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*'The creation of UN Women'*

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## The creation of UN Women

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Hilary Charlesworth and Christine Chinkin

This working paper was first presented at the RegNet @10 Conference, at The Australian National University, Canberra, in March 2011. The work was carried out at: School of Law, University of New England, Armidale; and ANU College of Law, ANU, Canberra, ACT.

## THE NEW UNITED NATIONS “GENDER ARCHITECTURE”: The creation of UN Women

Hilary Charlesworth & Christine Chinkin

The notion of institutional coherence has dominated the agenda for reform of the United Nations (UN) in this century. Motivated by what he saw as the weakness of the fractured UN system, UN Secretary-General Kofi Annan led an ambitious reform program throughout his term of office (1996-2005) seeking to ensure greater UN effectiveness through streamlining institutional functions. This concern has been inherited by Secretary-General Ban Ki Moon. A significant development in the reform process has been the creation in 2010 of the UN Entity for Gender Equality and the Empowerment of Women, known as UN Women, which came into operation on 1 January 2011. UN Women incorporates four existing parts of the UN system dealing with women and has been styled as the new UN “gender architecture”.<sup>1</sup> In this article we consider the implications of this new structure for the situation of women worldwide from the perspective of international law. Is UN Women simply a bureaucratic rearrangement or is it greater than the sum of its parts?

We first describe the context of UN reform in which the objective of coherence plays a central role. We discuss the creation of UN Women from this perspective and sketch the histories of the agencies that it amalgamates. The establishment of UN Women unifies the patchwork of international structures dealing with women and offers the opportunity for greater institutional visibility of women’s lives. We then describe the normative architecture relating to women in international law and institutions, noting its fragmented, contested and contradictory quality. We argue that the creation of UN Women prioritised institutional coherence without adequate attention to the legal basis of women’s struggles for equality. It may have been assumed that the substantive framework is uncontroversial and settled or, alternatively, that any attempt at renegotiation could lead to a backlash and dilution of existing standards. In any event the goals of coherence, effectiveness and economic efficiency – the drivers of institutional reform – were detached from legal reform and norm development. We suggest that, without a strong normative direction, UN Women will do little to change the global status quo in which women’s inequality is a significant feature. We acknowledge that international institutions operate in a deeply politicised environment and are constrained in what they can achieve. Institutional reform can however encourage the development of international law<sup>2</sup> and the creation of the architecture of UN Women may allow the elaboration of, and advocacy for, a richer concept of equality to support women all over the world. This would give UN Women a view -- a normative direction and a capacity to challenge the boundaries of international law.

The creation of UN Women highlights what Olympe de Gouges identified in the eighteenth century as a critical issue for feminism: whether women’s rights are best protected through general norms and institutions or through specific norms and bodies

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<sup>1</sup> A. Rao, “Gender Equality Architecture and UN Reforms: For submission to the UN Secretary-General’s High Level Panel on System-wide Coherence by the Centre for Women’s Global Leadership and the Women’s Environment and Development Organisation”, in: H. Pietilä, *NGLS Development Dossier: The Unfinished Story of Women and the United Nations*, 2007, 133 et seq.

<sup>2</sup> Compare C. W. Jenks, “Co-ordination in International Organization: An Introductory Survey”, *BYIL* 28 (1951), 29 et seq. (32) with A. Orford, *International Authority and the Responsibility to Protect*, 2011.

focussing only on women.<sup>3</sup> The attempt to improve women's lives through apparently general mechanisms can allow women's concerns to be submerged in what are deemed more global issues; however, creating separate mechanisms for women can generate a women's ghetto with less power, resources, and priority. Moreover, international institutions tend to tame feminist ideas in translating them into institutional agendas. The transformative power of these concepts requires support and engagement from communities outside the institutions. It is not yet clear whether the creation of UN Women will allow more or less interaction with feminist communities supporting substantive accounts of women's equality.

## I. INSTITUTIONAL COHERENCE AS THE DRIVER OF UN REFORM

Although the need for reform of the UN has been raised from its inception,<sup>4</sup> formal amendment of the Charter<sup>5</sup> has been minimal<sup>6</sup> and successive restructuring campaigns have fizzled. There is a perpetual tension between those seeking to shore up the UN as a chamber for global governance and those keen to limit the UN's mandate to constrain national sovereignty.<sup>7</sup> Failure to achieve concrete results leads to repetitious cycles of reform and renewal, exacerbated by poor institutional memory and dispersed information.<sup>8</sup> Apparent reform initiatives can be deployed to preserve the *status quo*.<sup>9</sup> The reform cycle that produced UN Women appears to use the idea of coherence as a way of creating new structures with little consideration of their normative agenda, apparently assuming them to be fixed. Coherence becomes then a method of design that obscures the politics of the structures it creates, squeezing out the possibility of substantive change.

In 1997, the first year of his tenure, UN Secretary-General Kofi Annan launched a reform process that was to continue throughout his two terms and beyond. He described this as "the most extensive and far-reaching reforms in the fifty-two year history" of the UN.<sup>10</sup> Annan's 1997 Report on "Renewing the United Nations" identified institutional weakness in the fragmentation and rigidity of some of its organisational structures.<sup>11</sup> He

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<sup>3</sup> S. Kouvo, *Making Just Rights? Mainstreaming Women's Human Rights and a Gender Perspective*, 2004, 104.

<sup>4</sup> In October 1947, a study of the US Senate Expenditures Committee found the UN had "serious problems of overlap, duplication of effort, weak coordination, proliferating mandates and programs." E. Luck, *Reforming the United Nations: Lessons from a History in Progress*, 2003, 1; See also, E. Luck, "Principal Organs", in: T. Weiss & S. Daws (eds), *The Oxford Handbook on the United Nations*, 2007, 653 et seq.

<sup>5</sup> UN Charter, Arts. 108-109.

<sup>6</sup> The UN Charter has been amended three times. See, Question of equitable representation on the Security Council and the Economic and Social Council, A/RES/1991(XVII) A-B of 17 December 1963. Part A of the resolution decided, in accordance with Article 108 of the UN Charter, to expand Security Council membership from 11 to 15 members; Part B decided to expand the membership of ECOSOC from 18 to 27. In 1971, the General Assembly again decided to enlarge the membership of ECOSOC, this time to 54 members: Enlargement of the Economic and Social Council, A/RES/2847(XXVI) of 20 December 1971.

<sup>7</sup> See P. Alston, "The United Nations: No Hope for Reform?", in: A. Cassese (ed.), *Realizing Utopia: The Future of International Law*, 2012, 38 et seq.

<sup>8</sup> Report of the Joint Inspection Unit, *Some Measures to Improve Overall Performance of the United Nations System at the Country Level – Part I: A Short History of United Nations Reform in Development*, Doc. JIU/Rep/2005/2 Pt I, 2005 (Doris Bertrand), para. 28; See also, D. Kennedy, "A New World Order: Yesterday, Today and Tomorrow", *Transnat'l. & Contemp. Probs.* 4 (1994), 329 et seq.

<sup>9</sup> D. Kennedy, "When Renewal Repeats: Thinking Against the Box", *N.Y.U. J. Int'l L. & Pol.* 32 (1999-2000), 335 et seq. (465).

<sup>10</sup> UN Secretary-General, "Renewing the United Nations: A Programme for Reform", Letter of Transmittal to the President of the UN General Assembly, Doc A/51/950 of 14 July 1997.

<sup>11</sup> *Ibid.*, para. 12.

envisaged “an extensive and far-reaching set of changes [to] move the Organisation firmly along the road to major and fundamental reform.”<sup>12</sup> Annan commissioned a suite of high level panels to report to him on different aspects of reform, from internal management, peace operations, relations with civil society, to development. After consideration of the recommendations made by the panels, the Secretary-General had to take his proposals to the UN General Assembly, thereby shifting from an expert to a political process. This sectoral approach to reform was further politicised when it was overtaken by a number of scandals involving UN personnel,<sup>13</sup> as well as by the deep divisions between member states caused by the invasion of Iraq in 2003.

At the Millennium Summit in 2000 the General Assembly asserted its determination to “spare no effort” in making the Organisation “a more effective instrument” for the pursuit of the priorities it had enunciated, including by strengthening its organs and “adopting the best management practices”.<sup>14</sup> In response to what he termed a “decisive moment” for the UN, Annan established a High Level Panel on Threats, Challenges and Change, which reported in 2004.<sup>15</sup> The High Level Panel made 101 policy and institutional recommendations to make the UN more “effective, efficient and equitable.”<sup>16</sup> It emphasised the need for institutions to work better, for greater effectiveness and credibility, proposed changes to existing UN organs, including the General Assembly, the Security Council and the Economic and Social Council (ECOSOC), the abolition of the Commission on Human Rights (CHR) and the establishment of two new institutions, the Human Rights Council (to replace the CHR) and the Peacebuilding Commission. Kofi Annan’s response to the High Level Panel’s report called for its “integrated and co-ordinated” implementation.<sup>17</sup> He recalled the reform processes that he had set in train since 1997 and the measures he had introduced relating to coordination in the development and humanitarian fields and the work of the UN at the country level. Despite some progress, the Secretary-General observed that “the United Nations system as a whole is still not delivering services in the coherent, effective way that the world’s citizens need and deserve.”<sup>18</sup>

At its 2005 World Summit, the UN General Assembly resolved to strengthen the UN through “enhancing its authority and efficiency”<sup>19</sup> and reiterated its support for “system-wide coherence.”<sup>20</sup> However, as has consistently been the case in UN reform projects, political divisions curtailed the General Assembly’s adoption of the proposed reforms, in particular omitting any reform of the composition or competence of the Security Council. Indeed it has been suggested that Annan’s reform initiative was poorly conceived and doomed to failure because of his misjudgement that the UN’s problems could be resolved through institutional change.<sup>21</sup> In any event, seeking widespread reform through member state negotiation is a fraught process that opens up disagreement and risks backlash. The 2005 World Summit did tentatively endorse some

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<sup>12</sup> Ibid., para 6.

<sup>13</sup> E.g., P. A. Volcker/ R. J. Goldstone/ M. Pieth, Independent Inquiry Committee into the United Nations Oil-for-Food Program, *Manipulation of the oil-for-food Program by the Iraqi Regime*, 2005.

<sup>14</sup> 2000 United Nations Millennium Declaration, A/RES/55/2 of 18 September 2000.

<sup>15</sup> Report of the Secretary-General’s High-level Panel on Threats, Challenges and Change, *A More Secure World: Our Shared Responsibility*, Doc A/59/565 of 2 December 2004.

<sup>16</sup> See also Letter of Transmittal dated 1 December 2004 from the Chair of the High-level Panel on Threats, Challenges and Change addressed to the Secretary-General.

<sup>17</sup> UN Secretary-General, *In Larger Freedom: Towards Development, Security and Human Rights For All*, Doc. A/59/2005 of 21 March 2005.

<sup>18</sup> Ibid., para. 196.

<sup>19</sup> 2005 World Summit Outcome, A/RES/60/1 of 16 September 2005.

<sup>20</sup> Ibid., para. 169.

<sup>21</sup> E. Luck, “How Not to Reform the United Nations”, *Global Governance* 11 (2005), 407 et seq. (409).

normative principles such as the “responsibility to protect.”<sup>22</sup> Its abolition of the CHR rested on concerns of lack of credibility and politicisation as well as ineffectiveness. Overall, however, the language of Secretary-General Kofi Annan’s UN reform project had a managerial cast: reform is regarded as important to create coherence, accountability and transparency, ensuring smooth and cost-effective functioning and delivery of support at the national level. It is surprising, then, that his agenda for UN reform took some time to get to the tangle of UN bodies relating to women, given their institutional incoherence through their *ad hoc* development and overlapping mandates.

## II. THE UN’S WOMEN’S ARCHITECTURE

Women have been formally on the UN’s agenda since its inception in 1945. The UN Charter “reaffirm[ed] faith ... in the equal rights of men and women”<sup>23</sup> and declared that one of its purposes was promotion and encouragement of “respect for human rights and fundamental freedoms for all without distinction as to ... sex.”<sup>24</sup> Article 8 of the Charter stipulated that the UN should “place no restrictions on the eligibility of men and women to participate in any capacity and under conditions of equality in its principal and subsidiary organs.” These provisions were the result of energetic diplomacy by women delegates to the San Francisco Conference in 1945, and sustained lobbying by women’s non-government organisations (NGOs).<sup>25</sup>

Women’s participation in the UN was the initial focus. The issue of women being included in national delegations to the UN was raised at the first session of the UN General Assembly held in London in 1946. France proposed a declaration to encourage UN delegations to increase their “feminine participation,” in large measure as a form of recognition of women’s roles during the Second World War. Various countries spoke in support of the French proposal, although it was not adopted formally.<sup>26</sup> The General Assembly did however adopt a resolution on the political rights of women, recommending that Member States grant women the same political rights as men.<sup>27</sup> At the same session of the General Assembly, Eleanor Roosevelt, a member of the United States’ delegation, read out an “Open letter to the women of the world” prepared by the seventeen women who were either members of or advisers to eleven of the fifty-one UN member delegations. The letter noted the many tasks women had “performed so notably and valiantly during the war” and called upon governments “to encourage women everywhere to take a more active part in national and international affairs, and on women ... to come forward and share in the work of peace and reconstruction.”<sup>28</sup>

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<sup>22</sup> 2005 World Summit Outcome, see note 22, paras. 138-40; the language was repeated in S/RES/1973, para. 4 of 17 March 2011: “[T]o protect civilians and civilian populated areas under threat of attack”.

<sup>23</sup> UN Charter, preamble.

<sup>24</sup> UN Charter, Art. 1, para. 3. This was the first assertion in an international treaty of the prohibition of distinction on the basis of sex.

<sup>25</sup> M. Galey, “Forerunners in Women’s Quest for Partnership”, in: Anne Winslow (ed.), *Women, Politics and the United Nations*, 1995, 1 et seq. (6-8); A. S. Fraser, “Becoming Human: The Origins and Development of Women’s Human Rights”, *HRQ* 21, 1999, 853 et seq. (886).

<sup>26</sup> UN League of Nations Committee, Declaration on the Participation of Women in the Work of the United Nations: Report of the General Committee, Doc. A/PV.29 of 12 February 1946.

<sup>27</sup> Political Rights of Women, A/RES/56(I) of 11 December 1946.

<sup>28</sup> The open letter was drafted in meetings arranged by Eleanor Roosevelt over tea in her room at the Claridges Hotel. See, M. A. Glendon, *A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights*, 2001, 29. The letter acknowledges that not all women may agree that participation in public life is their most immediate concern, as some were not yet able to claim full citizenship in their home countries. Nevertheless, delegates and advisers set out four tasks for women: active participation to improve living standards in their own countries “so that there will be qualified women ready to accept responsibility when new opportunities arise”; raising their children “boys and girls alike, to understand world problems and the need for international cooperation, as well as the problems of their

Although women's lives remain disadvantaged compared to men's on most global indicators,<sup>29</sup> attention to women has wavered within the UN since this flurry of early activity. The major response to claims for international recognition of women's lives has been the creation of specialised institutions, through which there has been a steady, but fragmented, body of work, involving the negotiation of women-specific treaties, research into the condition of women, collection of data and statistics, and policy development.<sup>30</sup> The following sections outline the mandates of the specialised institutions responsible for this work.

