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Feminism and International Law in the Post 9/11 Era

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ARTICLE
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POST- 9/11 ERA

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INTRODUCTION

Accounts of the role and influence of feminism in international law and global governance from the 1990s onward have tended to vacillate between analyses of the marginalization of feminist perspectives¹ and the narrative of “governance feminism,”² the idea

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1. See, e.g., Dianne Otto, *Power and Danger: Feminist Engagement with International Law through the UN Security Council*, 32 AUSTL. FEMINIST L.J. 97, 97–100, 118–21 (2010) [hereinafter *Power and Danger*] (noting that a common approach in many feminist analyses of international law and its institutions is to “tell a saga of ‘marginalisation’, ‘silencing’, and ‘talking to ourselves’”).

2. See Janet Halley et al., *From the International to the Local in Feminist Legal Responses to Rape, Prostitution/Sex Work, and Sex Trafficking: Four Studies in Contemporary*

that feminists and feminisms are wielding significant power in various areas of international law and institutional practice with a series of negative results.³ Such accounts have variously analyzed watershed moments in international law's guarantees of women's rights, such as protecting women in conflict, new anti-trafficking frameworks, and gender-sensitive developments in international criminal law, all of which occurred either just before or in the aftermath of the events of September 11, 2001. The coincidence of this timing is particularly striking, yet the impact of a newly-changed and increasingly omnipotent national security environment⁴ on international law and institutions on women's rights is remarkably

Governance Feminism, 29 HARV. J.L. & GENDER 335, 340 (2006) (“G[overnance] F[eminism] is, I think, an under-recognized but important fact of governance more generally in the early twenty-first century. I mean the term to refer to the incremental but by now quite noticeable installation of feminists and feminist ideas in actual legal-institutional power. It takes many forms, and some parts of feminism participate more effectively than others; some are not players at all. Feminists by no means have won everything they want—far from it—but neither are they helpless outsiders.”); see also JANET HALLEY, *SPLIT DECISIONS: HOW AND WHY TO TAKE A BREAK FROM FEMINISM* (2006) [hereinafter *SPLIT DECISIONS*] (providing an account of the power of feminism in the United States and globally); Janet Halley, *Rape at Rome: Feminist Interventions in the Criminalization of Sex-Related Violence in Positive International Criminal Law*, 30 MICH. J. INT’L L. 1 (2008–2009) [hereinafter *Rape at Rome*] (addressing the role of organized feminism in the development of the International Criminal Tribunal for the former Yugoslavia (“ICTY”), the International Criminal Tribunal for Rwanda (“ICTR”), and the International Criminal Court (“ICC”) during the 1990s).

3. See, e.g., *SPLIT DECISIONS*, *supra* note 2, at 31–35 (arguing feminism’s “bad faith” in refusing to acknowledge its investment in wielding power); Halley et al., *supra* note 2, at 341 (describing the “successes” of “governance feminism” as embodying “very state-centered, top-down, sovereigntist feminist rule preferences”).

4. This Article addresses not only the immediate upswing in national security activities and architecture in the immediate aftermath of 9/11, but is particularly concerned with the evolving and broadening national security frameworks that accompanied the adoption of the United Nations (UN) Global Counter-Terrorism Strategy in 2006 and onwards. See G.A. Res. 60/288, at 1 (Sept. 20, 2006) (defining terrorism as “one of the most serious threats to international peace and security. . . .”); see also the Strategy’s review resolutions: G.A. Res. 68/276 (June 24, 2014); G.A. Res. 66/282 (July 12, 2012); G.A. Res. 64/297 (Oct. 13, 2010); G.A. Res. 62/272 (Sept. 15, 2008). For the acknowledgement in feminist legal scholarship of the prevalence of counter-terrorism discourse and practice in national and global contexts, see, e.g., GENDER, NATIONAL SECURITY, AND COUNTER-TERRORISM: HUMAN RIGHTS PERSPECTIVES (Margaret L. Satterthwaite & Jayne C. Huckerby eds., 2013) [hereinafter *GENDER, NATIONAL SECURITY, AND COUNTER-TERRORISM: HUMAN RIGHTS PERSPECTIVES*]; Vasuki Nesiah, *Feminism as Counter-Terrorism: The Seduction of Power*, in *GENDER NATIONAL SECURITY, AND COUNTER-TERRORISM: HUMAN RIGHTS PERSPECTIVES*, at 127, 128 [hereinafter *Feminism as Counter-Terrorism*] (“The political and military scripts of counter-terrorism have dominated the world stage in the post-9/11 era.”); Fionnuala Ní Aoláin, *Situating Women in Counterterrorism Discourses: Undulating Masculinities and Luminal Femininities*, 93 B.U. L. REV. 1085, 1085 (2013) (“The events of September 11, 2001, brought a new urgency and vibrancy to state action in the realm of counterterrorism. . . .”).

under-theorized in existing feminist approaches to international law and human rights.⁵ While there have been some feminist legal analyses of States' national security responses, these tend to cluster around 9/11 and its immediate aftermath, analyzing "hard security"⁶ actions such as the conflicts of Afghanistan and Iraq,⁷ and telling a

5. See, e.g., Jayne C. Huckerby & Margaret L. Satterthwaite, *Introduction*, in GENDER, NATIONAL SECURITY, AND COUNTER-TERRORISM: HUMAN RIGHTS PERSPECTIVES, *supra* note 4, at 1 (citations omitted) ("It is accepted feminist knowledge that the 'War on Terror' abounds with gendered narratives, illustrated, for example, in the post-9/11 era with the U.S. government and its allies launching a war in Afghanistan in part to 'save' Afghan women. However, the gender and human rights dimensions and impacts of counter-terrorism measures outside of this moment are largely undocumented and under-theorized."); Ní Aoláin, *supra* note 4, at 1085 (citing another source) ("From a feminist perspective, it is notable that terrorism and counterterrorism have long been of marginal interest to mainstream feminist legal theorizing.").

6. Such "hard" security measures for the pursuit and apprehension of terrorists were the predominant focus of States in the aftermath of 9/11. See, e.g., UN Secretary-General, *Activities of the United Nations System in Implementing the United Nations Global Counter-Terrorism Strategy*, ¶ 20, U.N. Doc. A/68/841 (Apr. 14, 2014) [hereinafter U.N. Doc. A/68/841] ("While initially many Member States may have focused on their immediate need to combat and prevent terrorism by building critical capacities in law enforcement, investigation and prosecution. . . ."); see also Isaac Kfir, *Security, Gender and Post-Conflict Reconstruction: The Need for A "Woman Question" When Engaging in Reconstruction*, 22 TEX. J. WOMEN & L. 71, 84–87 (2012) (noting the rise of military security and militarization within the concept of "national security" in the post-World War II period).

7. For feminist legal analyses of international law and the events of 9/11 and their aftermath, see generally Dianne Otto, *Remapping Crisis through a Feminist Lens*, in FEMINIST PERSPECTIVES ON CONTEMPORARY INTERNATIONAL LAW: BETWEEN RESISTANCE AND COMPLIANCE 75, 78 (Sari Kouvo & Zoe Pearson eds., 2010) (outlining ways in which a "turn to crisis governance," particularly with respect to 9/11, affects feminist engagements with international law); Hilary Charlesworth & Christine Chinkin, Editorial Comment, *Sex, Gender, and September 11*, 96 AM. J. INT'L L. 600 (2002) (pointing to the absence of women's voices in the events of 9/11 and their responses); Gina Heathcote, *Feminist Reflections on the "End" of the War on Terror*, 11 MELB. J. INT'L L. 277, 278, 296 (2010) (stressing that "international legal developments that acknowledged the relevance of feminist approaches and women's participation during the 1990s were either sidelined by the global war against terrorism narrative or developed through the production of restrictive categories of female victim-status" and "[a]n important legacy of the 'War on Terror' is the affirmation of a gendered international law and a continuation of a model of international relations ignorant of its gendered underpinnings"); Rachael Lorna Johnstone, *Unlikely Bedfellows: Feminist Theory and the War on Terror*, 9 CHI.-KENT J. INT'L & COMP. L. 1 (2009) (tracing the confluence between feminist theory that seeks accountability for the actions of private individuals and the legal response to terrorism); Ratna Kapur, *Un-Veiling Women's Rights in the 'War on Terrorism'*, 9 DUKE J. GENDER L. & POL'Y 211 (2002) (tracing the invocation of women's rights in Afghanistan as a justification for military intervention and its impacts); Catharine A. MacKinnon, *Women's September 11th: Rethinking the International Law of Conflict*, 47 HARV. INT'L L.J. 1 (2006) (identifying parallels between the actors and events of 9/11 and violence against women to highlight the asymmetry in the international community's responses to each as further evidence of international law's gender bias); *Feminism as*

story that is largely one of marginalization and militarization. Such accounts have not, with some limited exceptions, taken a long view on the aftermath of 9/11 nor kept pace with the more holistic approaches to countering terrorism and violent extremism that represent contemporary national security practice.⁸ Accounts of

Counter-Terrorism, *supra* note 4 (analyzing the overlap of the women, peace, and security, and national security agendas); Rachel Saloom, *A Feminist Inquiry into International Law and International Relations*, 12 *ROGER WILLIAMS U. L. REV.* 159, 172 (2006) (“Most security-based theories of international law and international relations are gender blind. Specifically, gender is not taken into account when theorizing about security or about international law or international affairs in general.”); JAYNE HUCKERBY & LAMA FAKIH, CTR. FOR HUMAN RIGHTS AND GLOB. JUSTICE, *A DECADE LOST: LOCATING GENDER IN U.S. COUNTER-TERRORISM* (2011), <http://chrgj.org/wp-content/uploads/2012/07/locatinggender.pdf> [hereinafter *A DECADE LOST: LOCATING GENDER IN U.S. COUNTER-TERRORISM*] (analyzing the gender dimensions and gender impacts of US counter-terrorism policy from 2001 onward). For gender analysis of the differential impacts of post-9/11 measures on Muslim women as compared to Muslim men in the United States context, see Sahar F. Aziz, *Coercive Assimilationism: The Perils of Muslim Women’s Identity Performance in the Workplace*, 20 *MICH. J. RACE & L.* 1, 9 (2014) (addressing how stereotypes of Muslim women, including “as terrorists, violent, and disloyal” affect their experience in the workplace); Sahar F. Aziz, *From the Oppressed to the Terrorist: Muslim-American Women in the Crosshairs of Intersectionality*, 9 *HASTINGS RACE & POVERTY L.J.* 191, 195 (2012) (“Notwithstanding that the headscarved woman equally bears the brunt of the government’s harsh counterterrorism tactics and the public’s distrust of Muslims, her voice and perspectives are notably absent from the discourse”); Nadine Strossen, *Freedom and Fear Post-9/11: Are We Again Fearing Witches and Burning Women?*, 31 *NOVA L. REV.* 279 (2007) (detailing adverse post-9/11 impacts on women, Muslim women wearing religious attire, and immigrant women workers).

8. See, e.g., G.A. Res. 60/288, *supra* note 4, Pillars I & IV, which particularly reflect the evolving recognition of the need for the adoption of wider and more “soft” approaches to countering terrorism that embody human rights considerations. For example, Pillar I of the UN Global Counter-Terrorism Strategy requires a preventive approach to mitigate a range of human rights issues that can foster conditions conducive to terrorism, such as “prolonged unresolved conflicts, dehumanization of victims of terrorism in all its forms and manifestations, lack of the rule of law and violations of human rights, ethnic, national and religious discrimination, political exclusion, socio-economic marginalization and lack of good governance. . . .” *Id.* Pillar I. The fourth pillar is an even more direct nod to those States and practitioners pushing for a human-right based approach as a fundamental premise in the fight against terrorism; it “reaffirm[s] that the promotion and protection of human rights for all and the rule of law is essential to all components of the Strategy, recogniz[es] that effective counter-terrorism measures and the protection of human rights are not conflicting goals, but complementary and mutually reinforcing, and stress[es] the need to promote and protect the rights of victims of terrorism. . . .” *Id.* Pillar IV. For feminist analyses of international law and its institutions extending beyond the immediate 9/11 moment see Jayne Huckerby, *Gender, Counter-Terrorism and International Law*, in *RESEARCH HANDBOOK ON TERRORISM AND INTERNATIONAL LAW* 163 (Ben Saul ed., 2014); Fionnuala Ní Aoláin, *The Relevance of the Women, Peace and Security Agenda to the War on Terror*, *INTERNATIONAL AFFAIRS* (forthcoming 2016); *Feminism as Counter-Terrorism*, *supra* note 4 (challenging the narrative of marginalization of feminism from national security and counter-terrorism discourses); *A DECADE LOST: LOCATING GENDER IN U.S. COUNTER-TERRORISM*, *supra* note 7 (analyzing the

“governance feminism,” similarly do not speak to questions of gender, law, and national security in the post-9/11 era. Instead, they predominantly address a large body of practice in feminist organizing on international law and institutions that took place primarily in the 1990s⁹—especially with regard to successes of the feminist movement in establishing war crimes tribunals¹⁰—and therefore ahead of those events of 9/11 that subsequently indelibly altered the landscape of international law, its notions of sovereignty and human rights, and its traditional public/private divides.¹¹ As a result, there is no sufficient feminist account of international law that goes beyond the immediate aftermath of 9/11 to scrutinize the gender dimensions and impacts of an evolving national security landscape that—primarily through a new field of policy and activities known as countering violent extremism (“CVE”)¹²—increasingly seeks to incorporate “soft” approaches such as promotion of the rule of law, human rights, gender equality, and development, alongside traditional law enforcement, military, and intelligence responses.

Accordingly, when feminist approaches to international law seek to diagnose and explain the current state of international law and

gender dimensions and gender impacts of US counter-terrorism policy, including the role of development assistance).

9. SPLIT DECISIONS, *supra* note 2, at 32 (“The 1990s was the decade par excellence of the emergence of governance feminism.”); *see also* Halley et al., *supra* note 2.

10. Halley et al., *supra* note 2, at 342–47, n.10 (describing governance feminism as it manifested in relation to the ICTY, ICTR, and ICC processes).

11. *See, e.g.*, Anne-Marie Slaughter, *Sovereignty and Power in a Networked World Order*, 40 STAN. J. INT’L L. 283, 288 (2004) (noting the impact of the aftermath of 9/11 on recalibrating international law and its institutions, including through new manifestations of sovereignty as States operate through “government networks”).

12. The holistic approach reflected in the UN Global Counter-Terrorism Strategy in 2006 paved the way for this increasingly core aspect of States’ strategic approaches to violent extremism and terrorism. *See* G.A. Res. 60/288, *supra* note 4. There is no one universal definition or understanding of what constitutes CVE, but in general terms it is understood as having a preventive rather than *post hoc* orientation. *See, e.g.*, S.C. Res. 2178 ¶ 15 (Sept. 24, 2014) (addressing “countering violent extremism, which can be conducive to terrorism”); Georgia Holmer, *Countering Violent Extremism: A Peacebuilding Perspective*, U.S. INST. OF PEACE, Sept. 2013, at 2 (“Counter violent extremism is a realm of policy, programs, and interventions designed to prevent individuals from engaging in violence associated with radical political, social, cultural, and religious ideologies and groups.”); *Good Practices on Community Engagement and Community-Oriented Policing as Tools to Counter Violent Extremism*, GLOBAL COUNTERTERRORISM FORUM 1 (2009) (“[CVE] initiatives tackle conditions conducive to radicalization into violent extremism with the ultimate aim of denying terrorist groups new supporters and recruits. The strategies and tools that governments and civil society organizations use to counter violent extremism vary, reflecting differing conditions and settings.”).

institutions on gender equality, they miss quite a fundamental piece of the relevant normative and political backdrop to such inquiries. In contrast to this lacuna in feminist international law approaches, feminist engagements in other fields—particularly in security studies, international relations, and human security—have richly problematized the meaning of security and the gendered components of national and international security practice.¹³ This Article is in part an exercise in catching feminist international law approaches up to these analyses, but it also seeks to generate new lines of feminist inquiry by engaging with the specific and hitherto unanswered question of how the omnipotent and evolving national security environment in the post-9/11 era, particularly as represented by contemporary CVE policy and practice, affects international law on gender equality and women’s human rights. Does such an account

13. See generally SUSAN FALUDI, *THE TERROR DREAM: FEAR AND FANTASY IN POST-9/11 AMERICA* (2007) (using a historical perspective to amplify how the United States’ psychological response to 9/11 reified traditional images of women as fragile, victimized, and in need of protection by men); MARITA GRONNVOLL, *MEDIA REPRESENTATIONS OF GENDER AND TORTURE POST-9/11* (2010) (examining gender and torture in media coverage post-9/11 to draw attention to the preoccupation with, and construction of, female perpetrators of torture); Swati Parashar & Christine Sylvester, *The Contemporary Mahabharata and the Many Draupadis: Bringing Gender to Critical Terrorism Studies*, in *CRITICAL TERRORISM STUDIES* 178 (Richard Jackson & Marie Breen Smyth, eds., 2009) (addressing the absence of women in State-centric discourses concerning terrorism); Swati Parashar, *Women, Militancy, and Security: the South Asian Conundrum*, in *GENDER AND INTERNATIONAL SECURITY: FEMINIST PERSPECTIVES* 168 (Laura Sjoberg ed., 2009) (emphasizing the need for a gender perspective on addressing various aspects of terrorism and its response); WOMEN, GENDER, AND TERRORISM (Laura Sjoberg & Caron E. Gentry eds., 2011) (analyzing the complexities of women’s participation in terrorism); Aili Mari Tripp, *Towards a Gender Perspective on Human Security and Violence*, in *GENDER, VIOLENCE AND HUMAN SECURITY* 3, 13 (Aili Mari Tripp, Myra Marx Ferree & Christina Ewig eds., 2013) (noting the dangers of the incorporation of women’s needs in State-based national security and military measures); Eric M. Blanchard, *Gender, International Relations, and the Development of Feminist Security Theory*, 28 *SIGNS: J. WOMEN CULTURE & SOC’Y*, 1289, 1289 (2003) (“National security discourses are typically part of the elite world of masculine high politics.”); Heidi Hudson, *‘Doing’ Security As Though Humans Matter: A Feminist Perspective on Gender and the Politics of Human Security*, 36 *SECURITY DIALOGUE* 155, 156, 165 (2005) (stating that “[g]ender is intrinsic to the subject matter and politics of security” and arguing with regard to post-9/11 effects that “security in one area depends on insecurity in another, as the ripple effects of homeland security measures after 9/11 are felt across the globe”); Jan Jindy Pettman, *Feminist International Relations After 9/11*, 10 *BROWN J. WORLD AFF.* 85, 92 (2004) (demonstrating that the events of 9/11 and its aftermath have legitimated military action and revitalized traditional notions of masculinities and femininities and have “also disrupted and damaged the slow uneven moves towards the incorporation of some feminist concepts into international politics and policy making”); J. Ann Tickner, *Feminist Perspectives on 9/11*, 3 *INT’L STUD. PERSP.* 333 (2002) (analyzing the post-9/11 moment through a gender lens).

point to feminist irrelevance, governance, or something else? To trace these evolutions in feminism and international law in the post-9/11 era, Part I addresses the feminist legal responses to the “War on Terror,” or the global war against terrorism, particularly those offered in the immediate aftermath of the events of September 11, 2001. I chart both the descriptive and predictive aspects of these accounts, identifying the range of feminist forecasts of what would happen to international law and institutions on women’s rights and gender equality in the aftermath of 9/11. I am particularly interested in what this review indicates about how feminist legal theorists and practitioners subsequently set their gender equality agendas of the next fourteen years, as well as how it affected their capacity to identify and address how an evolving and omnipotent national security context impacted the development of women’s rights during this period. While some fault-lines in feminist approaches in international law are identified in these analyses, their shared focus on the immediate post-9/11 moments and the militarized security responses that followed is marked.

