston), private international law (Mary Keyes), international disaster law (Gabrielle Simm) and international constitutionalism (Aoife O'Donoghue and Ruth Houghton). Other chapters discuss foundational concepts in international law that have not received feminist consideration – the notion of consent in the Vienna Convention on the Law of Treaties (Siobhán Airey) and state

⁷³ Otto, above n 11.

⁷⁴ Charlesworth, Chinkin and Wright, above n 9, 25.

practice (Susan Harris Rimmer). Drawing on her time in practice, Pamela Finckenberg-Broman shines a feminist lens on European Union state aid law – a subject that has not received feminist attention. These chapters demonstrate both the urgent need to engage with these areas of law from a feminist perspective as well as the utility of doing so.

Second, lawyers and scholars must find ways to make feminist ideas more influential so that we can move beyond what Charlesworth describes as ‘talking to ourselves’.⁷⁵ Part II of this book brings together chapters that speak to ways in which feminist ideas have and can gain greater traction in mainstream legal thinking and international institutions. Kate Ogg’s chapter advocates a more holistic approach to feminist engagement with refugee law rather than reserving feminist theory and methods only for issues of immediate relevance to female refugees. Ekaterina Yahyaoui demonstrates the potential for feminist judging in her chapter on the International Court of Justice. Rosemary Grey and Louise Chappell unearth examples of feminist judging in international criminal courts. Jaya Ramji-Nogales’ chapter offers a framework for employing feminist approaches to international law more widely.⁷⁶ Dorothy Estrada-Tanck discusses why a human security framework complements human rights and provides a more effectual way for women to engage with international law. Ntina Tzouvala examines the consequences for feminist international law scholars in the neoliberal university environment with its consumerist culture and increased emphasis on competition. She highlights the connections between research and teaching essential for ensuring the continued growth and impact of feminist perspectives on international law, especially for future generations of law graduates. Providing a practitioner’s perspective, Jane Aeberhard-Hodges undertakes a reflection on the International Labour Organization’s attempts to reduce women’s invisibility in the treaty-making process.

The third goal is to find strategies for feminist scholarship to translate into meaningful changes to women’s lives. The chapters in Part III offer insights on this objective. Emma Larking explores the potential and limits of economic and social rights for constraining gendered inequalities that are perpetuated through the policies and practices of international trade and finance organisations. She concludes that meaningful change requires action beyond the bounds of international law. Belinda Bennett and Sara Davies discuss how international law can be used to better protect women’s health and well-being in public health emergencies. Through their oral history work with Rosemary Kayess, a legal practitioner and scholar, and reflecting on her unique contribution to the drafting of the UN Convention on the Rights of Persons with Disabilities, Kim Rubenstein and Anne Isaac highlight the dynamics that open up the possibilities for women lawyers from diverse personal and professional backgrounds to influence and enrich the development of international law. Beth Goldblatt’s chapter exposes the ways in which a greater focus on women’s social and economic rights may help to more effectively prevent and respond to violence against women. Mary Hansel invokes feminist temporality as a basis for examining how international law might become more focused on systemic, enduring, quotidian, issues – issues that most affect women. Having represented a number of female human trafficking victims caught up in the criminal justice web as offenders, Felicity Gerry proposes three solutions to help

⁷⁵ Charlesworth, above n 37.

⁷⁶ See also Otto, above n 11.

ensure that women suspects (especially those who have been victims of transnational crime and international human rights violations) are treated justly and fairly.

Finally, the agenda must include feminist scholarship intersecting with other critical theories and finding creative ways to address and move beyond the critiques that have harangued the field in order to open new debates. This is the focus of each of the chapters in Part IV. Jing Geng's chapter challenges the assertion that feminist engagement with international law is an imperialist endeavour. Her analysis of the Maputo Protocol emphasises that it is a product of African origin with African ownership. In her study, she demonstrates the ways in which feminist scholarship can move beyond the gender/culture debate through localising global norms. Kathryn McNeilly's chapter provides a consideration of and reply to queer critiques of feminist engagement with international human rights law. She asserts that 'what is needed is an equally queer approach to rights themselves – a queering of their foundations – which has not yet been fully exploited in feminist work'. Veronica Fynn Bruey addresses the efforts made by Indigenous women in the Global South in charting their own course in international law, while resisting western hegemonic dominance. In doing so, she addresses the difficulties associated with narratives about Indigenous women and law being created almost exclusively by Indigenous women from the Global North. She suggests that a way forward is to create a new generation of young leaders. Josephine Jarpa Dawuni addresses the issue of feminist legal scholarship homogenising and essentialising women from the continent of Africa. Her chapter presents a new conceptual framework for analysing, critiquing, developing and refining our theorisation of African women's experiences in international law. She develops this conceptual framework through a case study on women judges of African descent who have been appointed to international courts. Mariana Prandini Assis addresses the critique that the violence against women campaign has produced disempowering stereotypes of female victims of violence. She demonstrates the ways in which victim testimony in the Inter-American Court of Human Rights can both reproduce as well as disrupt these clichés.