## 1. The Commission on the Status of Women

The UN Commission on the Status of Women (CSW) was the first global institution assigned a mandate to make recommendations "on urgent problems requiring immediate attention in the field of women's rights."<sup>31</sup> It is a political body now comprising 45 UN member states. Although there were precedents in the Committee of Experts on the Legal Status of Women established by the League of Nations in 1937 (consisting of three men and four women)<sup>32</sup> and the Inter-American Commission on Women in 1928, the creation of CSW was the result of a battle within the UN General Assembly.<sup>33</sup> Brazil proposed a separate women's commission at the first General Assembly session, distinct from the CHR, which had been established in 1946.<sup>34</sup> The proposal was supported by many of the women delegates but roundly opposed by the US delegate, Virginia Gildersleeve. Gildersleeve argued that a separate women's commission would be discriminatory and unnecessary in that women's questions could be adequately dealt with by the CHR.<sup>35</sup>

This dispute was resolved through compromise between the two positions: the formation by ECOSOC of a sub-commission of the CHR devoted to women. However, at the urging of Bodil Begtrup, a Danish delegate and the first Chair of the Sub-commission on the Status of Women, ECOSOC adopted a resolution for the formation of a separate, free-standing functional commission on women in 1946.<sup>36</sup> This gave CSW formal status within the UN system. As a sub-commission it had been empowered to "submit proposals, recommendations and reports to the CHR regarding the status of women" and through the Commission to ECOSOC.<sup>37</sup> As an independent commission its reports and recommendations went directly to ECOSOC, thereby enabling it to determine its own timetable and agenda. CSW engaged with the work of the CHR, notably in the

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own countries"; not to allow themselves "to be misled by anti-democratic movements now or in the future"; and to accept that "the goal of full participation in the life and responsibilities of their countries and of the world community is a common objective toward which the women of the world should assist one another."

<sup>29</sup> UN Development Programme, *Human Development Report 2010*, 2010, 89, <<http://hdr.undp.org/>>.

<sup>30</sup> "The United Nations and the Advancement of Women 1945-1995", *The United Nations Blue Book Series*, Vol. VI, 1995, contains much of this work.

<sup>31</sup> Resolution establishing the Commission on the Status of Women, E/RES/2/11 of 21 June 1946.

<sup>32</sup> Pietilä, see note 2, 6; F. De Haan, "Women's Rights: A Brief Survey from 1945 to 2009", *UN Chronicle* XLVII (1) (2010), 56 et seq.

<sup>33</sup> Pietilä, see note 2, 15.

<sup>34</sup> Bertha Lutz, a member of the Brazilian delegation, had been a leading figure in the suffrage movement in Brazil and a delegate at the Pan-American Women's conference in Baltimore in 1922: See, J. Hahner, *Emancipating the Female Sex: The Struggle for Women's Rights in Brazil*, 1990.

<sup>35</sup> Fraser, see note 26, 886. Gildersleeve was supported by Eleanor Roosevelt on this point: See, D. Jain, *Women, Development and the United Nations*, 2005, 17-18.

<sup>36</sup> E/RES/2/11, see note 32.

<sup>37</sup> E/RES/5(I) of 16 February 1946, paras. 2-3.

drafting of the Universal Declaration of Human Rights.<sup>38</sup> CSW members were government delegates, but one observer noted that they appeared more personally engaged with the institution's goals than members of other UN bodies and that they acted "as a kind of lobby for the women of the world."<sup>39</sup> Accordingly CSW members built close relationships with women's NGOs.

In her plea to ECOSOC to establish CSW, Bodil Begtrup considered the argument against specialised women's bodies on the grounds that women's problems were not separate from men's. She responded:

[T]his point of view is purely unrealistic and academic. The practice shows that [ECOSOC] has special problems that are connected with the status of women. These problems have now for the first time in history to be studied internationally as such and to be given the social importance they ought to have. ... The feeling that this big body [the UN], with all the social and political difficulties before it, still has time to take an interest in the daily life and in raising the status of women has aroused an enormous interest ....<sup>40</sup>

CSW's mandate was couched in the language of rights: it was to report to ECOSOC on "promoting women's rights in political, economic, social and educational fields" as well as making recommendations on "urgent problems requiring immediate attention in the field of women's rights."<sup>41</sup> In what has been called its first phase of activity, CSW focused on enhancing recognition of women's right to equality.<sup>42</sup> It then shifted its orientation towards economic and social development.<sup>43</sup> CSW has continued as the major global policy-making body with respect to women, working in conjunction with, or as the support body for, many of the bodies and processes discussed below. It did not attract the criticisms of politicisation and ineffectiveness that dogged the CHR leading to that body's abolition in 2006 and replacement by the Human Rights Council.<sup>44</sup> However, the existence of a separate women's body created the potential for marginalisation of women's concerns in the work of the CHR.<sup>45</sup>

Until 1975 CSW was the sole UN body expressly authorised to address women's concerns. In response to pressure from CSW and women's NGOs, in 1972 the General Assembly resolved to hold a world summit on women in Mexico City in 1975, focusing on the themes of equality, development and peace and designating 1975 International

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<sup>38</sup> See, Status of Women, E/RES/48(IV) of 29 March 1947, para. 3: CSW to be represented at ECOSOC "when sections of the draft of the international bill of human rights concerning the particular rights of women are under discussion".

<sup>39</sup> Pietilä, see note 2, 14, quoting John Humphrey, first Director of the UN Secretariat Division of Human Rights.

<sup>40</sup> ECOSOC Res. E/PV.4 of 21 June 1946, reprinted in: *The United Nations Bluebook Series, The United Nations and the Advancement of Women 1945-1995*, (rev. ed., vol. VI, 1996), 101-2.

<sup>41</sup> E/RES/2/11, see note 32. The first session of CSW requested an amendment to its terms of reference to include a clause that CSW activities had the object of "implementing the principle that men and women shall have equal rights": Doc. E/281/Rev.1 of 25 February 1947. This request was accepted by ECOSOC: ECOSOC Res. 48(IV), see note 39, A, para. 7(b): 'the fundamental purpose of the Commission to develop proposals for promoting equal rights for women'.

<sup>42</sup> L. Reanda, "The Commission on the Status of Women", in: Philip Alston (ed.), *The United Nations and Human Rights: A Critical Appraisal*, 1992, 265 et seq. (275).

<sup>43</sup> UN Secretary-General, *Report of the Secretary-General to the CSW on the United Nations Technical Assistance Programme in Relation to the Status of Women*, Doc. E/CN.6/145 of 12 May 1950.

<sup>44</sup> Human Rights Council, A/RES/60/251 of 3 April 2006. The Council has welcomed cooperation with the CSW: see Integrating the Human Rights of Women throughout the United Nations System, HRC Res. 6/30, Doc. A/HRC/RES/6/30 of 14 December 2007.

<sup>45</sup> On the early relationship between the CHR and CSW, see J.Morsink, "Women's Rights in the Universal Declaration", *HRQ* 13 (1991), 231 et seq.

Women's Year.<sup>46</sup> Following the Mexico Conference, the General Assembly proclaimed the UN Decade for Women, 1976-85.<sup>47</sup> The Decade provided a framework and timeline for development of UN institutions with mandates for the advancement of women across these broad themes. The Decade saw two more conferences convened: Copenhagen (1980) and Nairobi (1985). Women participated in increasing numbers in the global conferences, both as government delegates and as representatives of women's organisations, as observers to the inter-governmental conferences and in parallel NGO fora.

The final documents adopted at the successive conferences provided a framework for the "adoption of national strategies, plans and programmes" and international action for the achievement of the objectives of the Decade. The Nairobi Conference recommended that "at least one world conference [on women] be held during the period between 1985 and the year 2000"<sup>48</sup> and accordingly the Fourth World Conference took place in Beijing in 1995. This broke all records for attendance at a UN meeting, with delegations from 189 governments and 17,000 delegates drawn from governments, NGOs, and the media with over 35,000 attendees at the parallel NGO Forum.<sup>49</sup> These figures led the UN Secretary-General, Boutros Boutros-Ghali, to describe the Beijing Platform for Action<sup>50</sup> as emerging from the most participatory and inclusive process in history with the final document providing "a powerful agenda for the empowerment of women."<sup>51</sup> We discuss the Platform for Action further below.

Following the Nairobi Conference, ECOSOC expanded CSW's mandate, giving it a central role in monitoring progress towards achievements of the goals of the Nairobi Forward-Looking Strategies,<sup>52</sup> and set out CSW's priority themes under the Mexico Conference's categories of equality, development and peace.<sup>53</sup> Similarly after the Beijing Conference, CSW, together with the General Assembly and ECOSOC, was to "play the primary role in the overall policy-making and follow-up, and in coordinating the implementation and monitoring of the Platform for Action."<sup>54</sup> It would also perform a "catalytic role in mainstreaming gender" throughout policies and programs and be the focal point in preparation for, and subsequent implementation of the five,<sup>55</sup> ten<sup>56</sup> and

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<sup>46</sup> International Women's Year, A/RES/3010 (XXVII) of 18 December 1972.

<sup>47</sup> World Conference of the International Women's Year, A/RES/3520 (XXX) of 15 December 1975.

<sup>48</sup> World Conference on Women, Third World Conference on Women, Nairobi, Kenya, 15-26 July 1985, *Report of the World Conference to Review and Appraise the Achievements of the United Nations Decade for Women: Equality, Development and Peace*, para. 340, Doc. A/CONF.116/28/Rev.1 (1986).

<sup>49</sup> C. Bunch, "Women and Gender", in: T. Weiss/ S. Daws (eds), *The Oxford Handbook on the United Nations*, 2007, 496 et seq. (499).

<sup>50</sup> World Conference on Women, Fourth World Conference on Women, Beijing, China, 4-15 September 1995, *Report of the Fourth World Conference on Women*, Doc. A/CONF.177/20/REV.1 (1996) [hereinafter Beijing Declaration and Platform for Action].

<sup>51</sup> B. Boutros-Ghali, "Translating the Momentum of Beijing into Action", in: United Nations Department of Public Information, *Beijing Declaration and Platform for Action with the Beijing +5 Political Declaration and Outcome Document*, 2001, 1 et seq. (2).

<sup>52</sup> E/RES/1987/18 of 26 May 1987; E/RES/1987/22 of 26 May 1987.

<sup>53</sup> E/RES/1987/24 of 26 May 1987.

<sup>54</sup> E/RES/1996/6 of 26 July 1996.

<sup>55</sup> Further actions and initiatives to implement the Beijing Declaration and Platform for Action, A/RES/S-23/3 of 10 June 2000.

<sup>56</sup> Ten-year Review and Appraisal of the Implementation of the Beijing Declaration and Platform for Action and the outcome of the twenty-third special session of the General Assembly held during the forty-ninth session of the CSW, from 28 February to 11 March 2005. UN Secretary-General, *Follow-up to the 4<sup>th</sup> World Conference on Women and Full Implementation of the Beijing Declaration and Platform for Action: Rep. of the Secretary-General*, Doc. A/55/293 of 11 August 2000; See also A/RES/55/71 of 8 February 2001.

fifteen<sup>57</sup> year follow-up processes. CSW has undertaken systematic analytical work on the implementation of the “critical areas of concern” identified in the Beijing Platform and selects ‘priority’ themes for its annual sessions.<sup>58</sup>

CSW’s original secretariat was the Section on the Status of Women within the Human Rights Division of the UN Department of Social Affairs. This was poorly staffed and financed, although one observer noted that its resource shortage was “partly compensated by the motivation and enthusiasm of members of the Commission.”<sup>59</sup> The Section became the Branch for the Promotion of Equality between Men and Women in 1974 and, in 1985, the Branch for the Advancement of Women. In 1988 the Branch was renamed the Division for the Advancement of Women (DAW), which it remained until its incorporation into UN Women. DAW moved from Vienna to New York in 1993.

## 2. INSTRAW, UNIFEM and OSAGI

The global conferences on women at Mexico City and Beijing led to the establishment of further specialist institutions within the UN. The International Research and Training Institute for the Advancement of Women (INSTRAW) was set up by ECOSOC in 1976 following a resolution of the Mexico conference.<sup>60</sup> It was based in the Dominican Republic and its objectives were “to stimulate and assist through research, training and the collection and dissemination of information - the advancement of women and their integration in the development process both as participants and beneficiaries.”<sup>61</sup> Uniquely within the UN system it was “devoted entirely to research, training and information in the context of the advancement of women in development.”<sup>62</sup> Following the Beijing Platform for Action, the General Assembly endorsed measures for INSTRAW’s revitalisation. These included the designation of new working methods through the establishment of an electronic Gender Awareness Information and Networking System, for “disseminating information from all countries, conducting research, capacity-building and networking, taking into account the special needs of developing countries.”<sup>63</sup>

The UN General Assembly established the Voluntary Fund for the UN Decade for Women in 1976 to assist in the implementation of the World Plan of Action adopted at

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<sup>57</sup> Report of the Secretary-General, *Review of the Implementation of the Beijing Declaration and Platform for Action, the outcomes of the twenty-third special session of the General Assembly and its contribution to shaping a gender perspective towards the full realization of the Millennium Development Goals*, Doc. E/2010/4\*-E/CN.6/2010/2\* of 8 February 2010. All official documentation for the 15-year review is available at <http://www.un.org>.

<sup>58</sup> E.g., in 2013, the Agreed Conclusions on the Elimination and prevention of all forms of violence against women and girls provide inter alia a comprehensive statement of states’ obligations, obstacles to their achievement, the inter-relationship between violence and gender inequality, the Millennium Development Goals, reproductive and sexual health and poverty; The elimination and prevention of all forms of violence against women and girls, Doc. E/CN.6/2013/L.5 of 19 March 2013. The adoption of agreed conclusions on this priority theme was especially significant after the failure in 2012 to agree to conclusions on that year’s priority theme, The empowerment of rural women and their role in poverty and hunger eradication, development and current challenges, Commission on the Status of Women, Report on the 56th session (14 March 2011, 27 February-9 March and 15 March 2012), Doc. E/2012/27 - E/CN.6/2012/16 of 23 March 2012, para. 28.

<sup>59</sup> Pietilä, see note 2, 15.

<sup>60</sup> World Conference of the International Women’s Year, A/RES/3520 (XXX), see note 48, para. 9; The International Training and Research Unit for the Advancement of Women, Doc. E/5850 of 12 May 1976. The establishment of UNITAR was endorsed by A/RES/31/135 of 16 December 1976.

<sup>61</sup> Statute of the United Nations International Research and Training Institute for the Advancement of Women, Doc. A/39/511 of 26 September 1984, art. 2.

<sup>62</sup> Revitalization and strengthening of INSTRAW, A/RES/54/140 of 10 February 2000.

<sup>63</sup> Ibid.

the Mexico Conference.<sup>64</sup> In selecting programs, the Fund was to focus on rural women, poor women in urban areas, “and other marginal groups of women, especially the disadvantaged.” The Fund had a Consultative Committee of five states selected by the President of the General Assembly. In 1984, in the lead up to the Nairobi Conference, the Fund became the United Nations Development Fund for Women (UNIFEM). It was designed to be a “catalyst to ensure appropriate involvement of women in mainstreaming development activities and to support innovative and experimental activities benefiting women in line with national and regional priorities.”<sup>65</sup> UNIFEM became an operational presence in countries, a semi-autonomous agency within the UN Development Programme (UNDP).

The Fourth World Conference on Women called for improvements to the institutional capacity of the UN to implement the Beijing Platform for Action and to support the advancement of women.<sup>66</sup> It proposed the creation of a high-level post in the UN Secretary-General’s office to advise on gender issues.<sup>67</sup> A Special Adviser on gender was located within the Secretary-General’s office in 1996 but in 1997 the new Secretary-General, Kofi Annan, moved the Office of the Special Adviser on Gender Issues and the Advancement of Women (OSAGI) to the Department of Economic and Social Affairs. The Special Adviser had the status of Assistant Secretary-General and thus was senior enough to co-ordinate gender policy throughout the UN system. The major focus of OSAGI has been the task of “gender mainstreaming,” discussed further below, in the UN system. It has also been the base for the Office of the Focal Point for Women whose major concern has been the status of women in the UN system. An Ad Hoc Inter-Agency Meeting on Women was created in 1976, after the Nairobi conference, involving most specialised agencies and other UN entities. It met in conjunction with the annual meetings of the CSW, initially with the support of the DAW and subsequently that of OSAGI. This entity evolved into the Inter-Agency Network on Women and Gender Equality, chaired by the Special Adviser on Gender Issues and Advancement of Women.<sup>68</sup>

Within the UN generally, the task of primary normative development is largely assigned to fora controlled by member states, leaving Secretariat-run institutions with the role of implementation through technical assistance and capacity building. In the area of women, the world conferences developed programmatic agendas in soft (legally non-binding) form. Despite its soft law status, the Beijing Platform for Action in particular has acquired legitimacy through its exposition of twelve critical areas of concern, its call for action by states, international governmental and non-governmental organisations, and its framework for policy guidance.<sup>69</sup> Since Beijing, women activists and institutions have been concerned to preserve the normative gains achieved there.