Against this backdrop, Part II analyzes feminism and international law in the long shadow of 9/11, addressing the long-term impacts of the immediate response to the events of 9/11, as well as those of this evolving and omnipotent national security landscape that increasingly mobilizes areas such as rule of law, human rights, and development—and indeed, sometimes women’s rights and gender equality—as part of holistic efforts to counter terrorism and violent extremism.¹⁴ This is a slightly different, though not entirely separate, project from applying a gender lens to analyze counter-terrorism and CVE, a task I have undertaken elsewhere.¹⁵ In other words, I am less concerned in this Article with only seeing counter-terrorism and CVE through the lens of gender, and more with seeing gender against the broader backdrop of the evolving and overarching context of counter-terrorism and CVE, although the two exercises cannot be entirely separated and their inter-linkages are highlighted as necessary. This review particularly addresses the question of how contemporary

14. For those accounts of the gender, human rights, and legal aspects and implications of counter-terrorism that analyze beyond the immediate 9/11 moment, see generally *Gender, Counter-Terrorism and International Law*, *supra* note 8; Ni Aoláin, *supra* note 8; *Feminism as Counter-Terrorism*, *supra* note 4; JAYNE HUCKERBY, CTR. FOR HUMAN RIGHTS & GLOB. JUSTICE, WOMEN AND PREVENTING VIOLENT EXTREMISM: THE U.S. AND U.K. EXPERIENCES (2012); A DECADE LOST: LOCATING GENDER IN U.S. COUNTER-TERRORISM, *supra* note 7.

15. See generally *Gender, Counter-Terrorism and International Law*, *supra* note 8.

national security discourse and practice utilize concepts of gendered victimhood and vulnerability (e.g., women as victims of terrorism) in ways that compromise the transformative potential of international law for women. It also includes scrutiny of how a post-9/11 revival of international law's formalism has affected the discipline's capacity to develop gender equality norms and particularly reduced attention to State-based violations against women in the name of countering terrorism. Additional normative impacts related to the conjoining of women's rights (and women, peace, and security) and national security agendas, as well as the securitization and instrumentalization of women's rights in national security law and practice, are also identified and analyzed as consequences of this broader national security landscape. In addition to these legal and normative questions, I also consider how, in practice, the contemporary terror/counter-terror landscape has affected the possibilities for transnational and inclusive feminist organizing, as well as the success of other feminist methods for analyzing international law from a gender perspective.

Across these areas of inquiry in Parts I and II, I pay particular attention to explicitly delineating which feminisms and which women's rights are most implicated in, and by, national security and international law discourses. Indeed, this Article takes as a starting point that there is no one feminist account of international law and that these divergences in feminist approaches to terrorism, counter-terrorism, and international law need to be so identified as they are instructive on which perspectives have ultimate analytic purchase in the choices that international law and its institutions make on how to recognize women's rights and gender equality. While being mindful of these differences among feminist engagements with international law, Part II also seeks to provide a series of preliminary insights on how a framework for moving toward a more comprehensive feminist account(s) of international law and the impact of national security policy and practice might look. While the full development of this alternate framework—or perhaps frameworks—is beyond the scope of this Article, I argue that a feminist international law project that seeks to make women's rights and gender equality concerns visible in the current national security context must address a series of macro and micro questions across at least the four areas of: women's participation in terrorism and violent extremism; women's roles in countering terrorism and violent extremism and the relationship between gender equality and national security more broadly; the

gendered effects of terrorism and violent extremism; and the impacts of countering terrorism and violent extremism on women, girls, and gender equality. Accordingly, Part II also contains reflections on these four aspects, as well as how each of these areas relate to each other, to pose future questions for feminist international law engagement with these issues.

I. FEMINIST LEGAL CRITIQUES OF NATIONAL SECURITY IN THE POST-9/11 MOMENT

Early feminist legal responses to the “War on Terror” correctly identified a number of incidents of gendered exclusion in the immediate post-9/11 reaction. Deploying the feminist method of searching for and mapping of “silences,”¹⁶ such accounts pointed to the fact that almost all notable actors involved in the perpetration of terrorism, as well as those involved in designing and implementing counter-terrorism measures, were male.¹⁷ Additionally, these legal analyses stressed the significant influence of a series of gendered, and often heavily racialized, narratives in the post-9/11 public debate and policy response.¹⁸ In such narratives, socially constructed categories

16. Rosa Ehrenreich Brooks, *Feminism and International Law: An Opportunity for Transformation*, 14 YALE J.L. & FEMINISM 345, 347 (2002) (“Our project, as feminists, must in large part be to map the silences of international law, and fill those silences with our own voices.”); Hilary Charlesworth, *Feminist Methods in International Law*, 93 AM. J. INT’L L. 379, 381 (1999) (“A methodology sometimes employed to question the objectivity of a discipline is that of detecting its silences.”); Hilary Charlesworth, Christine Chinkin & Shelley Wright, *Feminist Approaches to International Law*, 85 AM. J. INT’L L. 613, 615 (1991) (“By taking women seriously and describing the silences and fundamentally skewed nature of international law, feminist theory can identify possibilities for change.”).

17. Hilary Charlesworth, *The Hidden Gender of International Law*, 16 TEMP. INT’L & COMP. L.J. 93, 98–100 (2002) [hereinafter *Hidden Gender*] (querying “What About Women?” and reflecting that “[a]n initial observation that can be made about the events of September 11th and their aftermath is that women have not been featured in any way as involved in any of the crucial decisions”); *Sex, Gender, and September 11*, *supra* note 7, at 600 (posing the question “Sex: Where Are the Women?” and observing that “[a]s the events first unfolded, women were invisible, except as victims alongside men. Men made all of the crucial decisions involved in the hijackings and the responses to them. No women have been identified among the hijackers and their backers”); Kfir, *supra* note 6, at 84 (“9/11 highlighted how invisible women continue to be in times of national crises. . . .”); MacKinnon, *supra* note 7, at 3 (“On the perpetrators’ side, the atrocities were hardly sex- or gender-neutral.”). Similar observations were also made amongst feminist international relations and security studies scholars. *See, e.g.*, Blanchard, *supra* note 13; Tickner, *supra* note 13, at 335 (“So where did all the women go?”).

18. *Sex, Gender, and September 11*, *supra* note 7, at 604 (“[S]ex has been a crucial aspect of the events of September 11 and the response to them. Men have been the major

of feminine and masculine were dominant and this typecasting supported the Western-led, hyper-masculinized responses (e.g., military action)¹⁹ as necessary to protect women as vulnerable victims of male, brown terrorists.²⁰ The effect was also to produce a series of binaries that were at once decisive and divisive, encapsulated in the refrain of US President George W. Bush's government (the "Bush Administration"): "Either you are with us, or you are with the terrorists."²¹ These feminist accounts also articulated how gendered approaches to the issue of terrorism were essentially reductive, belying the complexity of the causal events leading up to 9/11, as well as favoring short-term and militaristic responses that precluded more systemic, long-term approaches to countering terrorism, such as "fund[ing] sophisticated long-term education programs in the Middle East."²² In such feminist readings, the immediate post-9/11 environment that excluded women's experiences and marginalized their participation in security institutions and decision-making, as well as the resort to masculinized, militarized, and State-centric responses, exemplified the very "male organizational and normative

players in all contexts and women have been cast as victims without real agency to affect the future."); *Hidden Gender*, *supra* note 17, at 98–102 (tracing the mobilization of both feminized and masculine imagery in the response to the events of 9/11).

19. *See, e.g.*, Saloom, *supra* note 7, at 170–72 (identifying a number of ways in which the "masculinist culture of the military" manifests). For similar observations in feminist international relations approaches, *see, e.g.*, Pettman, *supra* note 13, at 92 (identifying how the response to 9/11 "replayed the usual close associations of nationalism, war, and masculinity, and generated competing masculinities and stigmatized femininities").

20. *See, e.g.*, Heathcote, *supra* note 7, at 296 ("[A]longside the limited narrative of terrorist actors as rogue male actors functioning outside the boundaries of the state, are images of women's sexual vulnerability and need for protection. . . ."); Johnstone, *supra* note 7, at 44 ("[T]he discourse of the 'War on Terror' itself revealed a perceived need for the state to define its masculinity in the aftermath of attack. This required painting men as heroes and women as victims.").

21. President George W. Bush, Address to Joint Session of Congress and the American People (Sept. 20, 2001), <http://georgewbush-whitehouse.archives.gov/news/releases/2001/09/20010920-8.html>. *See also* *Hidden Gender*, *supra* note 17, at 101 ("Another dichotomy that has been used a lot is, 'You are either with us or against us.' There is no middle ground."); Pettman, *supra* note 13, at 92 (noting the events of 9/11 and its aftermath "activated bounded and binary international identity politics in which both women and gender played a central part, in representation and legitimation").

22. *Sex, Gender, and September 11*, *supra* note 7, at 605; *see also* Katie Rose Guest Pryal, *The Rhetoric of Sissy-Slogans: How Denigrating the Feminine Perpetuates the Terror Wars*, 15 *J. GENDER, RACE & JUST.* 503, 506 (2012) ("[T]he use of sissy-slogans. . . . have not only gained traction because of 9/11 and the ensuing terror wars, but have, in cyclical fashion, helped to perpetuate the terror wars by discursively shutting down potential for non-military action.").

structure of the international legal system²³ that had been the focus of feminist international law scholars a decade earlier. The predominance in national security discourse of the Western narrative of “rescuing” Third World and Muslim women—at its most explicit in calls to invade Afghanistan in 2001 in part to liberate women suppressed by the Taliban²⁴—also reflected “second-wave” feminist critiques that had argued that early feminist approaches to international law had unduly homogenized women’s experience and excluded women in the Global South, including by emphasizing their victimhood status.²⁵

For other feminist legal responses, these instances of exclusion and invisibility rose from the episodic to the meta, with the potential to disrupt and derail the project of gender equality under international law.²⁶ Indeed, one core theme—either implicit or explicit—in many feminist accounts of the post-9/11 era is that of gain reversal, the idea that the aftermath of the events of 9/11 marked the beginning of a sustained peeling-back of feminist advances in international law and institutions, particularly those developed during the 1990s, which had seen significant achievements in a number of areas of pressing concern to feminist engagement in international law. The impact on

23. *Feminist Approaches to International Law*, *supra* note 16, at 614.

24. See *Radio Address by Mrs. Bush* (Nov. 17, 2001), <http://georgewbush-whitehouse.archives.gov/news/releases/2001/11/20011117.html> (identifying the intention of the address as being “to kick off a world-wide effort to focus on the brutality against women and children by the al-Qaida terrorist network and the regime it supports in Afghanistan, the Taliban”).

25. See Kapur, *supra* note 7, at 214 (“[T]he ‘War on Terrorism’ and its secondary goal of protecting women has been addressed largely within the rhetoric of religion, civilization, and ‘a just war,’ rather than a concern for women’s human rights. The focus on women’s concerns through the prism of religion and culture not only serves to cast Muslim women as ‘Other,’ it also serves to justify the liberating impulse of military intervention. . . .”); see also *id.* at 224 (“Feminists in particular must pay heed to a history where such interventions have reinforced the assumptions of women in the postcolonial world as backward and as victims of a barbaric practice.”). See generally Hilary Charlesworth, Christine Chinkin, & Shelley Wright, *Feminist Approaches to International Law: Reflections from Another Century*, in *INTERNATIONAL LAW: MODERN FEMINIST APPROACHES* 17, 27 (Doris Buss & Ambreena Manji eds., 2005) (“[A] major concern of those promoting women’s international human rights [is] avoiding essentialising women and recognising the diversity in the situations and priorities of women around the world.”); Brooks, *supra* note 16, at 353–54 (“‘Second phase’ critics note that even within elite Western feminist scholarly circles, one woman’s bread is another woman’s poison. Surely, then, it is a form of arrogance to insist that the world’s three billion women have a common perspective on such a highly problematized subject as ‘rights.’”); *Feminist Approaches to International Law*, *supra* note 16, at 618 (“An alternative, feminist analysis of international law must take account of the differing perspectives of First and Third World feminists.”).

26. See, e.g., *supra* note 7 and accompanying text.

developments in promoting women's participation in institutions, as well as on newly-enhanced normative protections in the area of women's rights, were of particular concern.²⁷

To fully understand the nature of these concerns, it is necessary at this juncture to provide a snapshot of the improving state of international law on gender equality in the period leading up to the events of 9/11. Such progress included traction on the concept of women's rights as human rights,²⁸ particularly through a focus on gender-based violence;²⁹ the adoption of the first international instrument—albeit a criminal law rather than human rights one—to address trafficking in persons, with a particular focus on women and children in 2000;³⁰ and a series of developments in international criminal law, including the adoption of the Rome Statute of the International Criminal Court in 1998,³¹ which aimed to better address the experience of women in internal and international armed conflict. Significantly, only a year prior to 9/11, the women, peace, and security agenda was formally installed at the United Nations (UN) with the adoption of the landmark UN Security Council Resolution (“UNSCR”) 1325 (“UNSCR 1325”).³² Recognizing that peace is “inextricably” linked with gender equality, the women, peace, and security policy framework embodied in UNSCR 1325 and subsequent resolutions³³ provided a key and unprecedented international platform

27. See, e.g., Heathcote, *supra* note 7, at 297 (“A further consequence of the discourse on the global war against terrorism is the averting of attention from women's rights and women's participation at the international level.”).

28. See, e.g., Barbara Stark, *International Law from the Bottom Up: Fragmentation and Transformation*, 34 U. PA. J. INT'L L. 687, 700 (2013) (“Women's rights became a focus of international law in the 1990s.”).

29. See, e.g., Jennifer L. Ulrich, *Confronting Gender-Based Violence with International Instruments: Is a Solution to the Pandemic Within Reach?*, 7 IND. J. GLOBAL LEGAL STUD. 629, 629 (2000) (“Within the past two decades, international actors have devoted increasing attention to the crisis of gender-based violence.”).

30. Protocol To Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime, *opened for signature* Nov. 15, 2000, 2237 U.N.T.S. 319 (entered into force Dec. 25, 2003) [hereinafter UN Trafficking Protocol].

31. Rome Statute of the International Criminal Court, U.N. Doc. A/CONF.183/9 (July 17, 1998).

32. S.C. Res. 1325 (Oct. 31, 2000).

33. See Press Release, Security Council, Peace Inextricably Linked with Equality between Women and Men Says Security Council, in International Women's Day Statement, U.N. Press Release SC/6816 (Mar. 8, 2000) (“[T]he Security Council recognize that peace is inextricably linked with equality between women and men. . . [and] that the equal access and full participation of women in power structures and their full involvement in all efforts for the

for increased women's participation at all levels of conflict prevention, mediation, rule of law, peacekeeping and peacebuilding; the protection of women and girls during armed conflict; and the prevention of gender-based violence.³⁴ The adoption of UNSCR 1325 was momentous and is particularly key for understanding the goals and configuration of much feminist organizing at the international level heading into the new century. Specifically, following sustained advocacy by feminist and human rights groups, UNSCR 1325 "marked the arrival of . . . 'International Conflict Feminism' . . . as a player in global power politics,"³⁵ where "international conflict feminism" is understood to encompass "feminist initiatives that are aimed at strengthening the international law and policy arena's response to women's experience of war through measures that expand recognition and redress for harms suffered, and increase inclusion of women in justice and peace measures addressing contexts of conflict and war."³⁶ As well as providing an entry point for the influence of this specific form of feminist organizing, UNSCR 1325 locked in the ongoing presence and influence of women, peace, and security actors in international, regional, and domestic forums, by providing "a focus for continuing engagement between the Council and women's peace and human rights advocates."³⁷

prevention and resolution of conflicts are essential for the maintenance and promotion of peace and security."). *See generally* S.C. Res. 2242 (Oct. 13, 2015); S.C. Res. 2122 (Oct. 18, 2013); S.C. Res. 2106 (June 24, 2013); S.C. Res. 1960 (Dec. 16, 2010); S.C. Res. 1889 (Oct. 5, 2009); S.C. Res. 1888 (Sept. 30, 2009); S.C. Res. 1820 (June 19, 2008); S.C. Res. 1325, *supra* note 32.

34. *See* Dianne Otto, *A Sign of "Weakness"? Disrupting Gender Certainties in the Implementation of Security Council Resolution 1325*, 13 MICH. J. GENDER & L. 113, 116 (2006) [hereinafter *A Sign of "Weakness"?*] (noting that the adoption of UNSCR 1325 "promis[ed] new opportunities for entry into the 'master's house'"); *see also* Catherine O'Rourke, *'Walk[ing] the Halls of Power'? Understanding Women's Participation in International Peace and Security*, 15 MELB. J. INT'L L. 128, 133 (2014) ("[T]he feminist emphasis on participation within existing institutions can be seen as part of a wider move from oppositional to more integrationist feminist strategies.").

35. *Feminism as Counter-Terrorism*, *supra* note 4, at 127.

36. *Id.* at 142 n.2 (citation omitted). *See generally* Vasuki Nesiiah, *Uncomfortable Alliances: Women, Peace, and Security in Sri Lanka*, in SOUTH ASIAN FEMINISMS 139 (Ania Loomba & Ritty A. Lukose eds., 2012) (addressing the impact of UNSCR 1325 and international conflict feminism in the context of Sri Lanka).

37. *A Sign of "Weakness"?*, *supra* note 34, at 116 ("Since its adoption, the Resolution has provided a focus for continuing engagement between the Council and women's peace and human rights advocates. Remarkably, the Resolution has also become a grassroots tool for women's peace advocates.").

Although some feminist approaches were concerned with the fallout from the rise in prominence of national security practice in the immediate aftermath of 9/11, others saw active opportunities for advancing women's rights, or were at least worried about the risks of shutting down such opportunities. Governments' efforts to justify preemptive use of force in Afghanistan and Iraq as being in part to "save" women in particular provided validation for those feminists concerned primarily with "images of the female mother/child/victim requiring protection."³⁸ Other feminists also acquiesced when the Bush Administration increased its attention to women and international law questions by emphasizing the need to invade Afghanistan to rescue Afghani women from the Taliban and in its aggressive support for international action against sex trafficking.³⁹ Such feminist acquiescence existed even as the Administration framed both issues as also having a very clear nexus to its national security policy.⁴⁰ Indeed, this appeal to international law and women's rights and its viewing through a national security lens was not necessarily accidental; it had the effect of silencing normally critical voices such as feminists and liberal internationalists, who did not want to jeopardize losing what was perceived as a slender but critical window of opportunity to advance international law and

38. Heathcote, *supra* note 7, at 297; see also Farida Shaheed, *The "War on Terror" and Women's Rights: A Pakistan-Afghan Perspective*, in *LOST LIBERTIES: ASHCROFT AND THE ASSAULT ON PERSONAL FREEDOM* 222 (Cynthia Brown ed., 2003) ("[U]sing the rallying cry of women's oppression in Afghanistan in the opening chapter of the 'war on terror' hijacked the women's rights discourse and conscripted it in the service of military actions, making a mockery of genuine women's rights activism."); *Feminist Approaches to International Law: Reflections from Another Century*, *supra* note 25, at 19 (examining how women's rights function to detect terrorists and to legitimize coercive state responses through "the identification of the enemy in the war on terror with repressive treatment of women and the development of the notion of a war for women's rights"); Kapur, *supra* note 7, at 214. On the role of women's rights in justifying humanitarian intervention, see generally Karen Engle, "Calling in the Troops": *The Uneasy Relationship Among Women's Rights, Human Rights, and Humanitarian Intervention*, 20 *HARV. HUM. RTS. J.* 189, 217–26 (2007); Deborah M. Weissman, *The Human Rights Dilemma: Rethinking the Humanitarian Project*, 35 *COLUM. HUM. RTS. L. REV.* 259 (2004) (tracing the ways in which humanitarian and human rights concerns justified colonization in US foreign policy).