Both our keynote contributions from the Brisbane workshop speak to these themes and bookend our collection to provoke the deepest sense of humility for international lawyers. Kamala Chandrakirana reflects on some of the ways in which the promises of feminist international law scholarship have not been realised – especially for women in the Global South. Informed by her experience in the UN and as a human rights advocate, she highlights ways in which women 'are at the frontlines in opening dialogue across different legal traditions' and suggests that initiatives to localise international law may provide a source of opportunity and hope in the fight for women's rights and gender equality. Sima Samar reflects on the passing of the UN Security Council Resolution 1325 on Women Peace and Security in 2000 in Afghanistan whilst still under the control of the Taliban. She calls for international laws and instruments to 'come out of the drawers and be used to create space for women and help people's effective participation and effective contributions in peace, reconciliation and reintegration processes'.

V. CONCLUSION

The present state of feminist engagement with international law is fierce and creative, as shown by the contributions to this volume. It is also rare, as our empiric survey of the field ascertains, and possibly in decline in a disciplinary cul de sac. Our contributors, however, are not ‘taking a break’, not even as the Brexit vote results were read out aloud during our Brisbane workshop. The network of feminist international law scholars is strong and a source of inspiration in itself. Part of the ethos of this project was to sustain the network to support the next generation of feminist scholars.

We must remain in pursuit of our four goals as we pursue a future where feminist engagement with international law is robust, diverse, inclusive, influential and leads to positive change in women’s lives. Our goal to diversify feminist engagement with international law must open up all areas of international activity to rigorous analysis, from fisheries to nuclear weapons to space. We must innovate strategies so that feminist ideas can gain greater traction in mainstream legal thinking and international institutions. We must aim for feminist scholarship to translate into meaningful changes to women’s lives. Finally, another objective is to find ways in which feminist international legal scholarship can learn from and work in tandem or co-operation with other critical theories, especially to confront and acknowledge the justice of some of the criticisms levelled at the field.

In 2017 and again in 2018, almost 5,000,000⁷⁷ feminists were marching in each of the seven continents⁷⁸ as part of the ‘Women’s March’ movement. The Women’s March is demonstrative of the highs and lows of women’s engagement with international law. The movement started in response to Donald Trump’s assault on women’s rights and his foreign affairs policies but was indicative of the strength of the women’s rights movement not only in America but globally. It also reflects the discord present between different feminisms, with women of colour feeling that their struggles and concerns were not represented in the wider movement.⁷⁹ In the midst of these oscillations and divisions, what kind of global future are we marching towards? We hope that the contributions to this volume provide some insights and ideas.

⁷⁷ The Women’s March website estimates that 4,956,422 marchers participated: Women’s March, *Sister Marches* <<https://www.womensmarch.com/sisters>>.

⁷⁸ The Women’s March website shows the marches in Asia, Africa, North America, South America, Europe and Oceania: Ibid. A Women’s March also occurred in Antarctica: Mary Bowerman, ‘There’s Even a Women’s March in Antarctica’, *USA Today* (online) 21 January 2017 <<https://www.usatoday.com/story/news/politics/onpolitics/2017/01/21/womens-march-on-washington-antarctica/96882184/>>.

⁷⁹ For a discussion of the reaction to Women’s March activists placing a ‘pink pussy hat’ on the head of a statue of Harriet Tubman (a black abolitionist and anti-slavery heroine) see Roqayah Chamseddine, ‘We Need to Talk about the Women’s March’, *Sydney Morning Herald* (online) 24 January 2018 <<http://www.smh.com.au/lifestyle/news-and-views/news-features/we-need-to-talk-about-the-womens-march-20180123-h0mpvw.html>>.