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<sup>64</sup> Voluntary Fund for the United Nations Decade for Women, A/RES/31/133 of 16 December 1976.

<sup>65</sup> Report of the Joint Inspection Unit, *The Advancement of Women Through and in the Programmes of the United Nations System: What Happens after the Fourth World Conference of Women*, Annex I, Doc. JIU/REP/95/5, 1995 (Erica-Irene A. Daes); See also, World Conference on Women, *Report of the World Conference to Review and Appraise the Achievements of the United Nations Decade for Women: Equality, Development and Peace*, see note 49, para. 336.

<sup>66</sup> Beijing Declaration and Platform for Action, see note 51, para. 306.

<sup>67</sup> *Ibid.*, para. 326.

<sup>68</sup> Other bureaucratic developments included the establishment in 2007 by the Office of the High Commissioner for Human Rights (OHCHR) of a Women’s Rights and Gender Unit. Other UN entities have instituted focal points for gender issues within their internal structures, e.g. within UN peacekeeping missions and a gender adviser at the Department of Peacekeeping Operations Headquarters.

<sup>69</sup> Report of the Expert Group Meeting, *The Impact of the Implementation of the Beijing Platform for Action on the Full Achievement of the Millennium Development Goals*, Doc. EGM/BPFA-MDG/2009/REPORT of 22 December 2009, para. 96.

### 3. Other UN Bodies

Normative development has also been achieved through women-specific independent expert bodies that exist in other parts of the UN, notably the Committee on the Elimination of Discrimination against Women (CEDAW). CEDAW is the expert monitoring body established pursuant to the Convention on the Elimination of All Forms of Discrimination against Women (the Women's Convention), adopted in 1979, to oversee the implementation of the Convention.<sup>70</sup> The creation of a monitoring committee was controversial because some states feared that the new body might weaken the authority of CSW. The membership of CEDAW (like that of the other UN human rights treaty bodies) comprises independent experts, not government delegates as in the CSW. Through its concluding comments to states' initial and periodic reports, adoption of thematic General Recommendations and jurisprudence under the Optional Protocol to the Convention,<sup>71</sup> the Committee has provided an extensive interpretation of states' obligations "to ensure the full development and advancement of women."<sup>72</sup> CEDAW remains the only UN body dedicated to women's advancement that has a legal, rather than political, mandate to ensure compliance with the treaty obligation of non-discrimination against women.<sup>73</sup> Another expert mandate is the Special Rapporteur on Violence against Women, established by the CHR in 1994.<sup>74</sup> In 2004, the CHR appointed a Special Rapporteur on trafficking in persons, especially in women and children<sup>75</sup> and in 2010 the Secretary-General appointed a Special Representative on Sexual Violence in Conflict.<sup>76</sup> The UN Human Rights Council established a Working Group on Discrimination against Women in Law and in Practice in 2010.<sup>77</sup>

### 4. The Status of UN Women's Institutions

This brief account of the UN's institutional engagement with women shows that the creation of institutions was *ad hoc*, creating complex levels of responsibility as new institutions were layered onto existing structures. This is a similar story to other areas of UN activity: in a decentralised system, UN member states have proliferated institutional mandates and tasks while rarely being able to dismantle out-dated or ineffective ones for political reasons.<sup>78</sup> This is not necessarily a weakness, as Wilfred Jenks pointed out long ago. He observed that "functional decentralization" was chosen as the basis for the

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<sup>70</sup> Article 17 of the Convention on the Elimination of All Forms of Discrimination against Women, 18 December 1979, UNTS Vol. 1249, No. 20378.

<sup>71</sup> Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, Doc. A/RES/54/4 of 15 October 1999.

<sup>72</sup> Convention on the Elimination of All Forms of Discrimination against Women, art 3 [hereinafter CEDAW]. For a full account of CEDAW's normative work see M. Freeman/ C. Chinkin/ B. Rudolf (eds), *The UN Convention on the Elimination of All Forms of Discrimination against Women: A Commentary*, 2012.

<sup>73</sup> Convention on the Elimination of All Forms of Discrimination against Women, see note 71, arts 1- 3.

<sup>74</sup> Doc. E/CN.4/RES/1994/45 of 4 March 1994. The Special Rapporteurs to date have been Radhika Coomaraswamy, Yakin Ertürk and Rashida Manjoo.

<sup>75</sup> Special Rapporteur on Trafficking in Persons, Especially in Women and Children, Doc. E/CN.4/DEC/2004/110 of 21 April 2004. Sigma Huda (Bangladesh) was the first holder of this mandate. She was replaced in 2008 by Joy Ngozi Ezeilo (Nigeria).

<sup>76</sup> The post was mandated by S.C. Res. 1888 of 30 September 2009 on Women, peace and security: S/RES/1888 (2009) of 30 September 2009. Margot Wallström resigned from the position on 31 May 2012 and has been succeeded by Zainab Hawa Bangura from Sierra Leone.

<sup>77</sup> Elimination of discrimination against Women, Doc. A/HRC/RES/15/23 of 8 October 2010.

<sup>78</sup> Luck, see note 5, 653, 655.

UN architecture because it enabled the largest amount of co-operation in as many areas as possible and because it removed technical areas from political control.<sup>79</sup>

The UN's women-specific institutions suffer however from low levels of support and visibility. For example, an Inspector of the UN's Joint Inspection Unit (JIU) criticised the low status and paltry resources of DAW in 1995, noting that "four world conferences on women have done nothing to move the staff resources devoted to the women's programme from the very bottom of this United Nations resource list."<sup>80</sup> Both INSTRAW and UNIFEM were funded from voluntary contributions. Reliance on voluntary contributions creates uncertainty as to whether pledges will materialise, allows for targeted contributions and opens the way for major donors to exert influence and exercise leverage.<sup>81</sup> The establishment of OSAGI without any budgetary allocation meant that the new functions were attached to an existing post, placing constraints on the operational capacity of the position from the outset.

One measure of institutional status is the meeting time allocated to bodies such as CSW. Until 1987 CSW met every two years. Following the Nairobi Conference, ECOSOC decided that CSW should meet annually.<sup>82</sup> This meeting takes place for ten working days in late February and early March. This contrasts with the time allocated to the CHR which, until its termination in 2006, used to meet annually for six weeks. Its successor, the Human Rights Council, meets regularly throughout the year "for a total duration of no less than ten weeks."<sup>83</sup>

### III. THE CREATION OF UN WOMEN

The establishment of UN Women occurred after a lengthy debate on UN reform across a range of areas, sketched in Section I. It should therefore be assessed within that wider reform process, in particular whether it is part of the UN's standard "tinkering and muddle through"<sup>84</sup> approach to reform or whether there has been a more fundamental institutional shift. In 1985 the Nairobi Conference had noted the unwieldy quality of the UN's women's architecture, particularly the disadvantages of the fragmented institutional structure for achieving the goals of the UN Decade for Women and the lack of any systematic co-ordination.<sup>85</sup> In the lead up to the 1995 Conference in Beijing, the UN General Assembly considered a proposal by the Secretary-General for the merger of INSTRAW and UNIFEM.<sup>86</sup> The JIU assessed the existing structures, finding progress in implementing policies relating to women "disappointing."<sup>87</sup> It made a number of specific proposals, including a more active and pragmatic role for CSW in

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<sup>79</sup> Jenks, see note 3, 29, 37.

<sup>80</sup> Report of the Joint Inspection Unit, *The Advancement of Women Through and in the Programmes of the United Nations System: What Happens after the Fourth World Conference of Women*, see note 66, para. 210.

<sup>81</sup> J. Laurenti, *Financing*, in: Thomas Weiss & Sam Daws (eds), *The Oxford Handbook on the United Nations*, 2007, 675 et seq., 694.

<sup>82</sup> E/RES.1987/21 of 26 May 1987.

<sup>83</sup> A/ RES/ 60/251, see note 45, para. 10.

<sup>84</sup> Report of the Joint Inspection Unit, *Some Measures to Improve Overall Performance of the United Nations System at the Country Level Part I: A Short History of United Nations Reform in Development*, see note 9.

<sup>85</sup> World Conference on Women, *Report of the World Conference to Review and Appraise the Achievements of the United Nations Decade for Women: Equality, Development and Peace*, see note 49, para. 338.

<sup>86</sup> A/RES/48/111 of 20 December 1993.

<sup>87</sup> Report of the Joint Inspection Unit *The Advancement of Women Through and in the Programmes of the United Nations System: What Happens after the Fourth World Conference of Women*, see note 66, para. 4.

evaluating women's and gender programs,<sup>88</sup> enhanced funding and status for DAW;<sup>89</sup> and the establishment of a system for collaboration and interaction with NGOs for advancing women's programs.<sup>90</sup> The Beijing Conference reiterated such concerns,<sup>91</sup> articulating the need "to renew, reform and revitalize" parts of the UN system (especially DAW) to improve its efficiency and effectiveness.<sup>92</sup>

Following the Beijing Conference in 1995, OSAGI was established but the JIU's budgetary and organisational recommendations were not implemented. In 1996 the General Assembly again considered the politically contested proposals to merge INSTRAW and UNIFEM but concluded it lacked the requisite information on the legal, technical and administrative implications of any such merger, so took no action.<sup>93</sup> Repeating its earlier language,<sup>94</sup> the General Assembly recommended that interaction between CSW, INSTRAW, CEDAW, DAW and UNIFEM be "reviewed and rationalized within the context of ongoing efforts to revitalize the Economic and Social Council in pursuance of a stronger, more unified programme for the advancement of women." It also stated that any such action with respect to the bodies related to women "must be considered part of the general restructuring exercise of the United Nations",<sup>95</sup> linking reform of the UN women's architecture with the wider project of UN reform.

Following the review of the Beijing Platform for Action in 2000, NGOs and some UN personnel lobbied for reform in this area but the first stages of Kofi Annan's extensive UN reform agenda made no mention of any of the UN entities concerned with women. The 2004 report of the High Level Panel contained only limited references to women: it recommended that the Security Council, UN agencies and member states should fully implement Security Council Resolution 1325 (discussed below),<sup>96</sup> that there should be greater consultation with and involvement of important voices from civil society in peace processes, especially those of women;<sup>97</sup> and it called for ratification of the Palermo Protocol on Trafficking.<sup>98</sup> The Secretary-General's response to the High Level Panel's report similarly made no reference to the women-specific institutions. Despite calls by women's groups, the General Assembly's World Summit Outcome Document did not mention reform of women-specific UN institutions. However, the General Assembly affirmed that "the main horizontal policy themes, such as sustainable development, human rights and gender, are [to be] taken into account in decision making throughout the United Nations."<sup>99</sup> Following the language of the Secretary-General, it also emphasised the need for "system-wide coherence" in terms of UN policies and activities.<sup>100</sup> This required, for example, shoring up linkages between the UN's normative commitments and its operational activities and coordinating UN

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<sup>88</sup> Ibid., paras. 202-4.

<sup>89</sup> Ibid., paras. 205-13.

<sup>90</sup> Ibid., paras. 233-240.

<sup>91</sup> Beijing Declaration and Platform for Action, see note 51, para. 309.

<sup>92</sup> Ibid., para. 361.

<sup>93</sup> The UNGA noted that it had received no opinion from CSW "owing to the lack of the documents requested therein." A/RES/50/162 of 1 February 1996.

<sup>94</sup> A/RES/ 48/111, see note 87.

<sup>95</sup> A/RES/50/162, see note 94.

<sup>96</sup> Report of the Secretary-General's High-level Panel on Threats, Challenges and Change, *A More Secure World: Our Shared Responsibility*, see note 16, para. 238.

<sup>97</sup> Ibid., para. 103.

<sup>98</sup> Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organised Crime, 15 November 2000, UNTS Vol. 2237, No. 39574; Report of the Secretary-General's High-level Panel on Threats, Challenges and Change, *A More Secure World: Our Shared Responsibility*, see note 16, para. 175.

<sup>99</sup> A/RES/60/1, see note 20, para. 169.

<sup>100</sup> Ibid., paras. 168-9; UN Secretary-General, *In Larger Freedom: Towards Development, Security and Human Rights For All*, see note 18, paras. 193-8.

representation on the boards of development and humanitarian agencies to support coherence in mandates and resource allocation.

A further dimension of the UN reform processes was a focus on UN failures in respect of delivery on the ground. The UN Secretary-General received an invitation from “global leaders” to “strengthen the management and coordination of UN operational activities so that they can make an even more effective contribution to the achievement of the internationally agreed development goals, including the Millennium Development Goals.”<sup>101</sup> In response Kofi Annan set up a “High Level Panel on System-Wide Coherence.”<sup>102</sup> This time – in response to considerable pressure from the international women’s movement – the Secretary-General specifically requested the Panel to include an assessment of “how gender equality could be better and more fully addressed by the United Nations.” Only three out of fifteen members of the Panel were women. The Center for Women’s Global Leadership and the Women’s Environment and Development Organization submitted a paper, endorsed by some 50 women’s NGOs, to the Panel setting out their concerns with the existing system and vision for a new UN “gender architecture”. They argued for a “well-resourced independent entity with normative, operational and oversight capacity, a universal country presence and led by an Under-Secretary-General.”<sup>103</sup>

The High-Level Panel’s 2006 Report, *Delivering as One*, addressed development, humanitarian assistance and the environment in a globalising world, which it identified as constituting the main challenges to the UN’s operational activities and its assistance in achieving the Millennium Development Goals.<sup>104</sup> The Panel also addressed “cross-cutting issues”, including gender equality, proposing reform of the “current weak structures” to accord women “a much stronger voice,”<sup>105</sup> and recommending the creation of a single body to deal with issues of gender.<sup>106</sup> This would be achieved through consolidation of UNIFEM, DAW and OSAGI into two organisational divisions: a normative, analytical and monitoring division and a policy advisory and programming division. INSTRAW was omitted from the proposal at this stage because of pressures to maintain a UN body in the Caribbean and Central American region. The entity would be headed by an Executive Director with the rank of Under-Secretary-General and receive “adequate, stable and predictable funding” out of the regular budget, supplemented by voluntary contributions. The Panel envisaged the work of the gender entity as a way of ensuring that “gender equality and women’s empowerment are taken seriously throughout the UN system”;<sup>107</sup> and noted that “[o]ther UN entities need to dedicate significantly more resources to gender mainstreaming.”<sup>108</sup>

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<sup>101</sup> UN Secretary-General, Follow-up to the outcome of the Millennium Summit: Note by the Secretary-General, para. 2, Doc. A/61/583 of 20 November 2006. The “global leaders” were the Heads of State and Government who adopted the Outcome Document of the 2005 World Summit.

<sup>102</sup> Report of the Secretary-General’s High-level Panel on System-wide Coherence in the Areas of Development, Humanitarian Assistance and the Environment, *Delivering as One*, Doc. A/61/583 of 9 November 2006 [hereinafter *Delivering as One*].

<sup>103</sup> Rao, see note 2, 138. See also P. Donovan, *Gender Equality Now or Never: A New UN Agency for Women*, July 2006.