39. See Karen Engle, *Liberal internationalism, feminism, and the suppression of critique: Contemporary approaches to global order in the United States*, 46 *HARV. INT'L. L.J.* 427, 427 (2005).

40. See, e.g., Jayne C. Huckerby, *Unpacking the Trafficking-Terror Nexus*, in *GENDER, NATIONAL SECURITY, AND COUNTER-TERRORISM: HUMAN RIGHTS PERSPECTIVES*, *supra* note 4, at 106 (tracing the trafficking-terror nexus and its impacts on the human rights of trafficked persons, especially women).

gender equality.⁴¹ Other feminist accounts were less sanguine in seeking to capitalize upon the opportunities presented by aggressive counter-terrorism responses that pursued non-State actors and looked eagerly to the might and magnitude of international law's response to terrorism as a basis for generating strong responses to violence against women by private men.⁴² Such efforts also coincided with a set of feminist accounts that sought to define violations of women's rights themselves as acts of terrorism.⁴³ This early acquiescence—and in some cases outright support—of some feminist voices with counter-terrorism actions and discourse prefigured a more expansive conjoining of women's rights under international law with national security objectives, which I address further below in Part II.⁴⁴

II. FEMINISM AND INTERNATIONAL LAW IN THE LONG SHADOW OF 9/11

A. *The Role of Victimhood and Gendered Vulnerability*

One of the core concerns in some feminist approaches to international law has been how much its achievements—including particularly in the adoption of the women, peace, and security agenda, and the advancement of International Conflict Feminism—have

41. See Engle, *supra* note 39, at 430 (noting that the Bush Administration's appeal to international law confined the parameters of discourse in the United States to the non-question of "are we for or against using international law to protect women's rights?," rather than more difficult questions about what this protection entails and why international law is mobilized in respect of some women's rights issues and not others).

42. See MacKinnon, *supra* note 7, at 19 ("What will it take for violence against women, this daily war, this terrorism against women as women that goes on every day worldwide, this everyday, group-based, systematic threat to and crime against the peace, to receive a response in the structure and practice of international law anything approximate to the level of focus and determination inspired by the September 11th attacks?"); see also *id.* at 28 ("This is not to argue that the war on terror is the right model for opposing violence against women. It is rather to expose, against the template of one reality of what men getting serious looks like, the commonalities between the problems they address and those they ignore, as well as what unites the solutions they implement and the problems they continue to fail to solve.").

43. Such approaches have tended to be developed in relation to the analysis of sexual violence, including in conflict settings. See, e.g., SUSAN BROWNMILLER, *AGAINST OUR WILL: MEN, WOMEN, AND RAPE* 209 (1975) ("[M]en who commit rape have served in effect as front-line masculine shock troops, terrorist guerrillas in the longest sustained battle the world has ever known."); ROBIN MORGAN, *THE DEMON LOVER: ON THE SEXUALITY OF TERRORISM* (1989); Amy E. Ray, *The Shame of It: Gender-Based Terrorism in the Former Yugoslavia and the Failure of International Human Rights Law to Comprehend the Injuries*, 46 AM. U. L. REV. 793 (1997).

44. See *infra* notes 136–173 and accompanying text.

“depended on an investment in women’s victimhood.”⁴⁵ The particular concerns here are that such “hegemony of ‘victimhood’ as the framework for politics risks denying women’s agency and producing/reinforcing identity claims premised on injury,”⁴⁶ and significantly, for the purposes of assessing feminist gains over the last fourteen years, limits the transformative potential of feminist strategies under international law.⁴⁷ “Governance feminism” scholarship has similarly tended to emphasize how gendered notions of vulnerability are often “docked”⁴⁸ in international law and institutions to the detriment of recognizing women’s various expressions of agency. This Section traces how these critiques have or have not manifested in the post-9/11 era by looking at how international law and policy have metabolized the following features of this omnipotent national security environment: the impact of terrorist violence on women and girls, as well as the active roles of women in both terrorism and its response.

As a starting point, in practice, counter-terrorism and CVE policy regularly use images of women’s vulnerability and harm, including as a means to justify counter-terrorism actions.⁴⁹ As mentioned above, this was starkly evinced early in the aftermath of 9/11 with the effort to justify military intervention to “save” women as victims of the Taliban in Afghanistan.⁵⁰ In the intervening years, however, the connection between women victims of terrorism and national security policy has become more nuanced and also more widespread. In particular, from 2006 onward, counter-terrorism and CVE policy contained a new focus on the need to combat the dehumanization of victims to prevent terrorism, as well as to, more

45. Vasuki Nesiah, *Feminist Interventions: Human Rights, Armed Conflicts and International Law*, 103 AM. SOC’Y INT’L L. PROC. 67, 68 (2009); see also *Feminist Methods in International Law*, *supra* note 16, at 381 (“Women are not completely absent from the international legal order. . . . But, by and large, when women enter into focus at all in international law, they are viewed in a very limited way, often as victims, particularly as mothers, or potential mothers, in need of protection.”).

46. Nesiah, *supra* note 45, at 68.

47. See *id.*

48. See Halley et al., *supra* note 2, at 336; see also *Rape at Rome*, *supra* note 2, at 123 (“[F]eminist universalism and its war-against-women understanding of conflicts . . . reproduces in reverse the blind-spotted moral vision that it contests. It is completely inattentive to the possibility that women have been the instigators or perpetrators of conflict.”).

49. See Heathcote, *supra* note 7, at 296. For a similar observation on the instrumentalization of women as victims of terrorism, see Tickner, *supra* note 13, at 340-41.

50. See *supra* note 24 and accompanying text.

broadly, make human rights an integral part of combating terrorism.⁵¹ Both of these features of contemporary national security practice provided a crucial entry point for the uptake of those feminist perspectives focused on the gendered targeting of women and girls by terrorist and violent extremist groups and, in particular, on sexual violence.⁵² Accordingly, contemporary national security practice has shown an increasing concern with these gendered impacts of terrorism and violent extremism in a range of conflict and non-conflict contexts,⁵³ including by Al-Shabaab in Somalia⁵⁴ and, most recently, by the Islamic State of Iraq and Syria (ISIS) in parts of Iraq and Syria.⁵⁵ Gendered targeting of women in the north of Mali by “extremist Islamist groups;”⁵⁶ the attack on Malala Yousafzai in Pakistan by the Tehreek-e-Taliban Pakistan in Swat, Pakistan;⁵⁷ and

51. For example, Pillar I of the UN Global Counter-Terrorism Strategy requires a preventive approach to mitigate a range of human rights issues that can foster conditions conducive to terrorism, such as “prolonged unresolved conflicts, dehumanization of victims of terrorism in all its forms and manifestations, lack of the rule of law and violations of human rights, ethnic, national and religious discrimination, political exclusion, socio-economic marginalization and lack of good governance.” G.A. Res. 60/288, *supra* note 4, Pillar I; *see also id.* Pillar IV (on the promotion of human rights).

52. For an example of an explanation for the use of sexual violence by terrorists and violent extremists, *see, e.g.*, UN Secretary-General, *Conflict-related Sexual Violence*, ¶ 83, U.N. Doc. S/2015/203 (Mar. 23, 2015) [hereinafter U.N. Doc. S/2015/203] (observing patterns of sexual violence as perpetrated by violent extremists and concluding that such violence “is not incidental, but integrally linked with the strategic objectives, ideology and funding of extremist groups.”).

53. *See, e.g.*, UN Secretary-General, *Report of the Secretary-General on Women and Peace and Security*, ¶ 3, U.N. Doc. S/2014/693 (Sept. 23, 2014) [hereinafter U.N. Doc. S/2014/693] (recognizing the targeted nature of terrorist and violent extremist attacks on women and girls as follows: “Other developments of concern include targeted violence and human rights violations linked to terrorism committed against women and girls. . . .”); *id.* ¶ 46 (“As violent extremism continues to spread, there is growing recognition that women’s rights are under threat and that the role of women in countering terrorism and extremism is underutilized. . . . In societies with higher gender equality, extremism is less likely to take root and women are less vulnerable to its impacts.”). *See also Good Practices on Women and Countering Violent Extremism*, GLOBAL COUNTERTERRORISM FORUM, Good Practices #5, #21, #22 (2015) (the author was involved in the OSCE process that preceded this document).

54. *See* Anne-Yolande Bilala, *Women and Al-Shabab: Between False Empowerment and Terror*, DIPLOMATIC COURIER (Aug. 13, 2012), <http://www.diplomaticcourier.com/news/regions/africa/252-women-and-al-shabab-between-false-empowerment-and-terror>.

55. *See* S.C. Res. 2169, preamble ¶ 13 (July 30, 2014); Haleh Esfandiari, *ISIS’s Cruelty Toward Women Gets Scant Attention*, WALL ST. J. (Sept. 2, 2014), <http://blogs.wsj.com/washwire/2014/09/02/isis-cruelty-toward-women-gets-scant-attention/>

56. *See* UN Secretary-General, *Report of the Secretary-General on the Situation in Mali*, ¶¶ 21–24, U.N. Doc. S/2012/894 (Nov. 28, 2012).

57. *See generally* *Malala Yousafzai*, GUARDIAN, <http://www.theguardian.com/profile/malala-yousafzai> (last visited Dec. 15, 2015).

the kidnapping and abduction of women and girls by terrorist groups, including the abductions of Nigerian schoolgirls by Boko Haram⁵⁸ and of Yazidi women by ISIS,⁵⁹ are also high-profile instances of targeting of women that have attracted international attention and, at times, been used to incentivize or justify an international response led by counter-terrorism actors.

International law's account of the impact of terrorist violence on women and girls, however, has often been problematic from a gender and human rights perspective. The first challenge is that it is often unduly focused on sexual violence.⁶⁰ This has led to less attention to other gender-specific impacts of violent extremism and terrorism including, for example, restrictions on freedom of movement and dress, unequal distribution of aid and food, and banning or otherwise inhibiting access to education, particularly in areas under control of terrorist groups.⁶¹ This focus on hyper-vulnerability can also translate into a lack of precision regarding women's experiences vis-à-vis terrorist groups. For example, while a rumor that ISIS had mandated female genital mutilation in Mosul, Iraq⁶² was quickly discredited, such false accusations skew protection and prevention efforts and hamper victims' credibility in situations where victims often already have trouble being believed. This critique echoes that which is often made of the women, peace, and security agenda; that it unduly relies on notions of victimhood and vulnerability to promote women's

58. See, e.g., Adam Nossiter, *New Kidnapping Reported in Nigeria as U.S. Offers Help*, N.Y. TIMES, May 7, 2014, at A1.

59. See S.C. Res. 2199, preamble ¶ 14 (Feb. 12, 2015); *Iraq: ISIS Escapees Describe Systematic Rape, Yazidi Survivors in Need of Urgent Care*, HUMAN RIGHTS WATCH (Apr. 15, 2015), <http://www.hrw.org/news/2015/04/14/iraq-isis-escapees-describe-systematic-rape>.

60. See, e.g., U.N. Doc. S/2015/203, *supra* note 52, ¶ 82 (“The confluence of crises wrought by violent extremism has revealed a shocking trend of sexual violence employed as a tactic of terror by radical groups.”).

61. See, e.g., U.N. Doc. S/2014/693, *supra* note 53, ¶ 46. See also RADHIKA COOMARASWAMY, PREVENTING CONFLICT, TRANSFORMING JUSTICE, SECURING THE PEACE: A GLOBAL STUDY ON THE IMPLEMENTATION OF UNITED NATIONS SECURITY COUNCIL RESOLUTION 1325, 223-25 (2015) [hereinafter PREVENTING CONFLICT, TRANSFORMING JUSTICE, SECURING THE PEACE] (the author contributed to the background of this study); *Good Practices on Women and Countering Violent Extremism*, *supra* note 53, Good Practice #5.

62. See Lucy Westcott, *ISIS Denies UN Claim it Ordered Female Genital Mutilation in Mosul*, NEWSWEEK (July 25, 2014), <http://www.newsweek.com/isis-deny-un-claim-theyre-ordering-female-genital-mutilation-mosuls-women-261323>.

protection under international law and by international institutions with a disproportionate focus on sexualized victimhood.⁶³

Second, an emphasis on women's victimhood has undermined women's roles as agents in post-9/11 global governance, including in the specific areas of terrorism and its prevention. Concerning the former issue of gender, terrorism, and violent extremism, contemporary national security practice regularly fails to address the role of gender identities and norms in the various drivers of "radicalization" of men—such as in terrorist propaganda that encourages women to foster violence by male family members and uses gender-based violations in counter-terrorism efforts (e.g., invasive screening of female passengers at airports) and norms around masculinity to inspire violent extremism and terrorism by men⁶⁴—as well as the specific question of drivers for women's participation in violent extremism.⁶⁵ Instead, research and policy attention to the issue of women's involvement in violent extremism, tends to unduly rely on the phenomenon of women suicide bombers⁶⁶ and to flatten women's motivations for participating in violent extremism or terrorism on the basis of gender stereotypes, such as the idea that women are inherently peaceful and involved as pawns or victims, or only join terrorist organizations to become "jihadi brides."⁶⁷ Such analyses belie the extent of women's varied involvement, which in

63. See, e.g., Heathcote, *supra* note 7, at 298 (arguing that the women, peace, and security agenda as developed through the UN Security Council "links women's peace and security with sexual vulnerability"); O'Rourke, *supra* note 34, at 134 ("In particular, there is concern that the WPS agenda has retrenched and institutionalised protective stereotypes of women as vulnerable, sexualised and inherently predisposed to peacemaking."). *But see Power and Danger*, *supra* note 1, at 116–18 (tracing the role of "protective stereotypes of women" in the first four thematic resolutions on women, peace, and security and arguing that there has been some evolution from the initial emphasis on gendered vulnerability).

64. See, e.g., *Good Practices on Women and Countering Violent Extremism*, *supra* note 53, Good Practices #2, #8; ORG. FOR SEC. & COOPERATION IN EUR., WOMEN AND TERRORIST RADICALIZATION: FINAL REPORT 3-4 (2013) [hereinafter WOMEN AND TERRORIST RADICALIZATION: FINAL REPORT].

65. One of the few and early references within the UN system to the need to apply a gender lens to "radicalization" is in *Ankara Memorandum on Good Practices for a Multi-Sectoral Approach to Countering Violent Extremism*, GLOBAL COUNTERTERRORISM FORUM 7–8 (2013) ("CVE programming should place a specific emphasis on youth at risk of radicalization and recruitment. . . . Program design should, where appropriate, take into account the different needs of young women versus young men."). See also *Good Practices on Women and Countering Violent Extremism*, *supra* note 53, Good Practices #2, #8, #9.

66. WOMEN AND TERRORIST RADICALIZATION: FINAL REPORT, *supra* note 64, ¶ 7.

67. See *infra* note 70 and accompanying text; *Good Practices on Women and Countering Violent Extremism*, *supra* note 53, Good Practices #2, #8.

addition to roles as suicide bombers or fighters,⁶⁸ includes participation as “sympathizers and mobilizers,”⁶⁹ and in intelligence, recruitment, all-female brigades, and as legitimizers of state-building aspirations of terrorist groups.⁷⁰

On the question of women’s participation as agents in preventing or countering terrorism and violent extremism and the relationship between women’s rights and national security more broadly, the feminism and post-9/11 international law story becomes notably more complicated. Indeed, in somewhat of a contrast to the feminist narrative of the immediate post-9/11 moment—which identified women’s almost complete invisibility in decision-making⁷¹—one key consequence of a more recent move toward “soft” practices in countering terrorism and violent extremism has been an upswing in efforts to promote security initiatives that include women.⁷² Reflecting an understanding of the failings of “hard,” coercive counter-terrorism efforts, current national security thinking often stresses that overt government presence or footprint in initiatives to

68. See, e.g., MIA BLOOM, *BOMBSHELL: THE MANY FACES OF WOMEN TERRORISTS* (2011).

69. See, e.g., Naureen Chowdhury Fink, Rafia Barakat & Liat Shetret, *The Roles Of Women In Terrorism, Conflict, And Violent Extremism: Lessons For The United Nations And International Actors*, CENTER ON GLOBAL COUNTERTERRORISM COOPERATION 3 (2013), http://www.globalcenter.org/wp-content/uploads/2013/04/NCF_RB_LS_policybrief_1320.pdf.

70. See, e.g., Carolyn Hoyle, Alexandra Bradford & Ross Frenett, *Becoming Mulan?: Female Western Migrants to ISIS*, INST. FOR STRATEGIC DIALOGUE (2015), http://www.strategicdialogue.org/ISDJ2969_Becoming_Mulan_01.15_WEB.PDF; Erin Marie Saltman & Melanie Smith, *Till Martyrdom Do Us Part’: Gender and the ISIS Phenomenon*, INST. FOR STRATEGIC DIALOGUE, (2015), http://www.strategicdialogue.org/Till_Martyrdom_Do_Us_Part_Gender_and_the_ISIS_Phenomenon.pdf; Jayne Huckerby, Opinion, *When Women Become Terrorists*, N.Y. TIMES, Jan. 22, 2015, at A27.

71. See *supra* note 17 and accompanying text; see also *infra* note 75 and accompanying text.

72. See *Gender, Counter-Terrorism and International Law*, *supra* note 8. For examples of these initiatives, see *Good Practices on Women and Countering Violent Extremism*, *supra* note 53; *Hearing on Women’s Education: Promoting Development, Countering Radicalism: Markup of H.R. 3583, Malala Yousafzai Scholarship Act: Hearing Before the H. Comm. on Foreign Affairs*, 113th Cong. (2014); WOMEN AND PREVENTING VIOLENT EXTREMISM: THE U.S. AND U.K. EXPERIENCES, *supra* note 14; Frank Van Lierde, *Looking for That Other Face: Women Muslim Leaders and Violent Extremism in Indonesia*, CORDAID (2013), http://www.cordaid.org/media/publications/Cordaid_Other_Face_-LRtotaal_voor_web.pdf; ORG. FOR SEC. & COOPERATION IN EUR., PREVENTING TERRORISM AND COUNTERING VIOLENT EXTREMISM AND RADICALIZATION THAT LEAD TO TERRORISM: A COMMUNITY-POLICING APPROACH 142–45 (2014) [hereinafter PREVENTING TERRORISM AND COUNTERING VIOLENT EXTREMISM AND RADICALIZATION THAT LEAD TO TERRORISM: A COMMUNITY-POLICING APPROACH]; WOMEN AND TERRORIST RADICALIZATION, *supra* note 64.

combat terrorism is counter-productive, and that instead such efforts should be lead more informally by non-governmental actors, such as community members, religious leaders, youth, and women.⁷³ For example, recent instances of contemporary national security policies that seek to facilitate the roles of women include programs to bolster mothers' capacity to address "radicalization;" promoting women's access to secular and religious education to provide alternate narratives; support of women victims; supporting female family members of terrorists; reforming community-policing to engage women; and supporting women's radio-listening clubs.⁷⁴

However, despite these theoretical openings presented by a move toward holistic approaches to countering terrorism and violent extremism, the involvement of women, feminisms, and feminists in this trajectory of national security practice and discourse over the past fifteen years has been both marginal and patchy,⁷⁵ and remains deeply controversial.⁷⁶ The "where are the women?"⁷⁷ question, posed in early feminist accounts of women's invisibility in the immediate aftermath of the events of 9/11, remains relevant as male actors still overwhelmingly dominate the policy and practice of counter-terrorism and countering violent extremism.⁷⁸ Much like with the women, peace, and security agenda, while there have been some efforts to promote gender-sensitive and inclusive national security policy, these tend to cluster at the informal or community level.⁷⁹

73. See, e.g., Press Release, Off. of the Press Sec'y, The White House, Fact Sheet: The White House Summit on Countering Violent Extremism (2015), <https://www.whitehouse.gov/the-press-office/2015/02/18/fact-sheet-white-house-summit-countering-violent-extremism> [hereinafter Fact Sheet] ("The Federal Government's most effective role in strengthening community partnerships and preventing violent extremism is as a facilitator, convener, and source of research and findings.").

74. See *supra* note 72 and accompanying text (discussing initiatives).

75. See, e.g., Brooks, *supra* note 16, at 346 ("To the minimal extent that women have entered the male domain of international law and policy, they are often to be found clustered in its 'softer' corners, where you find the more 'feminine,' 'human interest' subjects such as refugee law and human rights law."); Ni Aoláin, *supra* note 4, at 1086 ("Men remain the primary and visible actors in terrorist acts and counterterrorism responses.").

76. See, e.g., PREVENTING CONFLICT, TRANSFORMING JUSTICE, SECURING THE PEACE, *supra* note 61, at 225-28; Ni Aoláin, *supra* note 4; *infra* notes 136-96 and accompanying text.

77. See, e.g., *Sex, Gender, and September 11*, *supra* note 7, at 600 (posing the question "Sex: Where Are the Women?"); *Hidden Gender*, *supra* note 17, at 98 (querying "[w]hat [a]bout [w]omen?" and reflecting that "[a]n initial observation that can be made about the events of September 11th and their aftermath is that women have not been featured in any way as involved in any of the crucial decisions.").

78. See sources cited *supra* note 17.

79. See *supra* note 72 and accompanying text.

Prevention and response frameworks that emphasize women's leadership in formal security institutions or promote gender-inclusive and responsive security sector reform are still largely lacking. Moreover, at the local level, governments' efforts to counter violent extremism by and large have tended to involve formal, often male, "credible" community leaders to the exclusion of informal, and often female, leaders. Further gendered effects flow from this: in some cases, government support for such "credible voices" (including former extremists) has elevated voices in the community otherwise inimical to women's rights concerns and feminist organizing.⁸⁰ Additionally, major international institutions addressing women's rights protection have simply not been influential or consequential actors in the national security space. A stark illustration of this is the fact that UN Women (which came into existence in 2010) only recently joined the UN Counter-Terrorism Implementation Task Force, which was established in 2005.⁸¹

Additionally, the rationale for such inclusion is often informed by—and deploys—a series of stereotypes that focus only on women's roles in their "families and communities" or as victims of terrorism or as inherently "peaceful" actors who will mitigate rather than foster violent extremism and terrorism.⁸² Such stereotypes are redolent of

80. See A DECADE LOST: LOCATING GENDER IN U.S. COUNTER-TERRORISM, *supra* note 7, at 27, 107–10. See also Sahar F. Aziz, *Policing Terrorists in the Community*, 5 HARV. NAT'L SEC. J. 147, 214 (2014) (noting that community policing "interlocutors, most of whom are men, can further entrench their gatekeeper status," such that "large segments of Muslim communities, particularly youth and women, could suffer an intra-community subordinating effect of being voiceless and bereft of individual agency.").

81. See Report of the UN Secretary-General, U.N. Doc. A/60/825 ¶ 3 (Apr. 27, 2006) (referencing the creation of CTITF in 2005 to "bring together key actors in the United Nations system and its partners dealing with counter-terrorism issues.").

82. See, e.g., *Good Practices on Women and Countering Violent Extremism*, *supra* note 53, Good Practices #3 (describing women's "significant and varying roles," but also noting "[a]s a core part of families and communities, women and girls have vital contributions"), #13, #15; *Good Practices on Community Engagement and Community-Oriented Policing as Tools to Counter Violent Extremism*, *supra* note 12, at 4 (stating that it is good practice for community engagement and community-oriented policing to "[e]ngage women as positive change agents in their communities," because "women, especially mothers, carry authority within their families and communities which can translate into positive influence against violent extremism"); *id.* at 8-9 (stating that "women can be a particularly critical actor in local CVE efforts," due to their role in their families, their knowledge of the local community, their position as "locally knowledgeable, credible, and resonant CVE voices," their potential for identifying signs of radicalization and discouraging its occurrence, and their ability to serve as "force-multiplier[s]" to raise awareness of, and build capacity among, other local women to address radicalization); WOMEN AND PREVENTING VIOLENT EXTREMISM: THE U.S. AND U.K.

those of women in security discourse prior to the events of 9/11, particularly in the women, peace, and security agenda, which alongside images of women as sexualized and vulnerable victims, mobilized images of women as peaceful and maternal as the rationale for guaranteeing their participation in peace-building.⁸³ Many feminist accounts of the post-9/11 moment similarly identified the influence of such ideas of gendered vulnerability and peacefulness in supporting coercive action.⁸⁴ However, this conventional feminist understanding that gendered images of female vulnerability and male strength post-9/11 enabled only military action is shown to be untrue by a more comprehensive review of existing national security policy; these later, broader, and “soft” national security practices—e.g., empowering mothers to combat violent extremism in their communities, or as peacemakers in their communities, or as victims of terrorism who provide credible counter-narratives to terrorism⁸⁵—also mobilized and reinforced such gendered images of vulnerability, innocence and care. As such, this more recent account of contemporary counter-terrorism and CVE shows how such images did not shut down the potential for non-military action, but instead dovetailed with it in certain circumstances.

Moreover, in many instances, the impetus for women’s inclusion has not been one of gender equality, but has been advanced by national security actors lacking a feminist perspective, but who remain committed to the belief that incorporating women in national security strategies—particularly in more localized and community-oriented “soft” measures aimed at building resilience—improves the efficacy of these strategies.⁸⁶ Such initiatives to include women tend to be premised on the rationale that women may have “different forms of influence” over their networks and that mainstreaming gender and the inclusion of women leads to a more comprehensive understanding of the causes of violent extremism, as well as more

EXPERIENCES, *supra* note 14, at 4–8 (tracing the rationales for incorporating a gender perspective in UK policies to prevent violent extremism).

83. See, e.g., O’Rourke, *supra* note 34, at 134; *A Sign of “Weakness”?*, *supra* note 34, at 129 (noting that arguments by women’s peace advocates for women’s inclusion that utilize “biologically-based ‘maternal’ gender representation . . . may, unwittingly, authorize women’s continuing exclusion because they do not disrupt the gendered ideologies and practices that maintain it”).

84. See, e.g., Heathcote, *supra* note 7, at 296–97.

85. See *supra* notes 72, 82, and 162 and accompanying text.

86. See *supra* notes 72, 82, and 162 and accompanying text.

“localized, credible, inclusive, resonant” strategies to build resilience.⁸⁷ They rarely reflect the fact that women have a right to equality and non-discrimination in participating in all areas of decision-making, including those aimed at countering terrorism and violent extremism. Instead, often, the dominant framing is the notion that women should be empowered *to* counter terrorism and violent extremism, reflecting an implicit and sometimes explicit assumption that women are not already empowered, and that such empowerment should be on its very terms instrumentalist as a means to achieving a greater national security end rather than a goal in and of itself. Such framings provide a platform for gendered images of women’s vulnerability and detach the goals of women’s inclusion and gender mainstreaming from substantive equality agendas in ways that can make it difficult, without more, to read feminist success or achievement in their adoption.

A third feature of the claims made about women’s victimhood within national security discourse and practice is that they can tend to be exclusive or hegemonic. This risks marginalizing the experience of other targets of violent extremists, such as gay men or religious minorities.⁸⁸ It also can manifest in the claim that injury to men in counter-terrorism is less important than the experiences of women at the hands of terrorism (or counter-terrorism). Indeed, this risk has been one of the main critiques aimed at “governance feminism,” that the agenda has a distasteful appetite for tolerance of male suffering in pursuit of feminist agendas.⁸⁹ In the post-9/11 era, some feminist perspectives have unfortunately been suggestive of this critique, in particular those that have explicitly opposed human rights organizations working with ex-Guantánamo Bay detainees to highlight abusive detention practices⁹⁰ or to challenge targeted

87. See *Good Practices on Women and Countering Violent Extremism*, *supra* note 53, Good Practice #3. See also Good Practice #4 (“Protect the human rights of women and girls, including their equality, non-discrimination, and equal participation, and ensure that CVE efforts do not stereotype or instrumentalize, women and girls”). See further *supra* notes 72, 82, and 162 and accompanying text.

88. See, e.g., Hossam Bahgat, *Explaining Egypt’s Targeting of Gays*, MIDDLE EAST RES. & INFO. PROJECT (July 23, 2001), <http://www.merip.org/mero/mero072301>.

89. See SPLIT DECISIONS, *supra* note 2, at 33 (“Unless it [feminism] Takes a Break from itself, it can’t see injury to men”); *Rape at Rome*, *supra* note 2, at 123 (contesting governance feminism’s emphasis on women’s victimhood and noting that “[w]orse, it involves a—to me absolutely chilling—indifference to the suffering and death of men”).

90. See generally Amna Akbar & Rupal Oza, “Muslim Fundamentalism” and Human Rights in an Age of Terror and Empire, in GENDER, NATIONAL SECURITY, AND COUNTER-

killings⁹¹ on the basis that such human rights work undermines gender equality advocacy, including because it takes insufficient account of whether those whose rights are being defended themselves hold positions inimical to women's rights.

Finally, a post-9/11 account of women's victimhood also tends to focus unduly on women's experiences at the hands of non-State actors (terrorists), rather than to illuminate ways in which State counter-terrorism policies have also undermined women's rights⁹² or to address a more complicated picture of victimhood whereby women often feel squeezed between terror and anti-terror.⁹³ Examples of this squeezing effect include failure of asylum procedures to adequately recognize gender-based violations by terrorist groups as a ground of persecution; anti-terror cuts in aid, which are felt disproportionately by women and girls who are reliant on development assistance and instead then have to rely on violent extremists or terrorists to provide such assistance; and government restrictions in funding to women's rights organizations working on the frontlines of the fight against violent extremism and terrorism, which may also have their activities chilled for fear of being charged with providing material support to banned entities.⁹⁴

TERRORISM: HUMAN RIGHTS PERSPECTIVES, *supra* note 4, at 152; Diana Hortsch, *The Paradox of Partnership: Amnesty International, Responsible Advocacy, and NGO Accountability*, 42 COLUM. HUM. RTS. L. REV. 119 (2010); Richard Kerbaj, *Amnesty International is Damaged by Taliban Link*, SUNDAY TIMES (Feb. 7, 2010), http://www.the-sundaytimes.co.uk/sto/news/world_news/article197042.ece (containing the original allegations of Gita Sahgal about Amnesty International's relationship with Begg); Mindy Sawhney & Ravindran Daniel, *Working With Others: An Independent Review*, AMNESTY INT'L (2010), http://www.amnesty.org.uk/sites/default/files/partnership_review_2010_0.pdf (outlining the outcomes of the commissioned review of Sahgal's concerns); *Is Amnesty International Supporting a Jihadist?*, NAT'L PUB. RADIO (Feb. 27, 2010), <http://www.npr.org/templates/story/story.php?storyId=124156482>.

91. See, e.g., Karima Bennoune, *Why I Spoke Out On Anwar al-Awlaki*, GUARDIAN (Nov. 19, 2010), <http://www.theguardian.com/commentisfree/cifamerica/2010/nov/19/human-rights-usa>.

92. See *infra* notes 111–35 and accompanying text.

93. UN Secretary-General, *Protection of Human Rights and Fundamental Freedoms While Countering terrorism*, ¶ 23, U.N. Doc. A/64/211 (Aug. 3, 2009) [hereinafter U.N. Doc. A/64/211] (“Those subject to gender-based abuses are often caught between targeting by terrorist groups and the State's counter-terrorism measures that may fail to prevent, investigate, prosecute or punish these acts and may also perpetrate new human rights violations with impunity.”).

94. See, e.g., *id.* ¶ 42 (“The Special Rapporteur is also concerned that terrorism financing laws that restrict donations to non-profit organizations have particularly impacted organizations that promote gender equality, including women's rights organizations.”); *id.* ¶ 50 (“[F]orced domestic service for actors considered to be terrorists has been understood to count

While it is beyond the scope of this Article to fully develop an alternative gender and human rights framework(s) for addressing the complexities of women's victimhood and agency in terrorism and its response, a few preliminary observations can be made. A feminist approach undoubtedly requires combating impunity for gender-based harms and terrorist targeting of women, but the key question is how to develop effective gender-sensitive prevention and response frameworks without unduly trading in images of women's vulnerability and victimhood. Some measures that could be utilized to identify and address the full range of these impacts—beyond just a focus on sexual violence—include collecting “gender-disaggregated data on terrorist violence” and training security officials on how to recognize these various impacts of terrorism and to deliver gender and human rights-sensitive security services, as well as including women and women's survivor networks in victim-assistance programs to address the full range of their protection needs.⁹⁵ Moving past blanket portrayals of women as victims also includes addressing gendered grievances and other reasons that women and girls support violent extremist groups,⁹⁶ as well as adopting the kinds of gender-sensitive disengagement, rehabilitation, and reintegration programs necessary for women and girls who may suffer gender-specific abuse both

as ‘material support’ to terrorism, therefore barring successful asylum claims by women who have suffered this abuse”); Lama Fakih, *Soft Measures, Real Harm: Somalia and the US “War on Terror,”* in *GENDER, NATIONAL SECURITY, AND COUNTER-TERRORISM: HUMAN RIGHTS PERSPECTIVES*, *supra* note 4, at 183 (examining how US anti-terrorism financing policies have politicized and chilled humanitarian assistance in Somalia, reducing the assistance available for women and women's rights organizations and resulting in reliance on groups that are detrimental to women's rights); *A DECADE LOST: LOCATING GENDER IN U.S. COUNTER-TERRORISM*, *supra* note 7, at 100 (addressing the application of “material support” bars to female asylum-seekers); *id.* at 70–80 (analyzing the gender impacts of US anti-terrorism financing rules).

95. See, e.g., *Good Practices on Women and Countering Violent Extremism*, *supra* note 53, Good Practice #21.

96. See, e.g., S.C. Res. 2242, *supra* note 33, ¶12 (urging Member States and requesting UN entities to “conduct and gather gender-sensitive research and data collection on the drivers of radicalization for women” and to “ensure United Nations monitoring and assessment mechanisms and processes mandated to prevent and respond to violent extremism, which can be conducive to terrorism, have the necessary gender expertise to fulfil their mandates”); *Good Practices on Women and Countering Violent Extremism*, *supra* note 53, Good Practices #2, #8, #9; PREVENTING CONFLICT, TRANSFORMING JUSTICE, SECURING THE PEACE, *supra* note 61, at 231 (recommending that Member States, the United Nations, regional organizations and civil society should “[i]nvest in research and data collection on women's roles in terrorism including identifying the drivers that lead to their radicalization and involvement with terrorist groups, and the impacts of counter- terrorism strategies on their lives.”).

within terrorist groups and from security services.⁹⁷ The questions concerning women's roles as agents in countering terrorism and violent extremism—and the more expansive question of the relationship between gender equality and national security—are particularly complex and are explored in more detail below.⁹⁸ A more nuanced account of gender and victimhood in the post-9/11 era also necessarily involves preventing, identifying, and remedying a series of adverse gender and human rights impacts of those measures taken in furtherance of national security agendas; an issue to which this Article now turns in more detail.⁹⁹

B. *Formalism and Inattentiveness to Gender-Based National Security Violations*

As has been observed in some feminist legal analyses, an initial effect of the post-9/11 “War on Terror” was to revive formalist and State-centric¹⁰⁰ approaches to international law in order to underscore its legitimacy.¹⁰¹ In this immediate post-9/11 moment, international law's reinvigorated formalism had a number of adverse gender impacts that have subsequently narrowed the capacity of international

97. *Good Practices on Women and Countering Violent Extremism*, *supra* note 53, Good Practice #10; PREVENTING CONFLICT, TRANSFORMING JUSTICE, SECURING THE PEACE, *supra* note 61, at 231 (recommending that Member States and the United Nations should “[d]evelop gender-sensitive disengagement, rehabilitation and reintegration programmes that address the specific needs of women and girls.”); Jayne Huckerby, *Gender, Violent Extremism, and Terrorism*, JUST SECURITY (Mar. 3, 2015).

98. *See infra* notes 136-96 and accompanying text.

99. *See, e.g.*, A DECADE LOST: LOCATING GENDER IN U.S. COUNTER-TERRORISM, *supra* note 7, at 112-14 (outlining a series of tools for undertaking gender-sensitive measurement and monitoring of the gender and human rights dimensions and impacts of activities to counter terrorism and violent extremism); S.C. Res. 2242, *supra* note 33, at ¶12 (urging Member States and requesting United Nations entities “to conduct and gather gender-sensitive research and data collection on the . . . impacts of counter-terrorism strategies on women's human rights and women's organizations”); PREVENTING CONFLICT, TRANSFORMING JUSTICE, SECURING THE PEACE, *supra* note 61, at 231 (calling for “gender-sensitive monitoring and evaluation of all counter-terrorism and countering violent extremism interventions. . .including through use of gender-related indicators and collection of sex-disaggregated data.”).

100. *See* Heathcote, *supra* note 7, at 299 (“The assertion of a mainstream (or formalist) return to the key values of the *UN Charter*, or international law, leaves little space for feminist approaches to international law that are premised on the possibility of re-imagining international law's core.”).

101. *See, e.g.*, Karima Bennoune, *Remembering the Other's Others: Theorizing the Approach of International Law to Muslim Fundamentalism*, 41 COLUM. HUM. RTS. L. REV. 635 (2010) [hereinafter *Remembering the Other's Others*]; Anne Orford, *The Destiny of International Law*, 17 LEIDEN J. OF INT'L L. 441 (2004); Heathcote, *supra* note 7, at 300.

law to develop gender norms. The first of these was to emphasize those State-centric¹⁰² approaches to international law that traditionally valorized public spaces and excluded women's experience in the private sphere, resulting in insufficient attention to private actors.¹⁰³ The second was to show, however, that alongside such State-centric approaches, international law did actually also have the capacity to address non-State actors—by galvanizing a serious and full-scale international law response to abuses by terrorists—but that it would also be selective as to when it chose to recalibrate the rigidity of this public/private divide in international law. While States were disposed to “far-reaching analyses of state responsibility doctrines” to hold States (e.g., so-called State sponsors of terrorism) responsible for the conduct of terrorist actors,¹⁰⁴ the same could not be said of the willingness of States to enhance state responsibility doctrines when it concerned other forms of violence by non-State actors (e.g., domestic violence against women).¹⁰⁵ This impartial convergence of feminist

102. See Heathcote, *supra* note 7, at 299 (“The assertion of a mainstream (or formalist) return to the key values of the *UN Charter*, or international law, leaves little space for feminist approaches to international law that are premised on the possibility of re-imagining international law’s core.”). A similar observation concerning the State-centric nature of responses to terrorism has been made in feminist engagements with critical terrorism studies and international security: see, e.g., Parashar & Sylvester, *supra* note 13; Parashar, *supra* note 13.