<sup>104</sup> *Delivering as One*, see note 103, paras. 14-51. The Panel is building on the General Assembly’s identification of these horizontal themes. See, A/RES/60/1, see note 20, para. 169.

<sup>105</sup> *Delivering as One*, see note 103, para. 49.

<sup>106</sup> Rao, see note 2.

<sup>107</sup> *Delivering as One*, see note 103 at para. 49.

<sup>108</sup> *Ibid.*, 25, box 2.

The need to counter institutional fragmentation was a strong theme throughout the Report<sup>109</sup> and the Panel's proposals with respect to strengthening the UN gender architecture were integral to this approach. Both institutional reform and gender equality were perceived instrumentally as "central to the delivery of effective development outcomes." The Panel accepted the concepts of gender equality, women's empowerment and gender mainstreaming without any critique, explanation or discussion of the relationship between them.

The "gender architecture" proposal included in "Delivering as One" sparked an intense debate among UN members.<sup>110</sup> Some were reluctant to endorse the formation of a new entity before adequate consideration had been given to all of the five key elements of the Report's recommendations: harmonising business practices; delivering as one; financial issues; governance issues and gender equality. Gender equality was a negotiating chip to some states, which insisted on agreement on all these other issues before addressing the last. Others questioned the effectiveness of merging three distinct institutions at the operational level. Consultations took place over the next three years over various options for the UN's gender architecture. The UN Secretariat on the basis of extensive consultations with member states and NGOs identified the options as: maintaining the *status quo*; creating an autonomous fund or program; establishing a new department within the UN Secretariat; and forming a new entity by consolidating existing institutions that would have both normative and operational functions.<sup>111</sup>

Influential women's organisations addressed another open letter to UN Member States and the Secretary-General at the CSW in 2007<sup>112</sup> and launched the campaign known as Gender Equality Architecture Reform (GEAR) – a global movement based on consultation with and building on the opinions of women worldwide -- at CSW in 2008. By 2009, the fourth option had emerged as the most acceptable,<sup>113</sup> and in early 2010, the Secretary-General issued a blueprint for the "composite entity for gender equality and the empowerment of women."<sup>114</sup> This document, which largely foreshadowed the terms of the General Assembly's establishment of UN Women, presented the new institution as a subsidiary body of the General Assembly. Its normative direction was to be shaped by the CSW and its operational direction guided by an Executive Board composed of 41 member states drawn from regional groupings and from among major financial contributors to the new body. Normative functions would be funded from the UN's regular budget, while operational processes were to be funded from voluntary contributions. The major differences between the GEAR proposals and those of the Secretary-General were the size of the budget (GEAR had proposed an annual minimum budget of US\$1 billion and the Secretary-General recommended half that

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<sup>109</sup> See, *ibid.*, para. 10. The report concludes at para. 47 that "[w]hile the UN remains a key actor in supporting countries to achieve gender equality and women's empowerment, there is a strong sense that the UN system's contribution has been incoherent, under-resourced and fragmented."

<sup>110</sup> For a summary of views see, *Update on UN Reform and the GEA*, Gender Equality Architecture Archives, 7 June 2007, <<http://www.gearcampaign.org>>.

<sup>111</sup> UN Secretariat, *Further Details on Institutional Options for Strengthening the Institutional Arrangements for Support to Gender Equality and the Empowerment of Women*, 5 March 2009, <<http://www.un.org>>. This paper develops upon reform options set out in two earlier notes: UN Secretariat, *Concept Note on a Strengthened Architecture for Gender Equality and Empowerment of Women*, 1 August 2007, <<http://www.un.org>>; UN Secretariat, *Note on the United Nations Support to Member States on Gender Equality and Women's Empowerment*, 5 June 2008, <<https://www.un.org>>.

<sup>112</sup> Open Letter regarding Women's Gender Equality Architecture at the UN from the NGO Linkage Caucus taking part in the 51<sup>st</sup> Commission on the Status of Women, 8 March 2007, <<http://www.cwgl.rutgers.edu>>. Stephen Lewis, the UN Special Envoy for AIDS in Africa, supported the initiative strongly.

<sup>113</sup> A/RES/63/311 of 2 October 2009.

<sup>114</sup> Report of the Secretary-General on the Comprehensive proposal for the composite entity for gender equality and the empowerment of women, Doc. A/64/588 of 6 January 2010.

amount) and the role of civil society in the new entity. GEAR sought formal civil society participation on the Executive Board, which was not acceptable to many member states or consistent with standard UN practice and the proposed intergovernmental body mentioned civil society only in general and vague references to consultation.

The General Assembly finally decided to establish UN Women through a resolution entitled “System-Wide Coherence” adopted in July 2010, encompassing all five of the key elements mentioned above.<sup>115</sup> Its final form merges and consolidates DAW, INSTRAW, OSAGI and UNIFEM. Its governance is a multi-tiered intergovernmental arrangement through the General Assembly, ECOSOC and CSW. In welcoming the launch of UN Women, UN Secretary-General Ban Ki-Moon spoke of the significant boost it would give to “UN efforts to promote gender equality, expand opportunity and tackle discrimination around the globe.”<sup>116</sup> UN Women’s first Executive Director, Michelle Bachelet, had considerable cachet as the former President of Chile, she was appointed at the level of Under-Secretary-General, the highest level position ever devoted to women’s equality within the UN. Her resignation in March 2013 in order to re-contest the Chilean presidency is a setback for the institution.

The constitution of UN Women by the General Assembly has been packaged primarily in the language of institutional consistency and only incidentally in normative terms. The first half of its foundational Resolution 64/289 is devoted to a range of issues: it makes numerous general requests for bureaucratic coordination -- of calendars, agendas, work programs, offices and committees; it proposes orientation and training programs in UN development activities for delegates of UN member states; it seeks a review of the system for evaluating development activities and more funding for them; and it encourages efficiency savings within the UN development system. The creation of UN Women then occurs without any preamble in the second half of the Resolution. This rather incongruous placement implies that the new entity is essentially an instrument for bureaucratic streamlining in the area of development – the focus of this aspect of the reform package.<sup>117</sup> This point is made explicitly in the Resolution where UN Women is presented as leading to “more effective coordination, coherence and gender mainstreaming across the United Nations system.”<sup>118</sup> Its creation therefore appears as an example of good-practice management, merging and consolidating the work of four existing bodies.

The Resolution’s provisions on the general principles to guide UN Women move away however from the development focus of the first part of the text. The Resolution identifies the normative framework of UN Women as the UN Charter, the Beijing Declaration and Platform for Action, the outcomes of the General Assembly’s Beijing + 5 special session, and UN “instruments, standards and resolutions” dealing with “gender equality and the empowerment and the advancement of women.”<sup>119</sup> These references are unelaborated in the text of the Resolution and it is striking that the Resolution contains no explicit reference to the Women’s Convention or its monitoring Committee, CEDAW. CSW, a policy rather than a legal body, is to offer “coherent guidance” to UN Women and is supported by it. In this way the ill-defined relationship in UN bodies between women’s rights and development continues without elucidation.

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<sup>115</sup> A/RES/64/289 of 21 July 2010.

<sup>116</sup> See *UN Women begins its work*, 1 January 2011, <<http://www.unwomen.org>>.

<sup>117</sup> The 2005 UN reforms had resulted in significant reform (and expenditure) in the areas of human rights (through the establishment of the Human Rights Council) and peace and security (through the establishment of the Peacebuilding Commission); 2005 World Summit Outcome, see note 20. The G77 in particular was keen to redress what it perceived as the lack of attention to the third pillar of the UN, development.

<sup>118</sup> A/RES/64/289, see note 116, para. 52.

<sup>119</sup> *Ibid.*, para 51.a.

The documentary history of UN Women includes a significant slippage between the terms “gender” and “women”. Although the Secretary-General’s 2010 proposal referred to a “composite gender entity,”<sup>120</sup> it described the work of the entity almost entirely in terms of women. General Assembly Resolution 64/289 also reflects this elision of the concepts of women and gender. The ungainly formal title of the new body refers both to gender equality and the empowerment of women, but the short title refers only to women.

UN Women’s First Annual Report<sup>121</sup> clarified the body’s “normative support functions and operational activities”.<sup>122</sup> From the bare words of Resolution 64/289 it has expanded the description of its functions: to support UN member states’ deliberations in fora “where international policies, standards and norms are negotiated and agreed upon”; to lead and coordinate “efforts across the UN system to achieve gender equality” and to help states to achieve “real changes in women’s lives.” It has set as priorities: “supporting women’s leadership; strengthening women’s economic empowerment; ending violence against women; promoting women’s participation in peace and security processes; and ensuring that public planning and budgeting responds to the needs and rights of women.” The Report details its work in conjunction with other UN (and regional) agencies and member states. Strategic partnerships have been formed by Memoranda of Understanding with other UN agencies to promote more effective and efficient system coordination within the Organisation.<sup>123</sup> However it does not seem that UN Women is creating strong links between itself and CEDAW, as anticipated by that Committee,<sup>124</sup> in developing the understanding of the key terms “gender equality” and “non-discrimination”. There is some inter-action and informal collaboration through participation of CEDAW members in expert group meetings and training sessions held by UN Women and input by UN Women to consideration of CEDAW General Recommendations, but this is apparently on an *ad hoc* basis. The next section discusses the international normative framework with respect to women, highlighting the incoherence in the development of its diverse strands and suggesting the UN Women could play a role in promoting normative, as well as institutional, coherence.

#### IV. GLOBAL NORMS RELATING TO WOMEN

The formal nomenclature of UN Women - Gender Equality and Women’s Empowerment – combines a legal (and political) concept, equality, with a policy objective, empowerment. The General Assembly Resolution constituting UN Women does not however offer any guidance on the meaning of these terms. The Executive Director’s first report to the CSW defined the mission of UN Women as “the elimination of discrimination against women and girls, the empowerment of women, and the achievement of equality between women and men as partners in and beneficiaries of development, human rights, humanitarian action and peace and security.”<sup>125</sup> Will these

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<sup>120</sup> Report of the Secretary-General on the Comprehensive proposal for the composite gender equality entity and the empowerment of women, see note 115, para. 6.

<sup>121</sup> UN Women, *Annual Report 2010-2011*. See also UN Women, *Annual Report 2011-2012*.

<sup>122</sup> A/RES/64/289, see note 116, para 51(b).

<sup>123</sup> Report of the Secretary-General on Mainstreaming a gender perspective into all policies and programmes in the United Nations system, Doc. E/2012/61, 25 April 2012, paras. 35-42.

<sup>124</sup> Report of the Committee on the Elimination of Discrimination against Women, Doc. A/66/38 (2011), Part Two, Annex V, Decision 47/VII, Statement on the establishment of the United Nations Entity for Gender Equality and the Empowerment of Women.

<sup>125</sup> Executive Director of the United Nations Entity for Gender Equality and the Empowerment of Women (UN WOMEN), *Report of the Executive Director of the United Nations Entity for Gender Equality and the Empowerment of Women*, delivered to the CSW, Doc. E/CN.6/2011, 10 December 2010 (Michelle

goals enrich the existing UN normative framework with respect to women? In this section, we discuss the UN's vocabulary relating to women which clusters around the themes of equality, development and peace, articulated first for the UN Decade for Women.<sup>126</sup> As we will see, these three themes have developed in quite different ways. How might UN Women's mandate of gender equality and women's empowerment affect these developments?

## 1. Equality

Following the UN Charter provisions, CSW at first promoted the idea of women's equality through legal obligation, drafting a number of treaties recognising women's equal rights to men in various specified spheres of life.<sup>127</sup> The two major human rights instruments, drafted by the CHR, the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR), adopted in December 1966, provide that the rights they recognise should be respected "without distinction of any kind" including sex,<sup>128</sup> and, more positively, that state parties should ensure the equal right of men and women to enjoy the designated rights.<sup>129</sup> The ICCPR also offers a broad guarantee of equality before the law and a general prohibition of discrimination on a number of grounds, including sex.<sup>130</sup>

General international human rights instruments thus provide the skeleton for a body of jurisprudence on women's rights. Since the Vienna World Conference in Human Rights in 1993 there have also been regular calls for the integration of the human rights of women into the mainstream of United Nations system-wide activity.<sup>131</sup> While there have been some important advances, such as the General Comments on Equality adopted by the monitoring bodies of the two Covenants,<sup>132</sup> these developments have not borne much fruit. Detailed studies have shown that the interpretation and implementation of these provisions have been circumscribed with respect to women. For example, although both the Human Rights Committee and the Committee on Economic, Social and Cultural Rights have recognised specific human rights abuses and constraints experienced by women, they have been less ready to address the structural inequality that lies at the core of these violations.<sup>133</sup> Nor have treaty bodies applied a sex discrimination analysis

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Bachelet), para. 5. This repeats the wording of the UN Secretary-General, *Comprehensive proposal for the composite gender equality entity and the empowerment of women*, see note 115 para. 6.

<sup>126</sup> See World Conference of the International Women's Year, A./RES/3520 (XXX), see note 48.

<sup>127</sup> CSW sponsored the drafting of the following treaties: Convention on the Political Rights of Women, 20 December 1952, UNTS Vol. 193, No. 2613; Convention on the Nationality of Married Women, 29 January 1957, UNTS Vol. 309, No. 4468; and Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, 7 December 1962, UNTS Vol. 521, No. 7525.

<sup>128</sup> Article 2 of the International Covenant on Civil and Political Rights, 16 December 1966, UNTS Vol. 999, No. 14668 (hereinafter ICCPR); Article 2 of the International Covenant on Economic, Social and Cultural Rights, 16 December 1966, 993 UNTS Vol. 993, No. 14531 (hereinafter ICESCR).

<sup>129</sup> ICCPR, *ibid.*, art.3; ICESCR, *ibid.*, art. 3.

<sup>130</sup> ICCPR *ibid.*, art. 26.

<sup>131</sup> World Conference on Human Rights, Vienna, 14-25 June 1993, *Vienna Declaration and Programme for Action*, II, para. 37, Doc. A/CONF.157/23, 1993; Beijing Declaration and Platform for Action, see note 51, para. 221.

<sup>132</sup> Doc. CCPR/C/21/Rev.1/Add.10, 20 March 2000, General Comment No. 28: The Equality of Rights between Men and Women; Doc. E/C.12/2005/4, 11 August 2005, General Comment No. 16: The Equal Right of Men and Women to the Enjoyment of All Economic, Social and Cultural Rights; Doc. E/C.12/GC/20, 2 July 2009, General Comment No. 20: Non-Discrimination in Economic, Social and Cultural Rights, (art. 2 (2) of the International Covenant on Economic, Social and Cultural Rights).