103. See *Feminist Approaches to International Law*, *supra* note 16, at 625–27 (addressing the gendered dimensions of the public/private divide in international law); *Feminist Methods in International Law*, *supra* note 16, at 387–88 (arguing that the public/private divide of State/non-State actors in international law reinforces gender inequality); Johnstone, *supra* note 7, at 4–7 (tracing manifestations of the public/private divide in international law, particularly with regard to State/non-State actors and the international/internal dichotomy). For feminist legal critiques of the public/private distinction as it manifests in relation to international human rights law, see, e.g., Anne Orford, *Contesting Globalization: A Feminist Perspective on the Future of Human Rights*, 8 *TRANSNAT’L. L. & CONTEMP. PROBS.* 1712, 1715 (1998) (“[I]nternational human rights law regime that developed after 1945 . . . treats the state as the principal threat to the freedom of the individual, human dignity, and human well-being.”). See generally Karen Engle, *After the Collapse of the Public/Private Distinction: Strategizing Women’s Rights*, in *RECONCEIVING REALITY: WOMEN AND INTERNATIONAL LAW* 143 (Dorinda Dallmeyer ed., 1993); Celina Romany, *Women as Aliens: A Feminist Critique of the Public/Private Distinction in International Human Rights Law*, 6 *HARV. HUM. RTS. J.* 87 (1993).

104. Ní Aoláin, *supra* note 4, at 1099.

105. See, e.g., MacKinnon, *supra* note 7, at 1–2 (citations omitted) (comparing “the configuration of acts and actors of September 11, 2001” and “men’s violence against women” and noting that the “formal and substantive parallels between the two—prominently their horizontal legal architecture, large victim numbers, and masculine ideology—make both patterns of violence resemble dispersed armed conflict, but the world’s response to them has been inconsistent”); see also Johnstone, *supra* note 7, at 1 (arguing that states broke down

theory and counter-terrorism¹⁰⁶ was an early shot across the bow to feminist approaches that saw opportunities for positive transformation in international law in the wake of 9/11.

The third formalist effect derived from State behavior itself as the “War on Terror” continued beyond its initial moment. In particular, increased violations in the name of countering terrorism that targeted men and boys through actions such as torture, arbitrary detention, and denial of the right to life signified a return to the kinds of violations with which international human rights law had been most traditionally concerned: men as victims of the State’s civil and political rights violations.¹⁰⁷ Efforts of the human rights community to address such violations, including, for example, detention and torture at Guantánamo Bay¹⁰⁸ further entrenched this focus. A series of distinct and adverse gender effects flowed from this focus on State violations of men’s rights. For example, it has been argued—particularly through those feminist perspectives that challenge “Muslim fundamentalism”—that this focus on male alleged terrorists as victims deprioritized women’s experience of terrorism and stymied the ability of international law to develop an adequate account of “Muslim fundamentalism” and its impact on women.¹⁰⁹ Additionally, the rehashing of traditional and overly legalistic and highly technical arguments over whether certain activities (e.g., waterboarding) fit

some aspects of the public/private divide at the same time as reifying others such as “the non-recognition of ‘enemy combatants’ as state organs or agents; privatization of military and non-military operations during the occupations of Afghanistan and Iraq; the privatization of gender discrimination in state (re-)building; and reinforcement of gender stereotypes and women’s private roles in the ‘War on Terror’”).

106. See, e.g., Johnstone, *supra* note 7, at 3; Ni Aoláin, *supra* note 4, at 1100, 1101.

107. See Brooks, *supra* note 16, at 345–47; *Feminist Approaches to International Law*, *supra* note 16, at 627–28 (noting, for example, the use of only the masculine pronoun in the definition of torture, as a way to illustrate how the public/private dichotomy is pervasive in international law and succeeds in excluding women’s voices).

108. See Meredith Tax, *Women Have Rights Too*, GUARDIAN (Dec. 13, 2010), <http://www.theguardian.com/commentisfree/cifamerica/2010/dec/13/international-criminal-court-moreno-ocampo> (“But the ‘war on terror’ has returned us, in many ways, to status quo ante: today, the normative human rights victim is once more a male prisoner, this time in Guantánamo; human rights offences by states are back at centre stage; and crimes against women and children are again being marginalised”).

109. See Karima Bennoune, *Terror/Torture*, 26 BERKELEY J. INT’L L. 1, 40 (2008) [hereinafter *Terror/Torture*] (“The human rights community, as a matter of basic principles of human rights, must hear (and respond to) the voices of victims of terrorism, their survivors, and all those who live in fear of such violence—just as it hears and responds to the voices of victims of counter-terror, their survivors and all those who live in fear of that violence. . . .”); *Remembering the Other’s Others*, *supra* note 101.

within international law's definition of torture, sidelined developments in progressive interpretations of international law that sought to categorize—and elevate—private abuses of women's rights (e.g., domestic violence) as State violations of torture norms.¹¹⁰ Moreover, this formalism and attention to States' male victims also lay the groundwork for another significant normative silence in the area of gender norms that has hitherto been insufficiently addressed by feminist approaches to international law: State violations of women's rights and gender equality in counter-terrorism efforts.¹¹¹

Indeed, the focus on women's victimhood at the hands of terrorists discussed above, along with a formalist impulse to address only men as victims of counter-terrorism, created the perfect storm for silence on State violations of women's rights and gender equality in counter-terrorism efforts. Remarkably, it was not until 2009—eight years removed from the events of 9/11—that the adverse gender impacts of counter-terrorism were first catalogued at the international level through a report to the UN General Assembly by the UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism.¹¹² The report

110. See *Remembering the Other's Others*, *supra* note 101, at 659–60, 698; see also Rhonda Copelon, *Recognizing the Egregious in the Everyday: Domestic Violence as Torture*, 25 COLUM. HUM. RTS. L. REV. 291, 337 (1993-1994) (arguing that in certain circumstances domestic violence should be recognized as torture); Heathcote, *supra* note 7, at 297 (“[S]ubversive feminist accounts in response to the global war against terrorism, alongside other critical and/or subversive approaches, became difficult to articulate when the dominant Western narrative appeared to function to reject international legal norms.”); *id.* at 300 (noting the subsequent exclusion of “feminists, women, critical theorists, writers from the global south, postcolonial theorists and third world approaches”).

111. See A DECADE LOST: LOCATING GENDER IN U.S. COUNTER-TERRORISM, *supra* note 7, at 9 (“Over the last decade of the United States’ ‘War on Terror,’ the oft-unspoken assumption that men suffer the most—both numerically and in terms of the nature of rights violations endured—has obscured the way women and sexual minorities experience counter-terrorism, rendering their rights violations invisible to policymakers and the human rights community alike.”); Ní Aoláin, *supra* note 4, at 1121 (reflecting on the need to “pay[] close attention to the experiences of women as the subjects of counterterrorism norms underscores the unique vulnerabilities that women face when their lives intersect with powerful patriarchal institutions and interests”).

112. See generally U.N. Doc. A/64/211, *supra* note 93. The author was involved in the research and writing of this report. For earlier consideration by the UN Special Rapporteur of the gender dimensions and impacts of counter-terrorism, see *Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development*, ¶¶ 21, 38, 62–63, 73(c), Human Rights Council, U.N. Doc. A/HRC/6/17 (discussing the promotion and protection of human rights and fundamental freedoms while countering terrorism); UN Secretary-General, *Protection of Human Rights and Fundamental Freedoms While Countering Terrorism*, ¶ 75, U.N. Doc. A/62/263 (Aug. 15, 2007); Special

builds upon earlier work of the UN Special Rapporteur to provide a “comprehensive overview of the frequency and nature of gender-based human rights abuses in counter-terrorism measures and to explore the complex relationship between gender equality and countering terrorism.”¹¹³ Significantly, the report, following on the mandate’s instruction to “integrate a gender perspective,” reflects a social definition of gender as distinguished from the biological definition of sex and therefore discusses, besides the human rights of women, the gendered impact of counter-terrorism measures on men and persons of diverse sexual orientations and gender identities, and addresses how gender intersects with other prohibited grounds of discrimination, such as race and religion.¹¹⁴ The use of this gender lens means that the report, while predominantly focused on women’s experiences, highlights the gender performativity at stake in additional areas, including the use of interrogation techniques against male terrorist suspects in detention facilities,¹¹⁵ as well as ways in which governments use the rights of lesbian, gay, bisexual, transgender, and intersex individuals as bartering tools to appease terrorist groups.¹¹⁶ The reaction to the report amongst a number of States and some conservative non-governmental organizations (NGOs), however, teetered on vitriolic and hyperbolic, with many

Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, *Implementation of General Assembly Resolution 60/251 of 15 March 2006 Entitled “Human Rights Council”*, ¶¶ 72, 92, Human Rights Council, U.N. Doc. A/HRC/4/26. For subsequent documentation of the gender and human rights impacts of counter-terrorism, including those particularly focusing on the post-9/11 era, see Phumzile Mlambo-Ngcuka & Radhika Coomaraswamy, *Women are the Best Weapon in the War Against Terrorism*, FOREIGN POL’Y (Feb. 10, 2015), <http://foreignpolicy.com/2015/02/10/women-are-the-best-weapon-in-the-war-against-terrorism/> (“Militarized counterterrorism operations disrupt economic and social activity, and destroy civilian infrastructure—the schools, markets, and medical facilities relied on by women in traditional caring roles.”). See generally GENDER, NATIONAL SECURITY, AND COUNTER-TERRORISM: HUMAN RIGHTS PERSPECTIVES, *supra* note 4; A DECADE LOST: LOCATING GENDER IN U.S. COUNTER-TERRORISM, *supra* note 7; *Gender, Counter-Terrorism and International Law*, *supra* note 8; Ní Aoláin, *supra* note 4.

113. U.N. Doc. A/64/211, *supra* note 93, ¶ 19.

114. *Id.* ¶¶ 18, 20 (quoting another source); see also Dianne Otto, *Transnational Homo-Assemblages: Reading ‘Gender’ in Counter-terrorism Discourses*, 4 JINDAL GLOBAL L. REV. 79, 82 (2013) (analyzing the use of a gender lens in the report).

115. See U.N. Doc. A/64/211, *supra* note 93, ¶ 44; see also Timothy Kaufman-Osborn, *Gender Trouble at Abu Ghraib?*, 1 POLS. & GENDER 597 (2005); (EN)GENDERING THE WAR ON TERROR: WAR STORIES AND CAMOUFLAGED POLITICS (Krista Hunt & Kim Rygiel eds., 2007); ONE OF THE GUYS: WOMEN AS AGGRESSORS AND TORTURERS (Tara McKelvey ed., 2007).

116. See U.N. Doc. A/64/211, *supra* note 93, ¶ 36.

challenging the use of a social (versus a biological) definition of gender and the report's consideration of sexual orientation and gender identity.¹¹⁷ In an unusual step demonstrative of the extent of this negative reaction, the UN General Assembly deleted references to the report from its annual resolution on human rights and counter-terrorism.¹¹⁸

The report was significant, not only as the first global—albeit belated—account of gender-based violations in the name of national security, but also because its reaction is a litmus test of the capacity of international law to advance gender norms in an overarching national security environment in five key ways. The first is that it evinces a new testing of the public/private divide in international law, on the one hand reflecting the reticence of governments to acknowledge that State counter-terrorism measures—inadvertently or otherwise—could adversely impact women, but on the other, showing its willingness to invest in addressing violence against women by terrorist actors. This constitutes a reversal of the usual complaint of feminist approaches to international law, i.e., that States focus disproportionately on public violence at the expense of that in the private spheres. In large part, this reversal can be attributed to the ongoing influence of national security discourses that, in the immediate to mid-range aftermath of 9/11, still utilized or relied upon a model of the State as the savior of women who are victims of terrorist savages.¹¹⁹ Under this binary model, it was simply not possible for many international stakeholders to contemplate the State as a violator of women's rights; demonstrating that “beyond the language of victimhood and defense

117. See, e.g., Political Affairs Head Says UN Efforts to Assist Election in ‘High Demand’ as Third Committee’s Debate on Promotion of Human Rights Continue, U.N. Doc. GA/SHC/3959 (Oct. 26, 2009), <http://www.un.org/News/Press/docs/2009/gashc3959.doc.htm>; see also *Transnational Homo-Assemblages: Reading ‘Gender’ in Counter-terrorism Discourses*, *supra* note 114, at 85 (“Endorsement of the report came from states in the Western European and Other Group (WEOG) and the Latin American Group, many of whom performed their gay-friendliness by making a point of showing their familiarity and ease with using the identity categories of sexual and gender minorities.”).

118. See G.A. Res. 64/168 (Dec. 18, 2009). For the votes, see *Overview of the 64th Session of the General Assembly*, INT’L SERV. FOR HUMAN RIGHTS, 4 n.13 (2010), http://www.ishr.ch/sites/default/files/article/files/hrm_2009_general_assembly_forweb_0.pdf.

119. See *supra* note 20 and accompanying text. See generally Makua Mutua, *Savages, Victims, and Saviors: The Metaphor of Human Rights*, 42 HARV. INT’L L. J. 201 (2001).

of the female, there is little political room for a full engagement with sex, sexism, and gender intricacies in the counterterrorism terrain.”¹²⁰

Secondly, to some extent, the reaction to the report also provides insights into the ongoing challenges in the gender/sex debate under international law. Feminist approaches to international law have largely preferred the use of the social category of gender to fully extrapolate an understanding of international rules and their effects.¹²¹ The use of a gender lens has been similarly critical in feminist critiques of the fields of international relations and security studies that have challenged the often-interchangeable use of “gender” and “sex” and applied the social definition of gender.¹²² However, the categories of gender and sex have been contested ones in international law’s discourse and practice, with some States continuing to prefer the use of a narrower, biological category of sex centered on the traditional male/female binary, rather than a broader definition of gender as a social construct that includes, for example, engagement in a discussion of masculinities, femininities, and gender identity and sexual orientation.¹²³ At the same time, however, “more recent international law efforts have shifted toward a focus on gender and sexuality,”¹²⁴ such that many of the core concepts in the report—the use of a social definition of gender that also addresses sexual

120. Ní Aoláin, *supra* note 4, at 1116–17 (citations omitted) (noting that “[t]he limits of progressive equality briefing in the context of counterterrorism policy are poignantly proven by the Special Rapporteur’s decision in 2009 to go beyond reporting on harms to women. . . . The Report garnered tremendously negative political responses by a variety of states. . . . The conclusion one can draw is awkward. A gendered account of counterterrorism strategies that concentrates on female harm can carve out acceptable political space. But beyond the language of victimhood and defense of the female, there is little political room for a full engagement with sex, sexism, and gender intricacies in the counterterrorism terrain.”).

121. *Feminist Methods in International Law*, *supra* note 16, at 379 (“Feminist methods . . . insist on the importance of gender relations as a category of analysis. The term ‘gender’ here refers to the social construction of differences between women and men and ideas of ‘femininity’ and ‘masculinity’—the excess cultural baggage associated with biological sex.”).

122. *See, e.g.*, Hudson, *supra* note 13, at 158 (“including women as a category of identity within security discourse without also integrating gender as unit of analysis creates silences”); Tickner, *supra* note 13, at 336 (defining gender as “a set of variable, but socially and culturally constructed relational characteristics” and analyzing the post-9/11 moment through a gender lens).

123. *See generally* Hilary Charlesworth, *Not Waving but Drowning: Gender Mainstreaming and Human Rights in the United Nations*, 18 HARV. HUM. RTS. J. 1, 14–18 (2005) (outlining the sex/gender distinction in international law and arguing that it is elided in the context of gender mainstreaming where gender is synonymous with women).

124. Darren Rosenblum, *Unsex CEDAW, or What’s Wrong With Women’s Rights*, 20 COLUM. J. GENDER & L. 98, 101 (2011).

orientation and gender identity, as well as the need to address women in various capacities (e.g., as victims, perpetrators, and agents of change)—have strong and long antecedents in other areas of international human rights law and practice.¹²⁵ Against this normative backdrop, the furor over the report's use of a social definition of gender then looks more like a smokescreen than substantive concern, requiring that other explanations for the nature of the reaction be explored. The third insight provided by the report's reaction therefore—particularly given the perspective of those States and some NGOs who objected to the report interpreting “gender perspective” to incorporate sexual orientation and gender identity—regards the ongoing, significant challenges in the “project of queering international law.”¹²⁶ As such, it also highlights some of the inclusivity challenges in feminist approaches to international law, whereby some feminist advocates are reticent to advance the rights of those of diverse sexual orientation and gender identities on the basis that it could undermine women's rights claims.¹²⁷

Finally, and perhaps most significantly, the reaction to the report is instructive on the project of gender mainstreaming and, in particular, the very limited ability of international norms on gender to traverse different areas of international rule-making and implementation. The report's use of a social definition of gender is one that has been adopted elsewhere in international human rights law, including by other UN Special Rapporteurs and women-specific institutions without fanfare.¹²⁸ As such it is very difficult to escape the conclusion that a core cause of consternation was that the concepts were being applied by a non-gender-specific part of the United

125. *A Sign of “Weakness”?*, *supra* note 34, at 120–21 (citations omitted) (identifying the different usages of “gender,” and noting that “[b]y the mid-1990s, the official definition of ‘gender’ in the U.N. system had become a version of gender as a social category, although the biological version was retained in the term ‘sex’”).

126. *Transnational Homo-Assemblages: Reading ‘Gender’ in Counter-terrorism Discourses*, *supra* note 114, at 85–86.

127. *See id.* at 91–94.

128. *See, e.g.*, Committee on the Elimination of Discrimination Against Women, *General Recommendation No. 25, on Article 4, Paragraph 1, of the Convention on the Elimination of all Forms of Discrimination Against Women, on Temporary Special Measures*, n.2 reprinted in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, U.N. Doc. HRI/GEN/1/Rev.7 (2004) (quoting 1999 World Survey on the Role of Women in Development, United Nations, New York, 1999, ix) (“Gender is defined as the social meanings given to biological sex differences . . . Thus, gender is a social stratifier. . . It helps us understand the social construction of gender identities and the unequal structure of power that underlies the relationship between the sexes.”).