<sup>133</sup> F. Van Leeuwen, *Women's Rights Are Human Rights: The Practice of the United Nations Human Rights Committee and the Committee on Economic, Social and Cultural Rights*, 2010, especially 235-251. This is a study of the approach of the two Committees with respect to women's physical integrity.

systematically throughout their work. For example while the Committee on Economic, Social and Cultural Rights regularly expresses its concern that “women still do not enjoy economic, social and cultural rights on the same level as men,”<sup>134</sup> and examines many ways in which women are disadvantaged in this respect, including female unemployment, women in decision-making and domestic violence against women,<sup>135</sup> the application of the Covenant to other groups such as migrants, persons with disabilities, internally displaced or homeless persons is considered without any differentiation between women and men.<sup>136</sup> Similarly, in the context of the international prohibition of torture, the UN treaty bodies have a mixed record in applying general principles to women’s lives.<sup>137</sup>

The most wide-ranging of the international human rights treaties devoted to women is the Women’s Convention. The Convention provides a broad definition of discrimination in Article 1, covering both equality of treatment and equality of outcome. It requires states to take legal and other measures to ensure the practical realisation of the principle of sex equality.<sup>138</sup> The Convention covers a wide range of areas where state parties must work to eliminate discrimination against women including political and public life,<sup>139</sup> international organisations,<sup>140</sup> education,<sup>141</sup> employment,<sup>142</sup> healthcare,<sup>143</sup> financial credit,<sup>144</sup> cultural life,<sup>145</sup> the rural sector,<sup>146</sup> and the law.<sup>147</sup> In this way the Women’s Convention transcends the traditional divide between civil and political rights and economic, social and cultural rights, illustrated by the separate development of the ICESCR and the ICCPR. The Women’s Convention attempts to overcome the dichotomy enshrined in many legal systems and replicated in international law, between public and private spheres of activity in which law is used to regulate public areas such as politics or education, but leaves private areas such as the family unregulated.<sup>148</sup> Thus the Convention explicitly affirms women’s right to equality in a limited way within the family<sup>149</sup> and with respect to legal contracts and other private instruments.<sup>150</sup>

The Women’s Convention provides for “temporary special measures” to accelerate substantive sex equality.<sup>151</sup> While Sandra Fredman has argued that this provision “implicitly assumes that gender specific treatment is *prima facie* invidious and unacceptable,” rather than an integral aspect of equality,<sup>152</sup> CEDAW has asserted that

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<sup>134</sup> E.g., Doc. E/C.12/NDL/CO/4-5 of 19 November 2010, Concluding Observations: Kingdom of the Netherlands.

<sup>135</sup> E.g., Doc. E/C.12/LKA/CO/2-4, of 9 December 2010: Concluding Observations: Sri Lanka, paras. 15, 16, 18, 24.

<sup>136</sup> E.g., Doc. E/C.12/NDL/CO/4-5, see note 135, paras. 12, 13; Doc. E/C.12/LKA/CO/2-4, *ibid.*, paras. 14, 29, 31.

<sup>137</sup> E.g. A. Edwards, “The ‘Feminizing’ of Torture under International Human Rights Law”, *LJIL* 19 (2006), 350 et seq.; A. Edwards, *Violence against Women under International Human Rights Law*, 2011, 198-262.

<sup>138</sup> CEDAW, article 2, see note 73.

<sup>139</sup> *Ibid.*, art. 7.

<sup>140</sup> *Ibid.*, art. 8.

<sup>141</sup> *Ibid.*, art. 10.

<sup>142</sup> *Ibid.*, art. 11.

<sup>143</sup> *Ibid.*, art. 12.

<sup>144</sup> *Ibid.*, art. 13(b).

<sup>145</sup> *Ibid.*, art. 13(c).

<sup>146</sup> *Ibid.*, art. 14.

<sup>147</sup> *Ibid.*, art. 15.

<sup>148</sup> H. Charlesworth/ C. Chinkin, *The Boundaries of International Law: A Feminist Analysis*, 2000, 30-31.

<sup>149</sup> CEDAW, article 16, see note 73.

<sup>150</sup> *Ibid.*, art. 15 (3).

<sup>151</sup> *Ibid.*, art. 4(1); Doc. A/59/38 (2004), Annex 1, Report of the Committee on the Elimination of Discrimination against Women, General Recommendation No. 25 (art. 4 (1) of the Convention on the Elimination of All Forms of Discrimination against Women, on temporary special measures).

<sup>152</sup> S. Fredman, “Beyond the Dichotomy of Formal and Substantive Equality: Towards a New Definition of Equal Rights”, in: Ineke Boerefijn et al. (eds), *Temporary Special Measures: Accelerating de facto Equality*

“special” must not be allowed to cast women as weak or vulnerable.<sup>153</sup> In the Committee’s view, Article 4 provides a means for the achievement of “de facto or substantive equality for women, rather than an exception to the norms of non-discrimination and equality.”<sup>154</sup>

While discrimination is defined in international instruments,<sup>155</sup> equality is not, meaning that those applying the instruments, including states parties, and the UN human rights treaty bodies, must develop their own understanding of the latter concept. In practice, the international legal understanding of equality is often elided with the notion of non-discrimination: equality and non-discrimination are taken to be positive and negative statements of the same principle.<sup>156</sup> In other words, equality means the absence of discrimination and non-discrimination between designated groups will result in equality across members of those groups. This approach limits the transformative possibilities of the idea of equality, confining it to a guarantee of equal treatment. In the context of women’s equality, such an understanding requires women to conform to a world defined by male lives. Moreover, by dealing with individual cases of discrimination rather than structural inequality, the notion of equal opportunity can solve some discrete, individual problems of discrimination, but fails to address the underlying causes of women’s inequality more generally.

The linkage of equality and non-discrimination also emphasises fault by particular actors in particular cases and distracts attention from the acceptance of many forms of inequality as normal, culturally sanctioned, or based on accepted principles of “merit.”<sup>157</sup> There are some important exceptions, for example CEDAW’s approach in the inquiry procedure provided for in the Optional Protocol to the Women’s Convention. In its investigation into hundreds of cases of murder and disappearance of women in Ciudad Juárez in Mexico, the Committee examined inequality in a structurally violent society. It found that focusing on the crimes as isolated cases did not address the underlying sociocultural problems and recommended that specific policies on equality were needed and a “gender perspective” adopted in all public policies.<sup>158</sup> It emphasised the need for “a global and integrated response, a strategy aimed at transforming existing sociocultural patterns,”<sup>159</sup> although the reality of CEDAW’s recommendations fell short of this objective. The *Cotton Field* case before the Inter-American Court of Human Rights similarly pointed to the impact of sexual stereotyping on the failure of the Mexican authorities to investigate violence against women adequately.<sup>160</sup> The judgment pays attention to structural inequalities faced by women. The Special Rapporteur on violence against women has also pointed to the transformative potential of reparations whereby

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*of Women under Article 4(1) UN Convention on the Elimination of All Forms of Discrimination against Women*, 2003, 111 et seq.

<sup>153</sup> CEDAW, General recommendation No. 25, see note 152, para. 21.

<sup>154</sup> *Ibid.*, para. 14.

<sup>155</sup> E.g. Art. 1 of the International Convention on the Elimination of All Forms of Racial Discrimination 21 December 1965, UNTS Vol. 660, No. 9464; CEDAW, see note 73, art. 1.

<sup>156</sup> See e.g., W. McKean, *Equality and Discrimination under International Law*, 1983, 287-288.

<sup>157</sup> I. M. Young, *Justice and the Politics of Difference*, 1990, 195-196.

<sup>158</sup> Doc. CEDAW/C/2005/OP.8/MEXICO of 27 January 2005, Report on Mexico produced by the Committee on the Elimination of Discrimination against Women under Article 8 of the Optional Protocol to the Convention, and Reply from the Government of Mexico, Committee on the Elimination of Discrimination against Women, para. 34.

<sup>159</sup> *Ibid.*, para. 287.

<sup>160</sup> *Gonzalez et al. v. Mexico*, Preliminary Objection, Merits, Reparations and Costs, Judgment, IACHR, Ser. C, No. 205, 16 November 2009.

they may “aspire, to the extent possible, to subvert, instead of reinforce, pre-existing structural inequality that may be at the root causes of the violence”<sup>161</sup>

Despite the narrow language of the Women’s Convention, the dynamic nature of international instruments allows for progressive interpretation and development of international law.<sup>162</sup> This provides a valuable tool for the elaboration of the concept of substantive equality.

## 2. Development

The area of development has seen the least normative development with respect to women’s lives. Reflecting the growing Third World membership of the UN, from the late 1950s CSW’s focus turned increasingly to the advancement of women in and through economic development.<sup>163</sup> This work had little impact initially and at the outset of the Second International Development Decade, 1970-1980, the first International Development Strategy did not refer to women in any detail. This prompted CSW to announce a detailed “Programme of concerted international action for the advancement of women.”<sup>164</sup> The Programme addressed the development of women, for example through minimum targets relating to education, employment, health, and public life, and sought to increase women’s contribution to the various economic and social sectors relevant to a state’s development.<sup>165</sup> Equality and development were linked in the themes for the International Women’s Year (1975)<sup>166</sup> and subsequently the UN Decade for Women. This reflected heightened scepticism about the value of traditional forms of development for women.<sup>167</sup>

In the 1980s and 1990s, CSW’s focus turned to the role women played in development, both as beneficiaries and as agents for change, identifying obstacles to women’s participation in development and women’s economic participation. The Beijing

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<sup>161</sup> Doc. A/HRC/14/22 of 23 April 2010, Report of the Special Rapporteur on violence against women, its causes and consequences, para. 31, (by Rashida Manjoo); see also R. Rubio-Marin (ed.), *The Gender of Reparations: Unsettling Sexual Hierarchies while Redressing Human Rights Violations*, 2009.

<sup>162</sup> Doc. CEDAW/C/GC/28 of 16 December 2010, CEDAW, General recommendation No. 28 on the core obligations of States parties under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women, para. 1.

<sup>163</sup> In 1957 the General Assembly invited CSW to pursue its efforts to improve “the status of women throughout the world”: Seminars on the Status of Women, A/RES/1163 (XII) of 26 November 1957. The UNGA “noted with appreciation” CSW’s work and progress made with respect to women’s rights. In 1962, the UNGA initiated a “unified long-term United Nations programme for the advancement of women” in which CSW was invited to cooperate. United Nations assistance for the advancement of women in developing countries, A/RES/1777 (XVII) of 7 December 1962.

<sup>164</sup> Programme of Concerted International Action for the Advancement of Women, A/RES/2716 (XXV) of 15 December 1970. Pietilä describes this as an “impressive counter-move on the part of CSW.” Pietilä, see note 2, 38.

<sup>165</sup> Programme of Concerted International Action for the Advancement of Women, Annex, see note 165. This instrumental approach is repeated, e.g. in the Preamble to the Convention on Elimination of All Forms of Discrimination against Women: “Convinced that the full and complete development of a country, the welfare of the world and the cause of peace require the maximum participation of women on equal terms with men in all fields.”

<sup>166</sup> A/RES/3010 (XXVII), see note 47, provides for intensive action: to promote equality between men and women; to ensure the full integration of women in the total development effort; and to recognise the importance of women’s contribution to the strengthening of world peace.

<sup>167</sup> Doc. A/CONF.116/28/REV.1 of 26 July 1985, Report of the World Conference to Review and Appraise the Achievements of the United Nations Decade for Women: Equality, Development and Peace, para.103: “While during the earlier, [sic] part of the Decade the belief that economic growth would automatically benefit women was more widely shared, an evaluation of the experience of the Decade has shed considerable doubt on this over-simplified premise.” See also, G. Sen/ C. Grown, *Development, Crises, and Alternative Visions: Third World Women’s Perspectives*, 1987.

Platform for Action has played an ambivalent role in this regard. On the one hand, it acknowledged that women's contribution to development is seriously underestimated and that economic globalisation can exacerbate inequalities between women and men. It has been described as articulating "a model of economic growth that is egalitarian, inclusive, participatory, people-centred, sustainable".<sup>168</sup> On the other hand, the Platform ignores the role of global capitalism in promoting inequality, seeing the problem for women as their lack of access to, and opportunity to participate in, the unchallenged economic system and in redress seeking primarily to ensure their inclusion in economic policy-making so as to minimise the adverse effects on them of structural adjustment and stabilisation measures.<sup>169</sup>

In the 21<sup>st</sup> century development objectives for women have shifted from the Beijing Platform to the Millennium Development Goals (MDGs).<sup>170</sup> The Beijing+10 Declaration in 2005 emphasised that "full and effective implementation of the Beijing Declaration and Platform for Action is essential to achieving the internationally agreed development goals, including those contained in the Millennium Declaration."<sup>171</sup> Participants in a panel session held during the 49<sup>th</sup> CSW meeting that year took a more cautious and critical approach, noting the need for a rights-based approach to implementation of the MDGs, especially women's human rights.<sup>172</sup> They also observed the limited scope given to gender equality and women's empowerment in efforts for realisation of the MDGs: generally such actions are seen as relevant only to Goal 3 (Promote gender equality and empower women) without any connection being made with the Beijing Platform for Action or the Women's Convention.<sup>173</sup> Moreover, the measurement of gender equality and women's empowerment is in very limited terms: representation in public office, enrolment in education and economic activity. In any event, the MDGs are a set of policy goals which do not purport to be comprehensive or to have any legal force. UN Women has urged that gender equality and women's empowerment be put at the heart of the MDGs<sup>174</sup> and fully integrated into the post-2015 international development framework,<sup>175</sup> but it has not challenged the neo-liberal economic status quo that undermines social justice and furthers inequalities.<sup>176</sup>

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<sup>168</sup> The impact of the implementation of the Beijing Platform for Action on the full achievement of the Millennium Development Goals, see note 70, para. 119.

<sup>169</sup> D. Otto, "Holding Up Half the Sky but for Whose Benefit? A Critical Analysis of the Fourth World Conference on Women", *Austl. Feminist L. J.* 6 (1996), 7 et seq.

<sup>170</sup> United Nations Millennium Declaration, A/RES/ 55/2 of 18 September 2000.

<sup>171</sup> Doc. E/CN.6/2005/L.1 of 3 March 2005, Declaration issued by the Commission on the Status of Women at its 49<sup>th</sup> Session, Agenda Item 3(c), para. 3; Doc. E/CN.6/2005/11, 2005 of 22 March 2005, Commission on the Status of Women: Report on the 49<sup>th</sup> Session, CSW, 49<sup>th</sup> Sess., Feb. 28 – Mar. 22, 2005, 1.

<sup>172</sup> CSW, Follow-up to the Fourth World Conference on Women and to the special session of the General Assembly entitled "Women 2000: gender equality, development and peace for the twenty-first century": implementation of strategic objectives and action in the critical areas of concern and further actions and initiatives, 28 February-11 March 2005, Summary submitted by the moderator Kyung-wha Kang, Doc. E/CN.6/2005/CRP.8 of 9 March 2005, para. 3, <<http://www.un.org>>.

<sup>173</sup> Charlotte Bunch has observed the limitations of the MDG process for women and that women have had to work hard to ensure their inclusion. Following the Millennium Summit + 5 women concluded "that gains had been made but that governments and the UN still fell far short of both the development and the gender equality goals espoused." Bunch, see note 50, 503.

<sup>174</sup> UN Women, *Progress of The World's Women in Pursuit of Justice*, 2011, 121.

<sup>175</sup> UN Women, *The Future Women Want: A Vision of Sustainable Development for All*, 2012 (prepared ahead of the UN Conference on Sustainable Development (June 2012)).

<sup>176</sup> UN Women has focused its interventions for enhancing women's empowerment on legal protection and recognition for women in specific situations, for example the informal economy and cross-border trading in Africa and the legal rights of domestic workers. It has also sought partnerships with the private

### 3. Peace

The third normative theme linked to women in international law is peace. As early as 1915 the International Women's Congress urged that women have a voice in the peace settlement that would take place at the end of the First World War.<sup>177</sup> Seventy years later, in 1975, the Nairobi Conference identified women and peace as a major arena for UN activity, but there was little normative development in the area for the next 25 years. After a sustained campaign by some UN member states and women's NGOs, particularly the Women's International League for Peace and Freedom (WILPF), the UN Security Council adopted Resolution 1325 in 2000.<sup>178</sup>

In line with the Security Council's mandate for the maintenance of international peace and security, the Resolution shifted the discourse to "women, peace and security." It drew attention, first, to women's participation in peace processes and second, to the inclusion of a "gender perspective" "in all efforts for the maintenance and promotion of peace and security."<sup>179</sup> The first aim was directed towards governments and the UN Secretary-General, and urged greater representation of women in all stages of conflict prevention, management and resolution.<sup>180</sup> The second aim defined a gender perspective as taking account of the "special needs of women and girls" in post-conflict processes and state building.<sup>181</sup> Men were referred to only in the context of disarmament where "all those involved" were encouraged "to consider the different needs of female and male ex-combatants". The Resolution also called for compliance with existing international humanitarian and human rights law and for the protection of women and girls "from gender-based violence, particularly rape and other forms of sexual abuse". Finally the Resolution called for "a study on the impact of armed conflict on women and girls, the role of women in peace-building and the gender dimensions of peace processes and conflict resolution."<sup>182</sup>

Security Council Resolution 1325 was not adopted under Chapter VII of the UN Charter, and thus does not formally bind UN member states. It nevertheless prompted considerable institutional activity: the UN launched training programs and developed a plethora of policies, action plans and guidelines.<sup>183</sup> It created an inter-agency forum "United Nations Action against Sexual Violence in Conflict" in 2007, bringing together 13 agencies as a "critical joint UN system-wide initiative to guide advocacy, knowledge-

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sector through the launching of the Women's Empowerment Principles: Equality Means Business. UN Women, *Annual Report 2010-2011*, see note 122.