Nation's institutional machinery (the UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism) in a report to a non-human rights body (the UN General Assembly). It, therefore, serves as an indictment of the ability of the category of "gender" to travel beyond women-specific institutions (e.g., the UN Committee on the Elimination of Discrimination of Women) or issues traditionally associated with women (e.g., gender-based violence) to have transformative effects in core areas of governance, such as national security policy-making and implementation. Relatedly, subsequent revelations about the intent of the Egyptian government to dispute the report to discredit the UN Special Rapporteur in advance of an upcoming country visit to Egypt, further highlight the fragility of norms on gender equality in the face of broader political agendas, as well as these norms' permeability in a post-9/11 era, where governments regularly prioritize resisting scrutiny of their human rights record in countering terrorism above other issues of human rights concern.¹²⁹

Instead of a feminist approach that ignores or downplays gender-based violations in counter-terrorism and countering violent extremism, however, there is a tripartite typology that can—and should—be developed to address State-based harms toward women and girls in the name of national security. Such a typology would necessarily reflect an intersectional approach, recognizing how these gendered experiences are often shaped by a number of other factors, including, in many contexts, the disproportionate impacts on Muslim communities of national security policies in the post-9/11 era. The first aspect of this typology is to appreciate how such policies have undermined the rights of women and girls through their focus on men and boys as the subject of counter-terrorism interventions. For example, the development-security nexus under wider, holistic approaches to countering violent extremism that focuses on providing development assistance (e.g., livelihood opportunities) to those most at risk of "radicalization" in a particular community—primarily men and young boys—reallocates resources in ways that risk further marginalization of women and girls who often face more acute

129. See Martin Scheinin, *Foreword*, in *GENDER, NATIONAL SECURITY, AND COUNTER-TERRORISM: HUMAN RIGHTS PERSPECTIVES*, *supra* note 4, at xi, xiv.

development needs in their community.¹³⁰ Another example of this category of violations is when female family members of those directly impacted by national security measures—such as torture, disappearance, illegal detention, and killings in the context of countering terrorism—experience adverse primary and collateral consequences (e.g., economic rights deprivations).¹³¹ Secondly, governments’ national security policies and practices have also, in many cases, directly discriminated against women and women’s rights organizations. For example, some governments have penalized freedom of expression and association through the use of counter-terrorism measures to improperly surveil and suppress activities of women’s human rights defenders.¹³² In other cases, governments have detained or interrogated female relatives of terrorists or violent extremists who themselves have no purported connection to terrorism or violent extremism as a form of leverage over their male relatives.¹³³ Finally, national security policy and practice can result in discriminatory treatment because of a failure to consider the underlying gender dynamics in the operating environments in which measures are being implemented. For example, while anti-terrorism financing and material support rules and policies are ostensibly gender-neutral, in practice they can often be gender discriminatory.¹³⁴ Such counter-terrorism financing rules by their nature favor large, well-known organizations and require strict reporting and auditing requirements, whereas, in practice, women’s organizations are small,

130. See, e.g., A DECADE LOST: LOCATING GENDER IN U.S. COUNTER-TERRORISM, *supra* note 7, at 30–53 (addressing the gender impacts of development activities to counter terrorism and violent extremism).

131. See U.N. Doc. A/64/211, *supra* note 93, ¶ 30 (citations omitted) (detailing gender impacts of enforced disappearances of male detainees); A DECADE LOST: LOCATING GENDER IN U.S. COUNTER-TERRORISM, *supra* note 7, at 54–69 (addressing gender impacts of militarized counter-terrorism, including on female family members); *id.* at 81–96 (addressing gender impacts of intelligence and law enforcement measures, including on female family members); Ramzi Kassem, *Gendered Erasure in the Global “War on Terror”: An Unmasked Interrogation*, in GENDER, NATIONAL SECURITY, AND COUNTER-TERRORISM: HUMAN RIGHTS PERSPECTIVES, *supra* note 4, at 15, 17 (“Although it has been largely invisible, ‘War on Terror’ rendition, interrogation, and detention practices that ensnare men have a concrete and indisputable impact on women, especially spouses.”).

132. See U.N. Doc. A/64/211, *supra* note 93, ¶ 27.

133. See *id.* ¶ 31.

134. See, e.g., *id.* ¶ 42; A DECADE LOST: LOCATING GENDER IN U.S. COUNTER-TERRORISM, *supra* note 7, at 70–80; *Counterterrorism Measures and Their Effects on the Implementation of the Women, Peace and Security Agenda*, WOMEN PEACEMAKERS PROGRAM (2015), <https://www.womenpeacemakersprogram.org/assets/CMS/Resources/Reports/Policy-brief-CTM.pdf>.

informal, may need to operate below the radar due to local safety concerns, and often do not have the administrative infrastructure necessary to comply with these reporting and auditing requirements.¹³⁵

*C. Which Women's Rights Count and How: The Conjoining of
Feminism and National Security*

Another key normative consequence of the post-9/11 context is that it is women's rights with a national security nexus that have gained the most traction in international law and the attention of its institutions. This conjoining of women's rights and national security agendas was an immediate feature of the 9/11 response,¹³⁶ but its presence and role in countering terrorism and violent extremism has subsequently evolved and requires separate and more detailed attention in feminist approaches to international law. This evolution can be observed in at least four distinct, but related steps in unfolding national security practice, which I detail in roughly sequential order, before reflecting on the implications of these developments for determining not only which rights count, but also how they are normatively defined. In this account, I also seek to be explicit about whose rights are being elevated and which feminist interpretations of international law feature at each stage of the conjoining.

The first stage in the conjoining, as referenced above, was in the initial call in the immediate aftermath of 9/11 to rescue Afghan women as part of the public push to justify the launch of Operation Enduring Freedom against the Taliban regime in Afghanistan.¹³⁷ Feminist critiques of the consequences of this invocation of women's rights have aptly identified the moral and strategic cover it sought to provide for military action in response to the events of 9/11, as well as its adverse gender impacts (such as the silencing of voices of Afghan women).¹³⁸

The next stage in the evolution of national security practice is that specific instances of women's rights violations also became defined as national security threats. Perhaps the earliest and most

135. See, e.g., A DECADE LOST: LOCATING GENDER IN U.S. COUNTER-TERRORISM, *supra* note 7, at 70–80; *Counterterrorism Measures and Their Effects on the Implementation of the Women, Peace and Security Agenda*, *supra* note 134.

136. See *supra* notes 38–41 and accompanying text.

137. See *supra* note 24 and accompanying text.

138. See *supra* note 25 and accompanying text.

prominent example of this concerns trafficking in persons, where in the post-9/11 environment, the United States and other governments began to identify linkages between terrorism and trafficking, focusing, for example, on trafficking and terrorism's shared character as transborder threats, the contribution of trafficking to terrorist mobility, and the role of trafficking in creating unstable nations.¹³⁹ As a consequence of these purported linkages, governments also began to identify how counter-terrorism strategies should encompass efforts aimed at the eradication of trafficking in persons, calling, for example, for securitized borders as a policy response to both phenomena.¹⁴⁰ Significantly for feminist analyses of international law, this post-9/11 merging of the anti-trafficking and anti-terrorism agendas was not ideology-free. Instead, it centered a certain Western feminist and abolitionist perspective that favored criminalized and securitized responses to saving vulnerable Global South women from the scourge of sex trafficking, rather than addressing, for example, labor trafficking or domestic trafficking or utilizing labor, human rights, or migration frameworks.¹⁴¹

The next—and most marked—opportunity for the uptake of some women's rights concerns in national security came with the expansion of national security policy and practice toward a whole-of-government approach that mobilized areas such as development, human rights, and rule of law, particularly from 2006 onward when the UN Global Counter-Terrorism Strategy was adopted.¹⁴² The adoption of the Strategy was itself in part an attempt to correct the UN response to terrorism up until that point, which had been very much driven by the UN Security Council and predominantly limited

139. See *Unpacking the Trafficking-Terror Nexus*, *supra* note 40.

140. See *id.*; see also U.N. Doc. A/64/211, *supra* note 93, ¶ 51.

141. See generally *Unpacking the Trafficking-Terror Nexus*, *supra* note 40. The influence of this perspective can be most starkly observed, for example, in December 2002, when President George W. Bush signed his first National Security Presidential Directive 22 (NSPD-22) entitled "Combating Trafficking in Persons." Emphasizing the "transnational threat" posed by trafficking, NSPD-22 specifically states that US anti-trafficking policy is "based on an abolitionist approach to trafficking in persons. . . . In this regard, the United States Government opposes prostitution and any related activities. . . . These activities are inherently harmful and dehumanizing. The United States Government's position is that these activities should not be regulated as a legitimate form of work for any human being." See Nat'l Sec. Presidential Directive, *Combating Trafficking in Persons*, NSPD 22, 64–65 (Dec. 16, 2002).

142. G.A. Res. 60/288, *supra* note 4.

to traditional security measures.¹⁴³ Accordingly, it contains four pillars that represent a mixture of “hard” and “soft” approaches: tackling the conditions conducive to the spread of terrorism; preventing and combating terrorism; building States’ capacity to prevent and combat terrorism and to strengthen the role of the UN system in that respect; and ensuring respect for human rights for all and the rule of law as the fundamental basis for the fight against terrorism.¹⁴⁴ Subsequent domestic practice emulates and builds upon this more holistic approach to countering terrorism and violent extremism, which is also referred to as “preventing violent extremism” (“PVE”) in some specific domestic contexts.¹⁴⁵

143. See *UN Counterterrorism Framework: Key Programs and Tools*, CHARITY & SEC. NETWORK (May 1, 2013), http://www.charityandsecurity.org/analysis/UN_Counterterrorism_Framework_Key_Programs_and_Tools (“After 9/11, many UN members expressed concern that the Security Council led counterterrorism framework was usurping the authority of the General Assembly and largely limiting its focus to security measures. In response, the General Assembly voted unanimously in September 2006 to adopt the UN Global Counter-Terrorism Strategy (Strategy), which advances a more holistic approach than the Security Council regime.”). In April 2005, in another nod to the importance of human rights, the then-United Nations Commission on Human Rights in its resolution 2005/80 decided to appoint, for a period of three years, a UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism. See Off. of the Comm’r on Human Rights, ¶ 14, Human Rights Res. 2005/80, U.N. Doc. E/CN.4/Res/2005/80 (Apr. 21, 2005). This mandate was subsequently assumed by the UN Human Rights Council in Apr. 3, 2006, and extended for one year, subject to the review to be undertaken by the Council in Human Rights Council decision 2006/102 (June 30, 2006). The UN Human Rights Council extended the mandate for a period of three years by Human Rights Council Res. 15/15, U.N. Doc. A/HRC/Res15/15 (Sept. 30, 2010), and further extended for another period of three years by Human Rights Council Res. 22/8, U.N. Doc. A/HRC/Res/22/8 (Mar. 21, 2013). To some extent this move toward more holistic approaches also derived from advocacy efforts with the human rights community itself: in the face of increasing violations of human rights in individual practices, as well as an overarching marginalization of human rights law and discourse, many in the human rights community directed efforts in the aftermath of 9/11 toward trying to have human rights respected and ensured in the fight against terrorism.

144. G.A. Res. 60/288, *supra* note 4.

145. In the US government, CVE has both a domestic and international component. See Fact Sheet, *supra* note 73; THE WHITE HOUSE, EMPOWERING LOCAL PARTNERS TO PREVENT VIOLENT EXTREMISM IN THE UNITED STATES (2011) (detailing the first US plan to counter violent extremism domestically); *Programs and Initiatives*, U.S. DEP’T OF STATE, <http://www.state.gov/j/ct/programs/index.htm#CVE> (last visited Jan. 17, 2016) (“CVE is a pillar of the Administration’s strategic approach to counterterrorism.”). In the United Kingdom, in July 2011, the government published the third version of its counter-terrorism strategy (CONTEST), which consists of four strands: *Pursue, Prevent, Protect and Prepare*. See generally SECRETARY OF STATE FOR THE HOME DEPARTMENT, PREVENT STRATEGY, 2011, Cm. 8092, (U.K.). According to the four-year *Prevent* strategy also released in 2011, *Prevent* seeks “to stop people becoming terrorists or supporting terrorism” and has three objectives: “respond to the ideological challenge of terrorism and the threat we face from those who promote it; prevent people from being drawn into terrorism and ensure that they are given

In particular, the new field of countering violent extremism means that national security practice began to “mov[e] further upstream to address root causes of extremist violence,”¹⁴⁶ increasingly touching and seeking to subsume traditionally feminized areas of practice or sectors where women have had critical roles, such as in highly localized and informal efforts to ensure peace or to build community resilience or in the development of cooperative and trust-based relationships between security institutions and civil society.¹⁴⁷ The field of countering violent extremism is also often styled as a long-term effort to address terrorism and violent extremism in contrast to States’ initial focus in the aftermath of 9/11 on the immediate tasks of enhancing capacity and undertaking measures in the areas of law enforcement, investigation, and prosecution.¹⁴⁸ This widening of the understanding of what constitutes national security policy and practice, as well as the emphasis on developing preventive, long-term, local, and context-specific strategic approaches,¹⁴⁹ notionally created greater space for the incorporation of women’s rights issues, as well as greater attention to promoting women’s participation, including in their families, communities, educational institutions, and public sector. Additionally, as discussed above, under these more holistic approaches, contemporary national security practices have also increasingly stressed the need to counteract the dehumanization of victims of terrorism.¹⁵⁰ This focus on victims has provided an additional key opportunity for incorporation of those

appropriate advice and support; and work with a wide range of sectors and institutions . . . where there are risks of radicalisation. . . .” *See id.* at 6, 40.

146. Holmer, *supra* note 12, at 2.

147. *See id.* and *supra* notes 72, 82, and 162 and accompanying text; *see also Good Practices on Community Engagement and Community-Oriented Policing as Tools to Counter Violent Extremism*, *supra* note 12, at 4 (Good Practice 5). The OSCE has similarly produced detailed guidance on this mainstreaming of gender and the inclusion of women in community policing as a CVE tool. *See* PREVENTING TERRORISM AND COUNTERING VIOLENT EXTREMISM AND RADICALIZATION THAT LEAD TO TERRORISM: A COMMUNITY-POLICING APPROACH, *supra* note 72, at 142–45.

148. *See, e.g.*, U.N. Doc. A/68/841, *supra* note 6, ¶ 20.

149. *See, e.g.*, *Good Practices on Community Engagement and Community-Oriented Policing as Tools to Counter Violent Extremism*, *supra* note 12, at 1 (“[L]ocally-relevant CVE initiatives are central to the success of any strategy.”); Fact Sheet, *supra* note 73 (“The underlying premise of the approach to countering violent extremism in the United States is that (1) communities provide the solution to violent extremism; and (2) CVE efforts are best pursued at the local level, tailored to local dynamics, where local officials continue to build relationships within their communities through established community policing and community outreach mechanisms.”).

150. *See supra* note 51 and accompanying text.

feminist perspectives—particularly of those feminists opposing “Muslim fundamentalism”¹⁵¹—that stress the pervasiveness of terrorist violence against women and define addressing such violence as a core component of counter-terrorism, and indeed international law more broadly.

In particular, women, peace, and security issues, and the participation of women peace-builders have been given heightened attention within this broader and more localized approach to countering terrorism and violent extremism.¹⁵² This conjoining derives in large part from the understanding of the close nexus between conflict and terrorism in contemporary national security discourse and practice. As reflected in early feminist accounts, initial State responses in the immediate aftermath of the events of 9/11 unequivocally placed both terrorism and counter-terrorism within a conflict paradigm, leading to the preference for a militarized responses to terrorism, rather than alternate approaches that emphasized law enforcement and/or human rights. While thinking and practice on the conflict-terrorism nexus has evolved and become somewhat more nuanced in the intervening years,¹⁵³ there is still a strong commitment to addressing the “peace and security dimensions of counter-terrorism,”¹⁵⁴ particularly through activities addressed at conflict resolution and prevention under Pillar I of the UN Global Counter-Terrorism Strategy,¹⁵⁵ as well as through the promotion of

151. See, e.g., *Remembering the Other's Others*, *supra* note 101; *Terror/Torture*, *supra* note 109.

152. See generally *Feminism as Counter-Terrorism*, *supra* note 4 (identifying a series of convergences between “international conflict feminism” and counter-terrorism discourse and practice).

153. See, e.g., S.C. Res. 2195, preambular ¶ 16 (Dec. 19, 2014) (“*Emphasizing* that the combined presence of terrorism, violent extremism, and transnational organized crime may exacerbate conflicts in affected regions . . . and *noting* that terrorist groups benefiting from transnational organized crime can, in some cases and in some regions, complicate conflict prevention and resolution efforts.”); U.N. Doc. A/68/841, *supra* note 6, ¶ 21 (“Terrorism is increasingly a factor in areas of conflict, and awareness of the Strategy and an understanding of terrorism are especially important for peacekeeping, special political and other United Nations support missions in conflict and post-conflict environments where terrorism and terrorist tactics remain evident.”).

154. U.N. Doc. A/68/841, *supra* note 6, ¶ 22.

155. *Id.* ¶¶ 22, 27, 34, 36-37, 47 (noting that under Pillar I’s focus on “[p]reventing and resolving conflicts” there are a number of activities that seek to address the intersections of peace and security with counter-terrorism and CVE, including “strengthening fragile democratic transitions and transforming confrontation into dialogue”; enhancing “national capacities for conflict prevention to strengthen the resilience of societies”; utilizing “systematic conflict analysis” to “inform the design and execution of preventive measures to

human rights under its Pillar IV.¹⁵⁶ In addition to the opportunities for overlap deriving from States' ongoing attachment to the conflict-terrorism nexus, such a conjoining was facilitated by the parallel ascendancy of the women, peace, and security agenda at the UN Security Council from 2000 onward.¹⁵⁷ The fact that "international conflict feminism" and counter-terrorism share both a "security paradigm" and "rule of law framework," has meant that such an ascendancy of "international conflict feminism" was readily "allied not only with intervention, but also the post-intervention push for nation-building institutional arrangements that pay homage to the intervening powers and/or serve their interests."¹⁵⁸ Additionally, as has been noted in some feminist engagement with security studies and particularly the concept of "human security," the traction gained by the women, peace, and security agenda owes much to the salience of the human security framework which informed and then subsequently securitized the agenda, as well as women and women's issues more broadly.¹⁵⁹ Accordingly, in the immediate post-9/11 environment, it was those women's organizations that were "already oriented toward security"—including because of their work on the women, peace, and security agenda—that had the opportunity to become more prominent than other women's groups.¹⁶⁰ This trend toward overlapping of

counter the emergence of radicalization and violent extremism"; and giving peace operations "disarmament, demobilization and rehabilitation mandates where the armed groups to enter the programmes sometimes have terrorist links").

156. *Id.* ¶ 22.

157. Additionally this conjoining is facilitated by the prevention pillar of UNSCR 1325, pursuant to which one of the four goals or outcomes is that "[i]nternational, national and non-State security actors are responsive to and held to account for any violations of the rights of women and girls, in line with international standards." See UN Secretary-General, *Women and Peace and Security*, at annex 35, U.N. Doc. S/2010/498 (Sept. 28, 2010). There are three indicators for voluntary reporting by Member States to meet this goal. See *id.* ("Percentage of reported cases of sexual exploitation and abuse allegedly perpetrated by uniformed, civilian peacekeepers and/or humanitarian workers that are acted upon out of the total number of referred cases."); *id.* at 36 ("Extent to which measures to protect women's and girls' human rights are included in directives issued by heads of military components and heads of police components of peacekeeping missions."). Indicator 5(b) specifically refers to national security. See *id.* ("Extent to which measures to protect women's and girls' human rights are included in national security policy frameworks).

158. *Feminism as Counter-Terrorism*, *supra* note 4, at 133.

159. See generally NATALIE FLOREA HUDSON, GENDER, HUMAN SECURITY AND THE UNITED NATIONS: SECURITY LANGUAGE AS A POLITICAL FRAMEWORK FOR WOMEN (2010) [hereinafter GENDER, HUMAN SECURITY AND THE UNITED NATIONS].

160. See Julie Mertus, *Road Blocks, Blind Spots, Speed Bumps: A Feminist Look at the Post-9/11 Landscape for NGOs*, in FEMINIST PERSPECTIVES ON CONTEMPORARY INTERNATIONAL LAW: BETWEEN RESISTANCE AND COMPLIANCE, *supra* note 7, at 98, 103.

women, peace, and security and counter-terrorism was formally addressed by the UN Security Council in October 2013 when it explicitly conjoined actions pursuant to UNSCR 1325 with counter-terrorism efforts in its UNSCR 2122, which expressed its intention to incorporate women, peace, and security issues in all relevant thematic areas of work on its agenda, including in threats to international peace and security caused by terrorist acts.¹⁶¹ This conjoining then spurred a series of institutional acknowledgements of the overlap within the UN Security Council,¹⁶² UN General Assembly,¹⁶³ and UN Human Rights Council,¹⁶⁴ which have also stressed the need for women's participation as a core component of efforts to counter terrorism and violent extremism. Very occasionally, women, peace, and security issues—particularly those concerning violations of women's rights and sexual violence—have also been integrated into counter-terrorism sanctions regimes.¹⁶⁵

Finally, it has been increasingly and more recently argued that gender inequality and/or women's insecurity writ large—as opposed to specific violations of rights as in the case of trafficking in persons or of women's rights under the Taliban in Afghanistan—is a threat to national security, such that the promotion of gender equality should itself be considered a counter-terrorism measure.¹⁶⁶ This approach recasts “feminism” as a counter-terrorism strategy.¹⁶⁷ It is most readily encapsulated in the emphasis on women's rights promotion as not just being the “right” thing to do, but also the “smart” thing from

161. S.C. Res. 2122, *supra* note 33, ¶ 3.

162. S.C. Res. 2178 *supra* note 12, ¶ 16; S.C. Res. 2195, *supra* note 153, preambular ¶ 14; S.C. Res. 2242, *supra* note 33, ¶ 11; S.C. Res. 2250 ¶ 16 (Dec. 9, 2015). In particular, of these UN Security Council Resolutions, UNSCR 2242 pays the most detailed attention to the roles of women in violent extremism and its response, *see* S.C. Res. 2242, *supra* note 33, ¶¶ 11-13, and calls for “greater integration” of the women, peace, and security, and counter-terrorism and countering violent extremism agendas, *see* S.C. Res. 2242, *supra* note 33, ¶ 11. *See also* Statement of the President of the Security Council, U.N. Doc. S/PRST/2014/21 ¶ 11 (Oct. 28, 2014).

163. G.A. Res. 68/276, *supra* note 4, preambular ¶ 20.

164. U.N. Doc. A/HRC/30/L.25/Rev.1 ¶ 4 (Oct. 1, 2015).

165. *See, e.g.*, U.N. Doc. S/2014/693, *supra* note 53, ¶ 9.

166. *See generally* Barbara Ehrenreich, *A New Counterterrorism Strategy: Feminism, in STOP THE NEXT WAR NOW: EFFECTIVE RESPONSES TO VIOLENCE AND TERRORISM* 78 (Medea Benjamin and Jodie Evans, eds., 2005) (advocating for supporting human rights for women and girls in order to combat terrorism in areas where “extremist Islamic insurgency” is prevalent); *Terror/Torture*, *supra* note 109, at 49.

167. *See, e.g.*, Ehrenreich, *supra* note 166, at 78 (“So here in one word is my new counterterrorism strategy: feminism.”).

a security perspective, reflecting an instrumentalist approach to women's rights advocacy that can be traced to early feminist concerns about gain reversal in the aftermath of 9/11 and the need to keep women's rights, and women, on and at the table.¹⁶⁸ This approach is one particularly championed by Western governments, most ardently by the United States, and it often draws its support from explicit reference to the women, peace, and security agenda rather than, for example, references to human rights obligations concerning women's non-discriminatory participation in all forms of public life.¹⁶⁹ Indeed, this particular framing extrapolates from one of the core rationales for promoting women's inclusion and gender mainstreaming in peace, and security more broadly: the idea that "peace is inextricably linked with equality between men and women."¹⁷⁰ As such, efforts to link gender equality and countering violent extremism also tend to stress

168. See, e.g., GENDER, HUMAN SECURITY AND THE UNITED NATIONS, *supra* note 159, at 31 (noting that securitization of an issue enables greater allocation of resources).

169. See, e.g., *Hearing on Nominations: Before the S. Comm. on Foreign Relations*, 111th Cong. 2 (2009) (statement of Melanne Verveer, Ambassador-at-Large-Designate for Global Women's Issues), <http://foreign.senate.gov/imo/media/doc/VerveerTestimony090324p.pdf>; *International Violence Against Women: Stories and Solutions: Hearing Before the Subcomm. on Int'l Orgs., Human Rights, and Oversight of the H. Comm. on Foreign Affairs*, 111th Cong. 1 (2009) (statement of Melanne Verveer, Ambassador-at-Large, Office of Global Women's Issues); Hillary Rodham Clinton, Sec'y of State, Remarks at the 10th Anniversary of UN Security Council Resolution 1325 on Women, Peace and Security (Oct. 26, 2010), <http://www.state.gov/secretary/rm/2010/10/150010.htm>; Hillary Rodham Clinton, Sec'y of State, Remarks at the Women in the World Stories and Solutions Summit (Mar. 11, 2011), <http://www.state.gov/secretary/rm/2011/03/158220.htm>; Dep't of State, Fact Sheet: The United States and UN Security Council Resolution 1325: Promoting the Political Participation of Women in All Aspects of Peace and Security (Oct. 26, 2010), <http://www.state.gov/r/pa/prs/ps/2010/10/150006.htm>; Rahim Kanani, *An In-depth Interview with Melanne Verveer, U.S. Ambassador-at-Large for Global Women's Issues*, HUFFINGTON POST (Mar. 10, 2011), http://www.huffingtonpost.com/rahim-kanani/melanne-verveer-us-ambassador-at-large_b_833073.html; Mark Landler, *A New Gender Agenda: Interview with Hillary Clinton*, N.Y. TIMES MAG., Aug. 21, 2009, at MM 41; Juan Lozano, *Clinton Champions Women's Rights Worldwide*, HOUSTON CHRON. (Mar. 27, 2009), <http://www.chron.com/dispatch/story.mpl/metropolitan/6347110.html>; Barack Obama, Remarks by the President at the Summit on Countering Violent Extremism (Feb. 19, 2015), <https://www.whitehouse.gov/the-press-office/2015/02/19/remarks-president-summit-countering-violent-extremism-february-19-2015> ("And as we go forward, let's commit to expanding education, including for girls. Expanding opportunity, including for women. Nations will not truly succeed without the contributions of their women."); Press Release, White House, Fact Sheet: "A Moment of Opportunity" in the Middle East and North Africa (May 19, 2011), <http://m.whitehouse.gov/the-press-office/2011/05/19/fact-sheet-moment-opportunity-middle-east-and-north-africa>; Melanne Verveer, Ambassador-at-Large for Global Women's Issues, Women, Peace and Security (Apr. 7, 2011), <http://www.state.gov/s/gwi/rls/rem/2011/161196.htm>; WHITE HOUSE, NATIONAL SECURITY STRATEGY 38 (2010), http://www.whitehouse.gov/sites/default/files/rss_viewer/national_security_strategy.pdf.

170. Mlambo-Ngcuka & Coomaraswamy, *supra* note 112.

that gender inequality is a sign of at-risk communities, such that it “is no coincidence that in societies and communities where gender equality indicators are higher, women are less vulnerable to the impacts of violent extremism,”¹⁷¹ and to call for women’s engagement on the basis that “an increase in women empowerment and gender equality has a positive effect on countering extremism, as it does similarly in peace building.”¹⁷² Feminists opposing “Muslim fundamentalism” have also again been particularly key allied voices in this form of conjoining by emphasizing the impact of some terrorist violence against women, but also the broader need for international law and lawyers to mobilize a response that fully addresses these impacts and discontinues its deference to purportedly competing human rights norms (e.g., the rights of male victims of counter-terrorism or of freedom of religion).¹⁷³

These efforts to converge women’s rights and national security have had a series of consequences for the international landscape on gender norms. An account of these impacts necessarily draws on those rich feminist legal analyses that have queried the normative damage that is done to women’s rights as it has moved from international law’s margins to its mainstream, particularly through the ascendance of women, peace, and security agenda in the UN Security Council,¹⁷⁴ but also in other areas where “governance feminism” has

171. *Id.* (“Overwhelming evidence from around the world shows that women’s empowerment is a powerful force for economic growth, social and political stability, and sustainable peace.”).

172. See Krista London Couture, *A Gendered Approach to Countering Violent Extremism: Lessons Learned from Women in Peacebuilding and Conflict Prevention Applied Successfully in Bangladesh and Morocco*, FOREIGN POL’Y: BROOKINGS viii (2014), <http://www.brookings.edu/~media/research/files/papers/2014/07/30-gender-conflict-prevention-countering-violent-extremism-couture/women-cve-formatted-72914-couture-final2.pdf>. See further PREVENTING CONFLICT, TRANSFORMING JUSTICE, SECURING THE PEACE, *supra* note 61, at 227 (recognizing the link but concluding that “[i]ncreasing recognition of women’s participation and empowerment should not be part of counter-terrorism strategies but a part of the civilian peace agenda.”).

173. See, e.g., *Remembering the Other’s Others*, *supra* note 101, at 636; *Terror/Torture*, *supra* note 109; *supra* note 108 and accompanying text.

174. See, e.g., O’Rourke, *supra* note 34; *A Sign of “Weakness”?*, *supra* note 34, at 162 (“If the transformative goals of international women’s peace movements are not being furthered by the increased participation of women in conflict-related decision-making, then whose project is being advanced?”); Dianne Otto, *The Exile of Inclusion: Reflections on Gender Issues in International Law over the Last Decade*, 10 MELB. J. INT’L L. 1, 2 (2009) [hereinafter *The Exile of Inclusion*] (analyzing the consequences of the UN Security Council’s adoption of the women, peace, and security agenda for “the long feminist struggle to utilise international law to promote and protect women’s rights and gender equality, and to secure

had traction, such as in the area of international criminal law and sex trafficking.¹⁷⁵ Other areas of feminist inquiry that emphasize the role of women's rights in servicing repressive international policy responses in counter-terrorism and practice¹⁷⁶ are also particularly salient here. Applying these insights illuminates some outcomes for gender norms and international law in the post-9/11 era as follows.

The first such outcome, as mentioned above, is that the conjoining has given traction to some areas of protection for women's rights and not others. In this respect, it is not a coincidence that two of the women's rights issues that have arguably gained most prominence in the post-9/11 era—the women, peace, and security agenda, and anti-trafficking efforts—are ones that governments perceived to have had a national security nexus or at least a very ready overlay with national security objectives and practices. Significantly, both of these areas were in nascent stages at the time of the events of 9/11—UNSCR 1325 had been adopted on October 31, 2000 and the first comprehensive international anti-trafficking instrument (the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (the “UN Trafficking Protocol”)) on November 15, 2000.¹⁷⁷ The evolving and more omnipotent national security environment fundamentally shaped the norms underpinning these frameworks; for example, I have detailed elsewhere the impact of this timing and the perceived trafficking-terror nexus on favoring a securitized rather than human rights-based approach to trafficking in persons that focused on enhancing border controls and criminal responses to the phenomenon of transnational sex trafficking of foreign women.¹⁷⁸

peace.”); *Power and Danger*, *supra* note 1 (assessing whether the UN Security Council's adoption of a series of thematic resolutions on women, peace, and security confirms the account of “governance feminism”).

175. *See, e.g.*, Halley et al., *supra* note 2, at 347-60 (addressing governance feminism and sex trafficking in the 1980s and 1990s).

176. *See generally* Kapur, *supra* note 7; *Feminism as Counter-Terrorism*, *supra* note 4; *supra* note 38 and accompanying text. For the perspectives of feminist engagements with security studies *see, e.g.*, ANNICK T. R. WIBBEN, *FEMINIST SECURITY STUDIES: A NARRATIVE APPROACH* 84-85 (2011) (arguing of the risk of securitization of areas such as human rights through the discourse of human security). *Cf.* Tripp, *supra* note 13 (arguing that the framework of human security creates openings for feminist contributions).

177. UN Trafficking Protocol, *supra* note 30.

178. *See Unpacking the Trafficking-Terror Nexus*, *supra* note 40 and accompanying text.

However, the women, peace, and security, and anti-trafficking agendas, have also serviced counter-terrorism and national security objectives. For example, for many years in the aftermath of 9/11, the dual rise of the women, peace, and security agenda and counter-terrorism discourse and practice worked hand-in-hand to preference the use of a securitized and conflict-based paradigm (as opposed to a law enforcement or human rights one) as the core lens through which to approach pressing issues in global governance. Such securitization and protectionist approaches required and invest heavily in images of gendered victimhood,¹⁷⁹ which the anti-trafficking and women, peace, and security regimes also supplied.¹⁸⁰ Securitized approaches to these areas have given staying power to images of women as vulnerable and requiring of States' protectionist policies; as such, one core outcome of situating women's rights in a national security framework has been a preference for conflict-based (e.g., in the case of women, peace, and security) or criminalized (e.g., in the case of trafficking) responses to issues of concern to women that primarily emphasize their gendered vulnerability (e.g., as victims of trafficking, terrorism, and conflict) at the hands of foreign men. To the extent that some feminist approaches have then dovetailed with national security agendas and utilized gendered images of vulnerability, this confirms the propensity of "governance feminism" to promote State-centered, law and order, or criminalized responses.¹⁸¹

Evolutions in contemporary national security practice toward more holistic approaches tend to continue these risks of securitization. While the exact relationship between counter-terrorism and countering violent extremism is not universally accepted (e.g., some argue that the latter is a "subset" of counter-terrorism policy and practice, others argue that it is an "evolution")¹⁸² it is clear that "CVE emerged from and does, for the most part, remain parked—programmatically and conceptually—in the international and national security policymaking community as part of a broader effort to counter terrorism."¹⁸³ The result is that despite its more holistic character and the emphasis on human rights noted above, the field of

179. See, e.g., Heathcote, *supra* note 7, at 297.

180. See *supra* notes 83 and 141 and accompanying text.

181. Halley et al., *supra* note 2, at 341 (noting that "governance feminism" successes are "very state-centered, top-down" and that it "emphasizes *criminal* enforcement.") (emphasis in original).

182. Holmer, *supra* note 12, at 2.

183. *Id.*

CVE it is still, at its core, a security discourse and policy framework in which human rights play a secondary and enabling role.¹⁸⁴ It is also a framework that in many contexts has had a disproportionate focus and discriminatory impact on Muslim communities with distinct gender and human rights consequences that I explore further below.¹⁸⁵

This securitization of women's human rights concerns is closely accompanied by another, second normative feature of women's rights in the post-9/11 era: the risk of instrumentalization¹⁸⁶ and narrowing of opportunities to develop and implement gender norms, as well as the prospects for inclusive feminist approaches. Such instrumental approaches to international law protections—meaning those that approach gender norms and women's rights primarily, or even solely, through a lens of countering terrorism or countering violent extremism—can undoubtedly be seductive,¹⁸⁷ having particular salience for those feminist approaches that feared marginalization and irrelevancy in the immediate aftermath of the events of 9/11. On one level, it is indeed easy to see the appeal in this approach; as well as being a tool for keeping women's rights in the spotlight, it is also true, for example, in practice, that many instances of gender equality organizing and advocacy by women's rights organizations and human rights defenders—including those working on women, peace, and security issues—do contribute upstream to creating the kind of resilient, tolerant, and peaceful societies to which contemporary national security policy and practice aspire. It may also be the case—as per the instrumentalist position—that gender equality has a net positive effect in countering terrorism and violent extremism.¹⁸⁸ However, it should be noted that strong empirical work on the latter is

184. See generally Amna Akbar, *National Security's Broken Windows*, 62 *UCLA L. REV.* 834 (2015) (analyzing the coercive aspects of the US government's community engagement strategy pursuant to its CVE program). A helpful parallel might also be drawn here with an observation made in some feminist approaches to security studies that efforts to integrate "human security" into policy-making in practice "do little to change the traditional security narrative" including because human security "focuses on incremental reform of the existing system": see WIBBEN, *supra* note 176, at 84, 85.

185. See *infra* note 192 and accompanying text; see also Aziz, *supra* note 80, at 214.

186. See, e.g., Jayne Huckerby, *The Complexities of Women, Peace, Security and Countering Violent Extremism*, *JUST SECURITY* (Sept. 24, 2015); PREVENTING CONFLICT, TRANSFORMING JUSTICE, SECURING THE PEACE, *supra* note 61, at 227-31; Tripp, *supra* note 13, at 12-13 (noting that the incorporation of women into State-based national security strategies risks their being used instrumentally to promote counter-terrorism efforts).

187. *Feminism as Counter-Terrorism*, *supra* note 4; Ni Aoláin, *supra* note 4, at 1116.

188. See generally Ehrenreich, *supra* note 166; *Terror/Torture*, *supra* note 109, at 49.

lacking, and ultimately irrelevant in principle if the promotion of international norms on gender equality is seen as an end in and of itself rather than a means to the end of countering terrorism and violent extremism.

However, despite these appeals, the trend toward securitization and instrumentalization of women's human rights has, to date, been both normatively damaging and disruptive of opportunities for effective organizing for women's rights. In particular, making women's rights of secondary importance in a broader counter-terrorism or countering violent extremism agenda opens up the possibility of bartering down or away women's rights and gender equality when such bartering is perceived to serve national security interests—a pattern that already has occurred in some existing countering terrorism and violent extremism practice and which undermines the inviolability of women's rights protections.¹⁸⁹ The risks to the legitimacy and viability of women's human rights advocacy are also acute. For example, women's rights advocacy that becomes “too closely associated” with Western national security agendas increases the threat of backlash against women's rights defenders or others seeking to implement gender equality norms.¹⁹⁰ In addition, framing women's rights and advocacy as a strategic element of national security policy, also means that security actors—including in many cases discriminatory, undemocratic, and unreformed security services—become the key interlocutors on the implementation of women's human rights, almost inevitably to their detriment.¹⁹¹ In many cases, such securitized engagement on issues of women's rights takes place in already racially, ethnically, and religiously marginalized communities, including those that have been previously targeted and adversely affected by counter-terrorism policies. Lessons from programs such as those in the United Kingdom

189. See U.N. Doc. A/64/211, *supra* note 93, at ¶ 36; Committee on the Elimination of Discrimination Against Women, *General Recommendation No. 30 on Women in Conflict Prevention, Conflict and Post-conflict Situations*, U.N. Doc. CEDAW/C/GC/30 ¶ 17 (Oct. 18, 2013) (recommending that States parties “(b) Reject all forms of rollbacks in women's rights protections in order to appease non-State actors such as terrorists, private individuals or armed groups”); A DECADE LOST: LOCATING GENDER IN U.S. COUNTER-TERRORISM, *supra* note 7, at 28, 207–08.

190. See PREVENTING CONFLICT, TRANSFORMING JUSTICE, SECURING THE PEACE, *supra* note 61, at 222; A DECADE LOST: LOCATING GENDER IN U.S. COUNTER-TERRORISM, *supra* note 7, at 26.