<sup>177</sup> J. Addams, *Emily Balch and Alice Hamilton, Women at the Hague: The International Congress of Women and its Results*, 2003.

<sup>178</sup> See, F. Hill, "Nongovernmental Organizations' Role in the Buildup and Implementation of Security Council Resolution 1325", *Signs* 28, 2003, 1255 et seq.; See also, D. Otto, "The Security Council's Alliance of Gender Legitimacy", in: H. Charlesworth/ J-M. Coicaud (eds), *Fault Lines of International Legitimacy*, 2010, 239 et seq. (256-258).

<sup>179</sup> Security Council Resolution 1325 has been described by Rachel Mayanja, UN Special Adviser of the Secretary-General on Gender Issues and Advancement of Women, in 2010 as an important 'international development landmark.' See, R. Mayanja, "Armed Conflict and Women – 10 Years of Security Council Resolution 1325", *UN Chron.* XLVII (2010), <<http://www.un.org/>>.

<sup>180</sup> These themes had been incorporated in the Beijing Platform for Action as Strategic Objective E.1, which called for increased participation of women in conflict resolution at decision-making levels and for the integration of a gender perspective in the resolution of armed or other conflicts: Beijing Declaration and Platform for Action, see note 51, para. 144.

<sup>181</sup> This time the reference is to "particular" needs.

<sup>182</sup> In fact there were two studies: United Nations, *Women, Peace and Security: Study Submitted by the Secretary-General Pursuant to Security Council Resolution 1325 (2000)*, 2002; E. Rehn/ E. J. Sirleaf, *Women, War, Peace: The Independent Experts' Assessment on the Impact of Armed Conflict on Women and Women's Role in Peace-Building*, 2002.

<sup>183</sup> Report of the Secretary-General on Women and Peace and Security, Doc. S/2010/498 of 28 September 2010, para. 122.

building, resource mobilisation, and joint programming around sexual violence in conflict.”<sup>184</sup> The Security Council held open debates and “Arria formula” meetings<sup>185</sup> on women and peace and security. The Secretary-General’s 2004 report to the Security Council on transitional justice replicated much of the language of Resolution 1325.<sup>186</sup> UN Member States adopted national action plans; civil society, in particular women’s NGOs, used the resolution in conflict areas, to formulate demands for political and disarmament processes.<sup>187</sup> Despite this flurry of activity, at the end of the decade, the Secretary-General conceded that little had changed on the ground.<sup>188</sup> Even the adoption of “System-Wide Action Plans” across UN agencies had had limited effect.<sup>189</sup>

Over the next decade the Security Council adopted four further resolutions to draw attention to the “disproportionate and unique impact of armed conflict on women and girls.”<sup>190</sup> Although they are formally directed at protection of civilians “including women and girls,” the language emphasises “the egregious and inhumane treatment of women and girls.”<sup>191</sup> Resolution 1820, adopted in 2008 focussed on sexual violence in war, demanding that parties to armed conflict take measures “to protect civilians, including women and girls, from all forms of sexual violence”<sup>192</sup> and end impunity for such crimes. Two Security Council resolutions (1888 and 1889) adopted in 2009 sought women’s participation in decision-making about both peacemaking and peacebuilding and the cessation of and accountability for the commission of crimes of sexual violence.<sup>193</sup> Following Security Council resolution 1888 a team of experts has been established working on issues relating to the rule of law in conflict countries, with a focus on strengthening national capacities for effective criminal investigations and trials. The final resolution in this quartet was adopted late in 2010. Security Council Resolution 1960 expressed the Council’s “deep concern” at the slow progress made on the issue of sexual violence in armed conflict, especially against women and children, reaffirming the earlier resolutions and the Council’s commitment to the cessation of all acts of sexual violence.<sup>194</sup> Resolution 1960 went further than its predecessors with respect to accountability in requesting the Secretary-General to compile lists of those who were “credibly suspected of committing or being responsible for patterns of rape and other forms of sexual violence in situations of armed conflict.” It suggested the possible use of

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<sup>184</sup> See “UN Action against Sexual Violence in Conflict”, *Strategic Framework 2011-12*, 2011, 3, <<http://nobelwomensinitiative.org>>.

<sup>185</sup> The Arria Formula is an informal arrangement that allows the Security Council greater flexibility to be briefed about international peace and security issues. See, J. Paul, “The Arria Formula”, *Global Policy Forum*, October 2003, <<http://www.globalpolicy.org>>.

<sup>186</sup> UN Secretary-General, *The rule of law and transitional justice in conflict and post-conflict societies*, Doc. S/2004/616 of 23 August 2004, paras. 15, 17, 25, 33, 35, 64.

<sup>187</sup> Developments in all three arenas are discussed in the UN Secretary-General’s Annual Reports on Women and Peace and Security and summarized in UN Secretary-General, Report of the Secretary-General on Women and Peace and Security, see note 184, paras. 5- 73.

<sup>188</sup> *Ibid.*, para. 32.

<sup>189</sup> The Secretary-General noted that the first System-Wide Action Plan 2005-7 did little to improve coordination efforts on women and peace and security within the UN system. It was reconceptualised in the 2008-9 Action Plan to ensure “results-based programming, monitoring and reporting”: Report of the Secretary-General on Women and Peace and Security, see note 184, para. 95. A new Action Plan was adopted in January 2011.

<sup>190</sup> *Ibid.*, at para. 1.

<sup>191</sup> *Ibid.*

<sup>192</sup> S/RES/1820 (2008) of 19 June 2008.

<sup>193</sup> S/RES/1888 (2009) of 30 September 2009; S/RES/1889 (2009) of 5 October 2009.

<sup>194</sup> S/RES/1960 (2010) of 16 December 2010.

these lists by the UN, including through sanctions,<sup>195</sup> implying that the Security Council may be prepared to exercise its powers under Chapter VII of the UN Charter for the first time in this context. The Special Representative of the Secretary-General on Sexual Violence in Conflict has indeed named in her reports such parties (armed groups, militia and, in the case of Syria, Syrian Government forces, the intelligence forces and the Shabbiha militia). At the least this “naming and shaming” allows for increased pressure on such parties, while it may also be first steps in more coercive action “through the adoption of targeted and graduated measures by relevant sanctions committees”.<sup>196</sup>

The Security Council has also included provisions relating to women in country-specific resolutions. Many of these provisions follow identical lines however and are either general references to Security Council Resolution 1325 or “zero tolerance” clauses with respect to sexual exploitation and abuse by members of UN peacekeeping missions.<sup>197</sup>

The Security Council resolutions of the 2000s depend on sometimes contradictory images of women and men, and of gender roles.<sup>198</sup> These include on the one hand women as agents of political change through preventing and resolving conflicts and engaging in peacebuilding, and on the other women, girls and children as a group with “special needs,” requiring protection, by a strong (male) authority to determine the proper measures for their security.<sup>199</sup> The countries to which the Security Council’s specific resolutions are directed also imply that the threat of sexual violence is located particularly in the global South and that the “muscular humanitarianism” of the international community is a vital source of protection.<sup>200</sup> The language of women’s (or gender) equality appears only fleetingly in one of the resolutions, Resolution 1889, which refers to the promotion of gender equality and the empowerment of women in post-conflict situations within UN missions, calling on the Peacebuilding Commission to give attention to mobilising resources for advancing gender equality.<sup>201</sup>

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<sup>195</sup> This follows a recommendation made by the UN Secretary-General, in Report of the Secretary-General on the implementation of Security Council resolutions 1820(2008) and 1888(2009), Doc. A/65/592–S/2010/604 of 24 November 2010, para. 46 (a).

<sup>196</sup> Report of the Secretary General on Sexual violence in conflict, Doc. A/67/792–S/2013/149 of 14 March 2013, para. 115 and Annexed List.

<sup>197</sup> E.g., ‘Requests the Secretary-General to continue to take the necessary measures to ensure full compliance of all MINUSTAH personnel with the United Nations zero-tolerance policy on sexual exploitation and abuse, and to keep the Council informed, and urges troop- and police-contributing countries to ensure that acts involving their personnel are properly investigated and punished’; S/RES/1944 (2010) of 14 October 2010 (on Haiti). See, Prince Zeid Ra’ad Zeid Al-Husseini, Doc A/59/710 of 24 March 2005, *A Comprehensive Strategy to Eliminate Future Sexual Exploitation and Abuse in the United Nations Peacekeeping Operations*. For critique see, D. Otto, “Making sense of zero tolerance policies in peacekeeping sexual economies”, in: V. Munro/ C. F. Stychin (eds), *Sexuality and the Law: Feminist Engagements*, 2007, 259 et seq.

<sup>198</sup> For the context of these resolutions see, D. Otto, “Power and Danger: Feminist Engagement with International Law through the UN Security Council”, *Austl. Feminist L.J.* 32 (2010), 97 et seq. (100-103).

<sup>199</sup> I. M. Young, “The Logic of Masculinist Protection: Reflections on the Current Security State”, *Signs: Journal of Women in Society and Culture* 29 (2003), 1 et seq.

<sup>200</sup> See also, A. Orford, “Muscular Humanitarianism: Reading the Narratives of the New Interventionism”, *EJIL* 10 (1999), 679 et seq.

<sup>201</sup> There are, however, preambular references to the Outcome Document of Beijing + 5, “Women 2000: Gender Equality, Development and Peace for the Twenty-First Century” in resolutions 1820 and 1888 and to OSAGI’s role in promoting gender equality in resolution 1888. In the Arms Trade Treaty, adopted by the UN General Assembly in April 2013, a link is made between small arms and gender-based violence: in making an assessment prior to authorising the export of conventional arms covered by the Treaty, State Parties shall take into account the risk of such arms being used “to commit or facilitate serious acts of gender-based violence or serious acts of violence against women and children.”: Doc. A/CONF.217/2013/L.3 of 27 March 2013, art. 7 (4).

Broader feminist agendas of disarmament, reduction of military expenditure or restrictions on small arms appear to have had no impact on the resolutions.<sup>202</sup> They do not address the links between violence against women in armed conflict and structural bases such as militarisation, the political economy of conflict or the struggle for control of economic resources.<sup>203</sup> Nor does increasing the number of female peacekeepers challenge militarism; it simply inserts women into the existing hegemonic process.<sup>204</sup> The resolutions also concentrate on sexual violence as the major concern for women during armed conflict, displacing all the other dangers which women experience during armed conflict such as disappearances of family members and destruction of property and food sources for which women as the primary carers within their family and community have responsibility for providing.<sup>205</sup> None of the resolutions refers explicitly to sexual violence against men and boys, a significant phenomenon in armed conflict.<sup>206</sup> Indeed the implication is that men and boys are only involved as perpetrators of sexual violence.

The adoption of Resolution 1325 in particular has provided a smokescreen for inaction in some post-conflict contexts. For example, the UN's Senior Gender Advisor in Nepal in 2007-2008, Ratna Kapur, reported that the Resolution was used as a mechanism to limit the scope of her work. Misreading the Resolution, the UN Mission regarded Nepali women as objects of welfare and their roles as combatants and political actors were overlooked. Kapur noted that "[a]dvice sought from the gender section by senior management was often limited to providing statistics or recommending token women to invite as speakers on panels, or providing inputs into speeches by the [UNMIN] leadership that were largely watered down or transformed into insipid remarks on gender." In her view, Resolution 1325 "project[ed] an illusion of *something being done* in the area of gender by the international community, including UNMIN, without very much actually being done on the ground."<sup>207</sup>

More generally, the call in the resolutions to include more women in peace processes has had little practical effect. A study of 24 major peace processes since 1992 reveals a small number of women acting as negotiators, as delegates of negotiating parties, or as signatories to peace agreements.<sup>208</sup> The UN itself has never appointed a woman to be a chief mediator in a peace process.<sup>209</sup> Indeed the Security Council has never taken the step of drawing attention to the absence of women in a particular peace process. CEDAW, however, has taken this up with respect to specific conflicts.<sup>210</sup> A review of the UN Peacebuilding Commission in 2010 found that it had

<sup>202</sup> Otto, see note 179, 255.

<sup>203</sup> E.g., Doc. A/HRC/11/6 of 18 May 2009, Report of the Special Rapporteur on violence against women, its causes and consequences, *Political economy women's rights* (by Yakin Ertürk), para. 62.

<sup>204</sup> M. Henry, "Gender, security and development", *Conflict, Security & Development* 7 (2007), 61 et seq. (76).

<sup>205</sup> D. Otto, "The Exile of Inclusion: Reflections on Gender Issues in International Law over the Last Decade", *Melb. J. Int'l L.* 10 (2009), 11 et seq.

<sup>206</sup> S. Sivakumaran, "Sexual Violence against Men in Armed Conflict", *E. J. Int'l L.* 18 (2007), 253 et seq.

<sup>207</sup> R. Kapur, Senior Gender Advisor/Chief of Section, UNMIN, End-of-Assignment Report of 4 July 2008 (document on file with authors). See also, N. Puechguirbal, "Discourses on Gender, Patriarchy and Resolution 1325: A Textual Analysis of UN Documents", *Int'l Peacekeeping* 17 (2010), 172 et seq.

<sup>208</sup> UNIFEM, *Women's Participation in Peace Negotiations: Connections between Presence and Influence*, United Nations Fund for Women (2010), <<http://www.unifem.org>>.

<sup>209</sup> *Ibid.*, 5.

<sup>210</sup> Eg., Doc. CEDAW/C/ISR/CO/3 of 22 July 2005, Concluding Comments: Israel, para. 22; Doc. CEDAW/C/CYP/CO/5 of 30 May 2006, Concluding Comments of the Committee on the Elimination of all Discrimination against Women: Cyprus, para. 34; Doc. A/64/38 (2009), Part Two, Annexe II, Decision 43/III, Statement by the Committee on the Elimination of Discrimination against Women on the situation in Gaza.

failed to live up to its explicit mandate to take women and gender into account in its work.<sup>211</sup> Another study of the terms of peace agreements found that only 16 per cent of peace agreements contained any references to women, beyond a general equality clause, although the adoption of Resolution 1325 had prompted an increase, especially if the UN was involved in the process.<sup>212</sup> Of course participation of women whether in peace processes, political bodies or governance does not of itself guarantee a feminist – or even women-oriented – perspective. Women, like men, bring a diversity of viewpoints to the table. Nevertheless failure to ensure women’s participation in accordance with Resolution 1325 ignores the gendered nature of conflict and undermines women’s equality.<sup>213</sup>

Within the UN, the theme of women and peace has been elaborated in particular contexts that have been priorities in the post-cold war context: peace, security, post-conflict peacebuilding and transitional justice. In conjunction with the work of the *ad hoc* international criminal tribunals there has been some significant advances. The Security Council has recognised gender and sex-based crimes as constituting a threat to the maintenance of international peace and security and effectively included within the jurisdiction of the *ad hoc* international criminal tribunals and the Statute of the ICC.<sup>214</sup> UN Women too is working with other parts of the UN and within member states to enhance women’s participation in post-conflict negotiations and political structures, to challenge impunity and to provide training to UN peacekeepers prior to their deployment.<sup>215</sup>

These developments have met with ambivalent responses.<sup>216</sup> Referring to women in Security Council resolutions and including some crimes against women in international criminal law do not address fundamental power imbalances between women and men. Another critique is the protective stance taken towards women that assumes their vulnerability, for example by the consistent conjunction of “women and children”. In the same vein, the “zero tolerance” policy of sexual contact with local people and UN peacekeepers has been criticised for its insufficient attention to “the grinding poverty or the poorly resourced charity-based models of aid that produce economies of survival sex”.<sup>217</sup>

#### 4. Assessment

This review of the elements of the international normative structures relating to women shows that there have been significant developments. The UN Charter adopted the principle of equal treatment of women and men; the Women’s Convention then endorsed the norm of non-discrimination on the basis of sex against women; in the

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<sup>211</sup> Doc. A/64/868–S/2010/393 of 21 July 2010, Identical letters dated 2010/07/19 from the Permanent Representatives of Ireland, Mexico and South Africa to the United Nations addressed to the President of the General Assembly and the President of the Security Council, para. 3.

<sup>212</sup> C. Bell/ C. O’Rourke, “Peace Agreements or Pieces of Paper? The Impact of UNSC Resolution 1325 on Peace Processes and their Agreements”, *Int’l Comp. L. Q.* 59 (2010), 941 et seq. (942). See also Security Council Report “Women, Peace and Security: Sexual Violence in Conflict and Sanctions” *Cross-Cutting Report*, 2013.

<sup>213</sup> For a fuller discussion see Charlesworth/ Chinkin, *The Boundaries of International Law: A Feminist Analysis*, see note 149.

<sup>214</sup> This article does not consider the inclusion of gender-based crimes in the jurisprudence of the international criminal tribunals, which has been extensively discussed elsewhere. See e.g. A-M. De Brouwer, *Supranational Criminal Prosecution of Sexual Violence: The ICC and the Practice of the ICTY and the ICTR*, 2005; J. Halley, “Rape in Berlin: Reconsidering the Criminalisation of Rape in the International Law of Armed Conflict”, *Melb JIL* 9 (2008), 78 et seq. (121).

<sup>215</sup> UN Women, *Annual Report 2010-2011*, see note 122, 17.

<sup>216</sup> E.g., *Ibid.*; K. Engle, “Feminism and its (Dis)contents: Criminalizing Wartime Rape”, *AJIL* 99 (2005), 778 et seq.

<sup>217</sup> Otto, see note 198; Otto, see note 206, 24.

1990s the idea of gender emerged as a tool to respond to the situation of women and it featured in programs (gender mainstreaming), principles (gender equality) and as tools (gender disaggregated data, gender analysis). In the new century, the UN's peace and security framework has emphasised both protective and participatory norms, as exemplified in the Security Council resolutions on women, peace and security.

The title of UN Women invokes two distinct concepts -- "gender equality" and "empowerment of women". We consider first some issues of terminology and symbolism. What is the significance of these terms and how do they fit into the developments sketched above? The terms "women", "sex" and "gender" have been deployed at different times as a shorthand acknowledgment of the differences between the economic, social, political and familial positions of women and men observed in most contexts across the globe. Of course all terminology in this area is controversial and unstable in some way: for example the category "women" is a complex one in an international context, inevitably reproducing an overbroad identity. In Denise Riley's words the term "women" "conflates the attributed, the imposed, and the lived, and then sanctifies the resulting mélange."<sup>218</sup> It has, however, some value in mobilising political action.

As we have seen, one goal of the UN set out in its Charter was to achieve the equality of men and women and to ensure that sex was not a basis for the denial of human rights. The notion of sex became synonymous with women. The major UN treaty elaborating the duty of non-discrimination on the basis of sex, the Women's Convention,<sup>219</sup> was directed solely at women's claims,<sup>220</sup> "emphasizing that women have suffered, and continue to suffer from various forms of discrimination because they are women."<sup>221</sup> These developments illustrate what Joan Scott has identified as a paradox of feminism: it seeks to discard sexual difference as a legitimate political criterion while at the same time relying on sexual difference to make claims in the name of women. In other words, feminism reinforces the sexual differences it seeks to eradicate.<sup>222</sup>

The terms "feminist" and "feminism" are never mentioned in international fora, presumably because they appear to carry strident political baggage. However, the term "gender", drawn from feminist theory, began to emerge on international agendas in the late 1980s. The Nairobi "Forward Looking Strategies" referred to "gender-based discrimination" and sought changed attitudes towards gender roles.<sup>223</sup> CEDAW used the term in a 1989 General Recommendation encouraging the collection of statistics,<sup>224</sup> and

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<sup>218</sup> D. Riley, "Am I That Name?": *Feminism And The Category Of Women In History*, 1988, 100.

<sup>219</sup> CEDAW, see note 73.

<sup>220</sup> The 1975 Mexico City World Plan of Action had recommended that "[h]igh priority should be given to the preparation and adoption of the convention on the elimination of discrimination against women, with effective procedures for its implementation": Doc. E/CONF.66/34 (1976), World Conference of the International Women's Year, First World Conference of the International Women's Year, Mexico City, Mexico, Jun. 19 – Jul. 2, 1975, *Report of the World Conference of the International Women's Year, Mexico City, 19 June – 2 July 1975*, Part 1, para. 198,

<sup>221</sup> CEDAW, General recommendation No. 25, see note 152.

<sup>222</sup> J. W. Scott, *Only Paradoxes to Offer: French Feminists and the Rights of Man*, 1996, 9-13.

<sup>223</sup> World Conference on Women, Report of the World Conference to Review and Appraise the Achievements of the United Nations Decade for Women: Equality, Development and Peace, see note 168, paras. 6, 121, 138, 167, 257, 347.

<sup>224</sup> CEDAW, General Recommendation No. 9, Statistical Data Concerning the Situation of Women, 8<sup>th</sup> Sess., (1989): the Committee "recommends that States parties should make every effort to ensure that their national statistical services responsible for planning national censuses and other social and economic surveys formulate their questionnaires in such a way that data can be disaggregated according to gender, with regard to both absolute numbers and percentages, so that interested users can easily obtain information on the situation of women in the particular sector in which they are interested".

a 1992 General Recommendation on violence against women.<sup>225</sup> At the Beijing Conference in 1995 the deliberate move away from the term “sex” to “gender” was strongly contested, primarily by those with a religious agenda.<sup>226</sup> It endorsed a commitment to gender equality as well as to non-discrimination on the basis of sex.<sup>227</sup> The rationale for the shift was that the concept of gender recognised “that the entire structure of society, and all relations between men and women within it, had to be re-evaluated.”<sup>228</sup> According to the UN, the term “gender” drew attention to the necessary “fundamental restructuring of society and its institutions” to allow women to be “fully empowered to take their rightful place as equal partners with men in all aspects of life”.<sup>229</sup> In this sense “gender equality” was seen as relational and engaging the interests of men as well as women – an important strategic objective. Similarly CEDAW has asserted that the term “sex” refers to “biological differences between men and women” while “gender” means “socially constructed identities, attributes and roles for women and men and society’s social and cultural meaning for these biological differences resulting in hierarchical relationships between women and men and in the distribution of power and rights favouring men and disadvantaging women.”<sup>230</sup> After the Beijing Conference, “gender mainstreaming” rapidly became the dominant international institutional strategy to achieve women’s equality.<sup>231</sup> It was a potentially radical response, bringing the issue of sex equality out of the specialised women’s institutional zone and insisting on its relevance to all areas of activity. It lost its radical edge in its bureaucratic translation, however, reducing some gender mainstreaming projects to head counts of women.<sup>232</sup>

As the full name of UN Women and its mandate illustrate,<sup>233</sup> the terms “women” and “gender” are used more or less interchangeably in the UN, even if this has little intellectual coherence. The term “sex” is in decline and “gender” has become a synonym for women. This reading of the term excludes other contentious signifiers of sexuality.<sup>234</sup>

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<sup>225</sup> CEDAW, General Recommendation No. 19, Violence against Women, 11<sup>th</sup> Sess. (1992): the Committee defines gender-based violence as “a form of discrimination which ... impairs or nullifies the enjoyment by women of human rights and fundamental freedoms”.

<sup>226</sup> Such groups advanced “singular and subordinating narratives of womanhood as predetermined by the ‘self-evidence’ of biology”. D. Otto, “A Post-Beijing Reflection on the Limitations and Potential of Human Rights Discourse for Women”, in: K. D. Askin/ D. Koenig (eds), *Women and International Human Rights Law* 1 (1999), 115 et seq. (129).

<sup>227</sup> Beijing Declaration and Platform for Action, Fourth World Conference on Women, see note 51, para. 24.

<sup>228</sup> “The Four Global Women’s Conferences 1975-1995: Historical Perspective”, *U.N. Dep’t of Pub. Info.*, May 2000, <[www.un.org](http://www.un.org)>.

<sup>229</sup> Ibid.

<sup>230</sup> Doc. CEDAW/C/GC/28 (2010), General Recommendation No. 28, The Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women, 47<sup>th</sup> Sess, para. 5.

<sup>231</sup> The Vienna Declaration and Programme for Action had stated that “the equal status of women and the human rights of women should be integrated into the mainstream of U.N. system-wide activity”: Doc. A/CONF.157/23 of 12 July 1993, World Conference on Human Rights, June 14-25, 1993, *Vienna Declaration and Programme for Action*, para. 37.

<sup>232</sup> See e.g. L. Handrahan, “Rhetoric and Reality: Post-Conflict Recovery and Development – the UN and Gender Reform”, in: N.D. White/ D. Klaasen (eds) *The UN, Human Rights and Post-Conflict Situations*, 2005, 404 et seq. (414-418); A. Woodward, *Gender Mainstreaming in European Policy: Innovation or Deception?*, Discussion Paper Fs 101-3, Wissensschatfszentrum Berlin Fur Sozialforschung, 22, 2001. See also, H. Charlesworth, “Not Waving but Drowning: Gender Mainstreaming and Human Rights”, *Harv. Hum. Rts. J.* 18 (2005), 1 et seq.

<sup>233</sup> E.g. The entity shall work in consultation with national women’s machineries; recognition of the role of women’s organizations; See, A/RES/64/289, see note 116.

<sup>234</sup> E.g. the UN Special Rapporteur on promoting human rights while countering terrorism caused controversy when he interpreted his mandate to include a gender perspective as encompassing consideration of the experiences of sexual minorities, including gays, lesbians and transgender individuals

It links gender with biology, implying that gender is a fixed, objective fact about a person and does not capture the ways that gender is constructed in society to make some actions seem natural and others controversial. Understanding gender as essentially about women ignores the relational nature of gender, the role of power relations and the way that structures of subordination are reproduced.<sup>235</sup> It allows problems facing women to be understood as the product of particular cultures, lack of participation in public arenas or lack of information or skills and obscures the way that gender shapes our understanding of the world. “Gender equality” allows men to claim equality rights, without recognition that women may thereby lose them. And the term excludes men and forms of male power from analysis. As Ines Smyth has argued:

The association between the term gender on one hand and mainstreaming – with its bureaucratic associations – on the other has created a “chain of equivalence” [whereby new meanings emerge according to the proximity between chosen words] that hides the element of power relations so essential to the original feminist understanding of the term.<sup>236</sup>

In other words, gender mainstreaming has become a managerial activity that can be addressed through increasing participation and providing technical assistance, rather than a political one requiring evaluation of root causes and systemic change.<sup>237</sup>

What force does UN Women’s endorsement of “empowerment of women” have? The earliest UN instruments addressing women speak of “women’s advancement,” which appears to refer to improvement in their status in the public sphere.<sup>238</sup> This language was supplemented in Article 3 of the Women’s Convention which seeks to achieve women’s “full development and advancement” and by the concept of “empowerment” in the 1995 Beijing Platform for Action.<sup>239</sup> The idea of women’s empowerment entered the UN’s lexicon from the world of development, but its meaning was not defined in the Beijing Platform. Drawing on religion, self-help manuals and business management, it has come to mean “self-generated positive change” or the free choice of individuals to fulfil their own potential, a counterweight to male power over women.<sup>240</sup> Thus UN documents describe “the core of empowerment [as] the ability of a woman to control her own destiny through equal capabilities, equal access to resources and opportunities” and “the agency to use those rights, capabilities, resources, and opportunities to make strategic choices and decisions,” which entails living free from the fear of coercion and violence.<sup>241</sup> In this context, empowerment rests on a model of the empowered citizen in a free market, liberal economy, whereby independence and self-

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in counter-terrorism efforts. Press Conference, Special Rapporteur on promoting human rights while countering terrorism, 26 October 2009, <<http://www.un.org/>>.

<sup>235</sup> S. Baden/ A.M. Goetz, “Who Needs [Sex] When You Can Have [Gender]?”, *Feminist L. Rev.* 56 (1997), 3 et seq. (7).

<sup>236</sup> I. Smyth, “Talking of Gender: Words and Meanings in Development Organisations”, *Dev. in Prac.* 17 (2007), 582 et seq. (586).

<sup>237</sup> S. Marks, “Human Rights and Root Causes”, *Mod. L.R.* 74 (2011), 57 et seq.

<sup>238</sup> E.g., United Nations Assistance for the advancement of women in developing countries, Doc. A/RES/1509(XV) of 12 December 1960, para. 1: refers to ‘programmes designed to improve the status of women.’

<sup>239</sup> ‘The Platform for Action is an agenda for women’s empowerment’; Beijing Declaration and Platform for Action, Fourth World Conference on Women, see note 51, para. 1.

<sup>240</sup> Smyth, see note 237, 584; See also, S. Mosedale, “Assessing Women’s Empowerment: Towards a Conceptual Framework”, *J. Int’l Dev.* 17 (2005), 243 et seq. (244).

<sup>241</sup> *UN Millenium Project Taskforce On Education And Gender Equality, Project Taking Action: Achieving Gender Equality And Empowering Women*, 2005, 30.

sufficiency provide a path to equality and autonomy, and the state can legitimately reduce its support for vulnerable groups.<sup>242</sup>

Although the concept of empowerment is typically deployed in a general and vague way, it has been quantified in specific fields, such as economic participation (numbers of women in the paid labour force and their remuneration on an equal basis with men); economic opportunity (quality of working conditions, challenging the sexual division of labour and the feminisation of poverty); political participation (women's representation in formal and informal decision-making bodies and in policy-making); education; and health and well-being.<sup>243</sup> Feminist scholars have criticised this move to render empowerment as an attainable end-product of development, rather than as an ongoing process, on the basis that it promotes individualism and consumerism and does not pay enough attention to social context.<sup>244</sup> Issues such as women's unpaid labour and their role as the "safety net of last resort" are also significant. In the widespread retreat from the welfare state, focus on empowerment might suggest weakness in those who need care and are not self-reliant. It burdens women with the responsibility for overcoming their poverty, exploitation and disempowerment,<sup>245</sup> shifting responsibility away from the state's obligations to protect, respect and fulfil their human rights.

The terms gender equality and empowerment of women used in the title of UN Women appear to link disparate initiatives and to give them greater coherence, although generality and abstraction of these concepts also avoids disagreement on what the concepts entail in any given situation.<sup>246</sup> Institutional attention to women's lives can readily become bureaucratized and ritualised, for example holding an annual meeting on gender while deflecting proposals for concrete change.