191. See, e.g., Jayne Huckerby, Open Briefing of the Counter-Terrorism Committee on The Role of Women in Countering Terrorism and Violent Extremism (Sept. 9, 2015).

where broad CVE programming sought to explicitly promote the engagement of Muslim women indicate that such programming increases alienation, discrimination, and harassment against Muslim women and creates a concern that the perspectives of minority women are only valued as they relate to the achievement of national security objectives.¹⁹² The rejection of such instrumentalized and securitized approaches—including through insisting on clarity on the dividing line between women’s rights and women, peace, and security, issues on the one hand, and countering violent extremism and terrorism, on the other—is a core challenge for feminist approaches to international law moving forward.¹⁹³

Additionally, efforts to conjoin women’s rights and national security, particularly under more holistic approaches that still nonetheless retain an overarching security orientation, have also sometimes led to a preference for norms outside of binding human rights treaty law—e.g., in UN Security Council Resolutions (on women, peace, and security) or transnational criminal law (e.g., the UN Trafficking Protocol)—as the preferred vanguard for women’s rights protections. In part, this turn away from the binding framework of international human rights law can be traced to an early distrust in a number of feminist accounts of the role of hard legal protections for ensuring gender equality. Such feminist accounts of international law scrutinized hard and soft law human rights guarantees, canvassing gender-neutral law for its gendered character and impacts,¹⁹⁴ as well

192. See, e.g., *Gender, Counter-Terrorism and International Law*, *supra* note 8; WOMEN AND PREVENTING VIOLENT EXTREMISM: THE U.S. AND U.K. EXPERIENCES, *supra* note 14; PREVENTING CONFLICT, TRANSFORMING JUSTICE, SECURING THE PEACE, *supra* note 61, at 222.

193. See generally Huckerby, *supra* note 186; PREVENTING CONFLICT, TRANSFORMING JUSTICE, SECURING THE PEACE, *supra* note 61, at 227-31 (recommending that governments should “[d]etach programming on women’s rights from counter-terrorism and extremism, and all military planning and military processes” and to “[p]rotect women’s and girls’ rights at all times and ensure that efforts to counter violent extremism strategies do not stereotype, instrumentalize or securitize women and girls”); *Good Practices on Women and Countering Violent Extremism*, *supra* note 53, at 1 (“The human rights of women and girls . . . should be promoted and protected at all times and not just as a means for CVE.”).

194. See Brooks, *supra* note 16, at 350–52 (analyzing the problematic assumption of international human rights law, including as embodied in CEDAW, that “‘maleness’ is the norm, and progress in gender equity will come only when women are treated ‘the same’ as men”); *Feminist Methods in International Law*, *supra* note 16, at 386 (noting that “the definition of human rights is limited and androcentric”); Hilary Charlesworth, *Feminist Ambivalence About International Law*, 11 INT’L LEG. THEORY 1, 5–6 (2005) (“Perhaps more than in any other area of international law, states have crafted many techniques to avoid implementing international norms relating to women in national legal systems. These

as querying the benefits of siloing women's rights into specialized instruments and institutions, including through a hard law, but highly-reserved and weak international human rights treaty in the form of the UN Convention on the Elimination of all Forms of Discrimination Against Women.¹⁹⁵ This feminist wariness of the importance of hard law human rights protections in ensuring women's rights was consolidated by the secondary role accorded to human rights in the post-9/11 era: evidenced both in the initial (and in many cases ongoing) challenges in getting States to observe human rights in countering terrorism and violent extremism (e.g., in detention practices), but also in the development of more instrumental approaches to human rights in "soft" countering terrorism and violent extremism approaches that have a tendency to emphasize human rights as a strategic tool rather than hard obligation. As such, efforts to conjoin gender issues and national security tend to emphasize the intelligence or security value of women's inclusion and gender mainstreaming over those formal legal norms (e.g., non-discrimination and gender equality) which arguably constitute binding treaty obligations for the same outcomes.¹⁹⁶ These factors, along with the invisibility of States' violations of women's human rights in the name of countering terrorism described above, are both symptomatic

techniques include extensive reservation toward CEDAW and the invocation of notions of 'local culture' as a reason not to accept the principle of women's equality with men."); Fionnuala Ní Aoláin, *Gendering the Declaration*, 24 MD. J. INT'L L. 335, 335 (2009) (identifying examples of gender "exclusions" embodied in the Universal Declaration of Human Rights). See generally Rebecca J. Cook, *Women's International Human Rights Law: The Way Forward*, 15 HUM. RTS. Q. 230, 261 (1993); Karen Engle, *International Human Rights and Feminism: When Discourses Meet*, 13 MICH. J. INT'L L. 517 (1992).

195. *Feminist Approaches to International Law*, supra note 16, at 632–34; *Not Waving but Drowning*, supra note 123, at 1. Such feminist critiques of international human rights also queried the extent to "which the acquisition of legal rights advances women's equality," in the face of massive inequality and discrimination in practice, as well as a series of inherent biases within the international human rights system that ultimately undermined even those formal legal gains in women's rights. See *Feminist Approaches to International Law*, supra note 16, at 634; Stark, supra note 28, at 699–700. As such, these accounts also identified and faulted a series of gendered asymmetries within the international human rights system that operate to the detriment of women's substantive rights enjoyment; an example often given is international human rights law's traditional preference for civil and political rights over economic, social, and cultural rights, where the latter can have particular resonance for women. See *Feminist Approaches to International Law*, supra note 16, at 635. Still other asymmetries result from perceived conflicts between women's rights and other human rights guarantees, e.g., the right to freedom of religion, which are often resolved in favor of the competing right of which the primary beneficiaries are often men. See *id.* at 635–38.

196. See supra notes 72, 82, and 162 and accompanying text.

and generative of this decreased attention to the role of hard law obligations in protecting women's rights.

D. Feminist Methods and Fractured Feminisms

While the above sections primarily address the normative impacts of the post-9/11 environment on gender equality and women's rights, it is also important to make some further observations about how that environment has affected the possibilities for transnational and inclusive feminist organizing, as well as other feminist methods in international law. What stands out in a review of this environment is the extent to which there is no single "global feminist" or "global feminism" that dominates. While women have been notably absent, if not invisible,¹⁹⁷ in the trajectory of national security policy-making and practice from 9/11 to the present, some feminisms—"international conflict feminism," abolitionists capitalizing on the trafficking-terror nexus, those opposing "Muslim fundamentalism," and to some extent those perspectives advancing feminist analyses of women's engagement in terrorism and violent extremism—have had airtime in certain instances and at certain junctures. However, to the extent that there has been an involvement of such feminisms, it would be very difficult to describe the organizational style as "coalitional" or uniform, or evincing an identifiable representational practice—another core feature of "governance feminism"¹⁹⁸—stemming as each does from quite different foci and entry points in the terrain of contemporary national security practice and policy. Instead, explanations for both the engagement and resonance of these perspectives range from the intrinsic (e.g., a genuine concern about the real impacts of terrorism on women and girls) to the instrumental (e.g., as a strategy of some feminist voices concerned about the inattention to women's rights in an era dominated by national security actors and seeking a hook to ensure women's issues remain on the agenda in the altered policy-making space)—or in some cases, a mixture of the two. These perspectives also often mobilize opposite or competing gendered

197. See, e.g., Ni Aoláin, *supra* note 4, at 1086.

198. See, e.g., *Rape at Rome*, *supra* note 2, at 3 (identifying feminists' organizational style in support of the development of the international criminal tribunals during the course of the 1990s as "coalitional"); see also *id.* at 6 ("Feminism working on sexual violence in IHL and ICL in the 1990s, especially the part of it that worked on the big tribunal-establishing statutes, was nearly consolidated in its feminist ideology and in its goals.").

images. For example, for feminists combating “Muslim fundamentalism,” a key emphasis has been on portraying terrorism as the antithesis of gender equality and, often, stressing the status of women as victims.¹⁹⁹ Such approaches dovetail neatly with governments’ emphasis on the idea of women’s vulnerability and lack of agency as a justification for counter-terrorism, particularly on behalf of women in the Global South. However, at the same time, other perspectives—particularly those analyzing the complex array of motivations of women for joining or supporting terrorist and violent extremist organizations—can emphasize women’s agency, as well as the various roles women play in terrorist organizations. An additional layer that complicates a portrait of feminist homogeneity is that often, as discussed above, the impetus for women’s inclusion and gender mainstreaming has come from national security actors, particularly in the context of contemporary security practice.²⁰⁰ This move without more is suggestive more of “cooption” than “governance feminism.”²⁰¹

In addition to differing perspectives amongst these feminisms, there has also been a notable absence of a number of key feminists and feminism engaging in either the formation or critique of evolving practices in countering terrorism and violent extremism from a legal perspective, particularly after the initial crisis moment represented by the events of 9/11. For some this absence derives from an unease of how the feminist project could be used or co-opted to support military or more broadly coercive actions.²⁰² In practice, however, the absence of a number of feminist voices from national security discourse and practice can also in part be attributed to a perceived lack of relevant expertise on the topic, particularly when counter-terrorism and countering violent extremism was dominated by “hard” security measures such as military, law enforcement, and intelligence action. The notion of installing feminism as authority which features prominently in the “governance feminism” literature—the idea that a

199. See, e.g., *Remembering the Other's Others*, *supra* note 101; *Terror/Torture*, *supra* note 109; *supra* note 108 and accompanying text.

200. See *supra* notes 72, 82, and 162 and accompanying text.

201. *The Exile of Inclusion*, *supra* note 174, at 13 (“[I]nstitutional reception and management of feminist ideas works to divest them of their emancipatory content, and therefore prefer to depict the result as ‘cooption’ rather than ‘governance feminism’, which implies the result is intentional.”).

202. For examples of this unease, see Kapur, *supra* note 7; *Feminism as Counter-Terrorism*, *supra* note 4; *supra* note 38 and accompanying text.

key methodology and entry point of feminism has been the elaboration of feminism as expertise—simply does not find a parallel in the post-9/11 legal and institutional landscape. The result has been an array of normative silences in areas that the gaze of feminism would have otherwise surfaced. For example, unlike the achievement of “governance feminism,” in ensuring international humanitarian law and international criminal law explicitly addressed the “distinctive harms that women suffer in armed conflict,”²⁰³ feminist approaches—with few exceptions—have been woefully late and inadequate in raising the visibility of the gendered effects of State’s counter-terrorism measures.²⁰⁴

Additionally, a number of other features of the post-9/11 environment have fractured the opportunities for transnational and inclusive feminist organizing, particularly by reinforcing—and in some case creating—hierarchies among different women and women’s organizations. In large part, these hierarchies derive from the idea of feminism-as-counter-terrorism. The argument that gender equality should be deployed as a counter-terrorism tool is at its core about Western governments seeking to shore up their own domestic security by promoting women’s rights not so much within their own territories, but instead, within other States’ domestic jurisdictions. Under this approach, the domestic prerogatives of one State are used to throw open the “black box”²⁰⁵ of another’s domestic affairs to scrutinize deeply local contexts and to assess the potential roles that foreign women can play in combating violent extremism. It is within this framework, for example, that local women’s organizing on confronting oppressive policies within the context of religion,²⁰⁶ begins to be viewed less as an organic, localized, human rights effort and more as a potential part of a broader and structured counter-terrorism policy to increase the security of the Global North. Such an approach reinforces hierarchies amongst women’s rights, because it implies that the human rights of foreign women—including immigrant women in the West—only matter to the extent that they

203. *Rape at Rome*, *supra* note 2, at 123.

204. *See supra* notes 107–12 and accompanying text.

205. *See* Brooks, *supra* note 16, at 348.

206. *See* Madhavi Sunder, *Piercing the Veil*, 112 *YALE L.J.* 1399 (2003) (identifying ways in which local Muslim women activists are challenging oppressive laws and practices and pursuing equality within the framework of religion).

can be of service to ensuring the security of majority women in Western countries.²⁰⁷

Compounding this splintering are other features of counter-terrorism practice, in particular anti-terrorism financing rules, which have reinforced “top down” approaches to feminist advocacy in the post-9/11 era. In particular, counter-terrorism financing rules have narrowed the operating space and resources available for small, local women’s organizations: such rules, by their nature are gender-discriminatory and in practice, cut off funding women’s organizations.²⁰⁸ In this environment, donors also increasingly prefer to “channel funds via large organizations (including consultancies)” meaning that “direct access to funding is getting more difficult for women’s organizations.”²⁰⁹ In still other cases, the politicization of counter-terrorism discourse and practice can mean that those smaller women’s organizations that are eligible to receive such grants may reject the terms of the grant (such as those requiring extensive due diligence on partners) as a matter of principle.²¹⁰ In addition to having to work through bigger organizations, counter-terrorism measures have meant that women’s organizations are also often forced to engage in an array of adaptive behavior that places great strain on their work, including by “[k]eeping a low profile in regards to certain activities, or dropping of some programs.”²¹¹ Against a backdrop of these changes that have been wrought by the national security landscape in the long shadow of 9/11, certain feminist methods designed to take into account women’s diverse experiences (e.g., “world traveling,” that requires “multicultural dialogue and a shared

207. See generally Cyra Akila Choudhury, *Empowerment or Estrangement?: Liberal Feminism’s Visions of the “Progress” of Muslim Women*, 39 U. BALTIMORE. L. Forum 153, 153 (2009) (“The last decade and a half has seen a burgeoning of transnational activism on behalf of women in the global South. With the continuing wars on terror and in Iraq, Muslim women’s oppression and the role of Islam in that oppression remain in the limelight.”). These patterns can reinforce already existing hierarchies amongst women. See, e.g., Stark, *supra* note 28, at 729 (citations omitted) (arguing that the “fragmentation of women’s human rights law” has been a “real boon for educated, middle-class women” and for those in the “global North”).

208. See *supra* notes 134–35 and accompanying text.

209. *Counterterrorism Measures and Their Effects on the Implementation of the Women, Peace and Security Agenda*, *supra* note 134, at 6.

210. See A DECADE LOST: LOCATING GENDER IN U.S. COUNTER-TERRORISM, *supra* note 7, at 75.

211. *Counterterrorism Measures and Their Effects on the Implementation of the Women, Peace and Security Agenda*, *supra* note 134, at 7.

search for areas of overlap, shared concerns and values”²¹²) simply falter, and the “spread of feminist ideas” shuts down rather than facilitates “new spaces for feminist activism.”²¹³

*CONCLUSION: FEMINISM, INTERNATIONAL LAW, AND
NATIONAL SECURITY MOVING FORWARD*

Terrorism, as well as counter-terrorism and countering violent extremism, are dominant features of the global landscape in the post-9/11 era. While there have been some feminist legal analyses of States’ national security responses, these tend to primarily address 9/11 and its immediate aftermath, including the conflicts of Afghanistan and Iraq, and have neither taken a long view on the aftermath of 9/11 nor kept pace with the more holistic approaches to countering terrorism and violent extremism that represent contemporary national security practice. Instead, the praxis with which almost all feminist international law accounts of national security have been concerned is the initial landscape of counter-terrorism in the aftermath of 9/11, comprising “hard,” *post hoc* military, law enforcement, and intelligence approaches addressed to the pursuit and apprehension of terrorists that privileged traditional and coercive security actions and actors. Contemporary national security practices that consist of more holistic and “soft” preventive measures that target the pre-criminal space and address conditions conducive to terrorism such as the dehumanization of victims, as well as the promotion of human rights—particularly through a new field of policy and activities known as countering violent extremism—have hitherto escaped feminist scrutiny. While the events of 9/11 and the immediate response were core antecedents for these contemporary practices, there are significant developments in the fields of countering terrorism and violent extremism of which there is insufficient account, particularly vis-à-vis its impact on the

212. See Isabelle R. Gunning, *Arrogant Perception, World-Traveling, and Multi-Cultural Feminism: The Case of Female Genital Surgeries*, 23 COLUM. HUM. RTS. L. REV. 189, 191 (1992). See generally *Feminist Methods in International Law*, *supra* note 16, at 383–85; Karen Engle, *Female Subjects of International Law: Human Rights and the Exotic Other Female*, 26 NEW ENG. L. REV. 1509 (1992); Nancy Kim, *Toward A Feminist Theory of Human Rights: Straddling the Fence Between Western Imperialism and Uncritical Absolutism*, 25 COLUM. HUM. RTS. L. REV. 49 (1993).

213. *The Exile of Inclusion*, *supra* note 174, at 14.

development and implementation of international law on gender equality.

The failure to attend to the impact of this broad and evolving national security environment on the capacity of international law and its institutions to address gender equality has been consequential. It has not meant that concepts of gender equality and feminism have not been considered within this evolving context, but rather that where they have been taken up it is in ways that favor certain feminist perspectives—“international conflict feminism,” abolitionists capitalizing on the trafficking-terror nexus, those opposing “Muslim fundamentalism,” and to some extent those perspectives advancing feminist analyses of women’s engagement in violent extremism—and not others, with consequences that are not always favorable to women’s rights. From heavy investments in gendered notions of women as victims of terrorism to the promotion of women’s participation in national security in ways that deploy a series of troubling gender stereotypes to the securitization and instrumentalization of gender equality itself as a counter-terrorism measure, the prospects for progressive feminist approaches to international law have been markedly narrowed. Compounding these effects that have flowed from national security’s uptake of women and gender equality are other normative consequences of this evolving and broadened national security landscape, including how a post-9/11 revival of international law’s formalism has reduced the discipline’s capacity to develop gender equality norms and to address State-based violations against women, while at the same time inculcating a steady preference for soft rather than hard, treaty law protections for women’s rights. Against this backdrop and in the current grey area that exists between “governance feminism” and feminism governed, the need for transnational and genuinely inclusive feminist organizing is particularly acute. At the same time, however, several features of the post-9/11 era—particularly the gender-discriminatory impacts of counter-terrorism financing rules—mitigate against such approaches. As such, this Article seeks to provide a starting point to inform an ongoing examination of feminism and international law in the post-9/11 era in ways that fully contemplate the future normative and political capacity of international law and international institutions to address gender equality.

With regard to developing that framework moving forward, this Article's examination of contemporary national security policy and practice demonstrates that the task of seeing women, and more broadly gender, reveals itself to be a much more complicated undertaking than only looking at women as victims of male terrorist violence or lamenting their absence in security decision-making. Instead, a feminist project or projects that seek to make gender concerns visible in the current national security context must consider at least four separate aspects as well as how each of these areas relate to each other: the human rights and gender issues at stake in women's engagement in and support of terrorism; the impact of terrorism and violent extremism on women and girls and gender equality; the roles of women and gender equality in countering terrorism and violent extremism, including through women's participation in security institutions; and the impact of counter-terrorism and countering violent extremism on women and girls. The last fourteen years in particular have been beset by feminist failures to authentically address these and other intersections of women's rights issues with terrorism and efforts at fighting its occurrence. These failures range from the continued impunity for terrorists who directly and differently target women and girls' security in conflict and post-conflict settings to failure to adopt gender-sensitive disarmament, demobilization, and reintegration programs for females involved in terrorism and violent extremism to gender-based abuses in the name of national security that frustrate the full implementation of the gender equality agenda.

In addressing such effects moving forward, it will be as important not to overstate how much countering violent extremism and terrorism is of concern to the women, peace, and security agenda and gender equality, and vice versa, as it will be to not downplay the overlaps. From insisting on clarity on the dividing line between the fields of countering violent extremism and women's rights advocacy to developing gender-sensitive prevention and response frameworks without unduly trading in images of women's vulnerability and victimhood, feminist approaches to international law in the post-9/11 era face a pressing challenge not just of ensuring women's rights are protected from incursion by either terrorists or State actors, but that women and the gender equality agenda more broadly are not squeezed between terror and counter-terror.