The impetus for legal reform has come largely from civil society, notably women's groups. Taking advantage of the diversity of institutional structures, women activists and practitioners have found spaces that were receptive to their aims.<sup>247</sup> However the success of civil society strategies in seeking alliances with international institutions has had many negotiating costs.<sup>248</sup> A sign of the fragility of the normative system is the controversy over whether to hold a Fifth World Conference on Women.<sup>249</sup> NGOs and some UN member states fear that such an event may lead to revision of the Beijing Platform for Action, for example to insert references to culture and traditional practices as legitimate restraints on women's assertions of rights.<sup>250</sup>

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<sup>242</sup> I. M. Young, "The Logic of Masculinist Protection: Reflections on the Current Security State", *Signs* 29 (2003), 1 et seq. (21); See also, M. H. Marchand, "The Future of Gender and Development after 9/11: Insights from Postcolonial Feminism and Transnationalism", *Third World Quarterly* 30 (2009), 921 et seq. (928).

<sup>243</sup> World Economic Forum, *Women's Empowerment: Measuring The Global Gender Gap*, 2005.

<sup>244</sup> Mosedale, see note 241, 243-248.

<sup>245</sup> S. Madhok/ S. Rai, "Agency, Injury and Transgressive Politics in Neoliberal Times", *Signs* 37 (2012), 645 et seq. (649).

<sup>246</sup> Compare H. Kalmo/ Q. Skinner, "Introduction", in: H. Kalmo/ Q. Skinner (eds), *Sovereignty in Fragments: The Past, Present and Future of a Contested Concept*, 2010, 1 et seq. (3).

<sup>247</sup> C. Chinkin, "Jus Cogens, Article 103 of the UN Charter and Other Hierarchical Techniques of Conflict Solution", *Finnish Y. B. Int'l L.* 27 (2006), 63 et seq.

<sup>248</sup> E.g., Dianne Otto discusses the compromises made by the NGO Working Group on Women, Peace and Security in determining its strategy of seeking access to the UN Security Council for the adoption of SC Res 1325: Otto, see note 179, 239, 255.

<sup>249</sup> Joint announcement by the President of the General Assembly and the United Nations Secretary-General on the occasion of the International Women's Day, 8 March 2012), <<http://www.un.org/sg/>>: The President of the UN General Assembly and the Secretary-General of the United Nations announced a joint initiative to propose a Fifth Global Conference on Women by 2015.

<sup>250</sup> See e.g., Summary Report of 47<sup>th</sup> Session CSW Meetings on 5WCW and Beijing 10+, Fifth Women World Conference, 2003, <<http://www.5wwc.org/>>.

The creation of UN Women offers an opportunity to strengthen the international normative system but the 2012 UN Conference on Sustainable Development illustrates the political difficulties in such a project. UN Women submitted a contribution in advance to the Conference, *The Future Women Want: A Vision of Sustainable Development for All*, but it avoided contentious topics such as women's reproductive rights. While the Conference Outcome Document makes general references to gender equality and women's empowerment, language on women's reproductive rights was negotiated out of the text. It contains a commitment to "promote" women's equal access to basic services, including addressing women's sexual and reproductive health, rather than "ensuring" them as in an earlier draft text.<sup>251</sup>

## V. A NORMATIVE AGENDA FOR UN WOMEN

The creation of UN Women is a moment of great promise because of the unprecedented focus on the institutional architecture for the advancement of women. Its mandate for "gender equality" means that UN Women, like other bodies, must interpret the undefined concept and apply this understanding in its work. This gives it an opportunity for developing a transformative interpretation of substantive equality. UN Women's two Annual Reports do not suggest however that the body sees it as part of its role to challenge the global structures that sustain women's subordination. Rather it creates a pool of expertise to address routine forms of discrimination against women, to offer technical assistance and expert knowledge to states, with respect to issues such as law and judicial reform, governance, capacity building and gender budgeting. For example it asserts that "ending violence against women requires know-how", adoption of appropriate legislation, action plans and budgets, prevention programs and services and awareness campaigns.<sup>252</sup> Its work is practical and focused but does not address the root causes of violence against women, for example by referring to the work of successive special rapporteurs on violence against women with respect to its causes. While accepting the continuing need for such scrutiny, expertise and practical assistance, UN Women could also play a valuable role in addressing the foundational weaknesses of the normative structure relating to women in international law, which has overall taken a minimalist approach to women's equality and encouraged integration into pre-existing structures. In this section, we suggest that the goal of substantive equality should be defined and emphasised by UN Women.

The idea of equality has some resonance in an international legal system that is formally constructed on the principle of sovereign equality between states.<sup>253</sup> However, sovereign equality has had little practical application other than in the voting system of

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<sup>251</sup> Doc A/66/L.56 of 24 July 2012, Annex, para. 241. The Outcome Document however reaffirms the commitment to implement the Programme of Action of the International Conference on Population; See R. Lefton, *Assault on Reproductive Rights and Gender Equality at Rio+20*, Center for American Progress, 21 June 2012, <<http://www.americanprogress.org/>>. See also L. Ford, "Gro Harlem Brundtland censures Rio+20's gender equality outcomes", *The Guardian*, 22 June 2012, <<http://www.guardian.co.uk/>>. In 2013 the CSW, in its conclusions on the elimination and prevention of all forms of violence against women and girls, also states that "protecting and fulfilling reproductive rights in accordance with the Programme of Action of the International Conference on Population and Development, the Beijing Platform for Action and the outcome documents of their review conferences, is a necessary condition to achieve gender equality and the empowerment of women to enable them to enjoy all their human rights and fundamental freedoms, and to prevent and mitigate violence against women." Commission on the Status of Women, Elimination and prevention of all forms of violence against women and girls: Agreed conclusions, CSW, 57<sup>th</sup> Session, 4 – 15 March 2013.

<sup>252</sup> UN Women, *Annual Report 2010-2011*, see UN note 122, 15; See also UN Women, *Annual Report 2011-2012*, see note 122.

<sup>253</sup> UN Charter, Art. 2(1).

some international institutions, most notably the UN General Assembly. In other contexts such as claims of “unequal” treaties, or the “equal rights and self-determination of peoples,” the concept of equality has been contested, or discounted.<sup>254</sup> Indeed it has been argued that international law, shaped by the unequal relationships of colonialism, has never developed a coherent theory of equality or of inequality,<sup>255</sup> and that it fails to recognise the possibility of inherently coercive relationships.<sup>256</sup> Thus attempts by weaker states to draw attention to economic inequality such as through the campaign for a New International Economic Order, or the formulation of a right to development, have failed.<sup>257</sup> Benedict Kingsbury has identified:

... a relationship of mutual containment between sovereignty and inequality. The system of sovereignty at least notionally precludes some forms of inequality, while helping exclude other forms of inequality from real consideration. Inequality limits sovereignty where hierarchies are established among different political and legal units.<sup>258</sup>

Extending Kingsbury’s observations, the attachment to sovereignty in international law also shields inequalities within states from international scrutiny. The notion of equality focuses on limited goals, providing access to already constituted institutions and orders. For example in *In Larger Freedom*, his blueprint for UN reform, Secretary-General Kofi Annan listed the following measures to achieve the goal of “gender equality”: increasing primary school completion and secondary school access for girls; ensuring secure tenure of property to women; ensuring access to reproductive health services; promoting equal access to labour markets; providing opportunity for greater representation in government decision-making bodies; and supporting direct interventions to protect women from violence.<sup>259</sup> Implementation of such measures would undoubtedly enhance the lives of many women but overall they simply increase women’s participation in existing institutions and structures and do not challenge the hierarchies of power and wealth on which they are built.

This reluctance to deal with the causes of inequality between women and men is an aspect of a larger failure in the area of human rights. Susan Marks has observed the focus of the human rights movement on explanatory analysis, and its lack of engagement with the root causes of human rights abuses.<sup>260</sup> She has identified three principal problems: the investigation of causes is prematurely curtailed, effects are treated as causes and causes are identified only to be set aside. There is a similar pattern with respect to sex equality: little attention is paid to the reproduction of inequality within global frameworks; the effects of inequality, such as the low numbers of women in public life, are understood as causes of inequality; sex inequality is traced to “deficiencies of leadership or accountability, or quirks of local history or culture”<sup>261</sup> and

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<sup>254</sup> There is no reference to unequal treaties in the Vienna Convention on the Law of Treaties and “the general view is that the principle does not form part of positive law”: I. Brownlie, *Principles of Public International Law*, 5<sup>th</sup> ed., 1998, 620.

<sup>255</sup> A. Anghie, *Imperialism, Sovereignty and the Making of International Law*, 2005.

<sup>256</sup> A. Carty, “International Law and the Spirit of Anti-Colonialism: Europe Fights Back”, *Mod. L. Rev.* 74 (2011), 135 et seq. (147).

<sup>257</sup> See S. Pahuja, *Decolonising International Law*, 2011.

<sup>258</sup> B. Kingsbury, “Sovereignty and Inequality”, in: A. Hurrell/ N. Woods (eds), *Inequality, Globalization and World Politics*, 1999, 66 et seq. (67-68).

<sup>259</sup> UN Secretary-General, *In Larger Freedom: Towards Development, Security and Human Rights For All*, see note 18, at Annex, para. 5 (j). These same examples are listed by the UNGA in its 2005 World Summit Outcome; A/RES/60/1, see note 20, para. 58.

<sup>260</sup> Marks, see note 238, 57, 70.

<sup>261</sup> *Ibid.* 78.

technical solutions are proposed to tinker at its edges. As in the human rights area generally, the beneficiaries of inequality between women and men are invisible: in Marks' words, "those who (directly or indirectly) live off the practices and processes that victimise others have been allowed to remain comfortably out of sight."<sup>262</sup> Analysis centres on how women experience inequality, rather than on how men experience their position of greater power, which is viewed as natural and uncontroversial. The discourse of women's empowerment and gender equality assumes that women can be empowered without men changing their lives, losing some power, or giving up the trappings of privilege.

Substantive equality provides a sharper tool to respond to women's global inequality. Elaborating such an idea would require UN Women to build on the thin fabric contained in its constitutional resolution. It could draw on the principle of equality explained by the Permanent Court of International Justice as long ago as 1935 as encompassing "equality in fact", which "may involve the necessity of different treatment in order to attain a result which establishes an equilibrium between different situations",<sup>263</sup> that is, objectively unequal situations should not be treated equally.

Feminist accounts of equality do not necessarily rely on comparators to demonstrate unequal treatment but instead emphasise the influence of structural and ideological power relationships between women and men that uphold women's subordination.<sup>264</sup> Thus substantive equality between women and men requires not only redressing the disadvantageous practical impact of apparently neutral laws and practices but also focusing on the "asymmetrical structures of power, dominance and disadvantage at work in society".<sup>265</sup> These structures are maintained by complex systems of stereotyping on the basis of sex.<sup>266</sup>

Substantive equality is also different from the notion of non-discrimination, which rests on a commitment to formal equality – treating people in the same situation in the same way. The goal of formal equality for women when compared to similarly-situated men has a blunt edge because, across the world, women's lives differ in so many ways to men's. Reproduction, economic opportunities, education, and political and social contexts, for example, all mark women's lives as distinct to those of men.<sup>267</sup> The language of non-discrimination makes it difficult to emphasise the particularity of women's lives in ways that benefit women: it compresses women's lives into cumbersome and inaccurate categories. It also precludes the possibility of special programs for women.

Substantive equality is also distinct from the notion of equality of opportunity, which takes into account the unequal playing fields for women and men in assessing equality, recognising that formally equal treatment may in fact exacerbate inequality. Equality of opportunity is more concerned with allowing women entry to public spheres of activity, than with how they fare once they have gained entry. These two approaches have tended to produce temporary gains for some women, but had little effect on the structures of discrimination more broadly. They allow women access to a world already constituted by men and do not challenge gendered structures, such as workplaces and politics. Rebecca Cook has urged an approach that focuses on those who are especially

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<sup>262</sup> Ibid. 76.

<sup>263</sup> PCIJ, *Minority Schools in Albania*, Advisory Opinion of 6 April 1935, < <http://www.icj-cij.org/>>.

<sup>264</sup> See e.g. R. Hunter, 'Introduction: Feminism and Equality', in: R. Hunter (ed.), *Rethinking Equality Projects in Law: Feminist Challenges*, 2008, 4.

<sup>265</sup> A. Byrnes, "Article 1", in: M. Freeman/ C. Chinkin/ B. Rudolf (eds), *The UN Convention on the Elimination of All Forms of Discrimination against Women: a Commentary*, 2012, 51 et seq. (54).

<sup>266</sup> See generally R. J. Cook/ S. Cusack, *Gender Stereotyping: Transnational Legal Perspectives*, 2010.

<sup>267</sup> See, R. Hunter, see note 265.

vulnerable. She urges attention to disadvantage, that is “a law or policy that maintains or aggravates the disadvantage of a persistently disadvantaged group is discriminatory.” This perspective “requires [decision-makers] to look at women as they function in the real world to determine whether women’s abuse or deprivation of power is due to their place in a sexual or gender hierarchy.”<sup>268</sup>

Substantive equality requires restructuring social and political life through destabilising structural barriers to equality. As Sandra Fredman has argued:

Transformation requires a redistribution of power and resources and a change in the institutional structures which perpetuate women’s oppression... . It aims to facilitate the full expression of women’s capabilities and choices, and the full participation of women in society.<sup>269</sup>

Article 5 of the Women’s Convention provides a useful tool to achieve this. It calls on States parties to modify “social and cultural patterns of conduct.” CEDAW has elaborated this, stating that “[t]he lives of women and men must be considered in a contextual way, and measures adopted towards a real transformation of opportunities, institutions and systems so that they are no longer grounded in historically determined male paradigms of power and life patterns.”<sup>270</sup> Gender stereotypes are perpetuated through a variety of means and institutions including laws and legal systems and by State actors in all branches and levels of government as well as by private actors. The Committee has applied this reasoning to, for example, attitudes towards women that condone domestic violence,<sup>271</sup> to judicial processes where “stereotyping affects women’s right to a fair and just trial”,<sup>272</sup> and to the workplace.<sup>273</sup> UN Women could forge a closer working relationship with CEDAW to assist in the elaboration of a concept of substantive equality. This would both strengthen the legal framework for the work of UN Women and enhance the visibility and status of CEDAW.

Anne Marie Goetz draws attention to the significance of accountability for the achievement of substantive equality for women in both public and private spheres of activity. She argues that those holding power, whether it be in government, the market or the family, should be required to explain and justify their actions in terms of human rights and be subject to penalties if they act abusively.<sup>274</sup>

Other strategies of substantive equality include the development of concepts that capture the limits of women’s lives and create political momentum for change.<sup>275</sup> International law has remained tethered to an understanding of women’s equality based on non-discrimination with a male comparator. One example of this is the account of violence against women as a form of discrimination. While it was an important first step

<sup>268</sup> R. J. Cook, “State Responsibility for Violations of Women’s Human Rights”, *Harv. Hum. Rts. J.* 7 (1994), 126 et seq. (156).

<sup>269</sup> Fredman, see note 153.

<sup>270</sup> CEDAW, General Recommendation No. 25, see note 152, para. 10; See also Cook/ Cusack, see note 266.

<sup>271</sup> Doc. CEDAW/C/32/D/2/2003, Communication No. 2/2003, *Ms. A. T. v. Hungary*, para. 9.4.

<sup>272</sup> Doc. CEDAW/C/46/D/18/2008 of 22 September 2010, Communication No. 18/2008, *Karen Tayag Vertido v. The Philippines*, para 8.4.

<sup>273</sup> Doc. CEDAW/C/51/D/28/2010 of 13 April 2012, Communication No. 28/2010, *RKB v. Turkey*. (court proceedings based on the stereotyped perception that extramarital relationships were acceptable for men and not for women and that only women had the duty to “refrain from even the slightest offence against morality”).

<sup>274</sup> A. M. Goetz, “Gender Justice, Citizenship and Entitlements: Core Concepts, Central Debates and New Directions for Research”, in: M. Mukhopadhyay/ N. Singh (eds), *Gender Justice, Citizenship and Entitlements*, 2007, 15 et seq. (47-52).

<sup>275</sup> Rosemary Hunter makes this proposal in the context of national legal systems: Hunter, see note 265 , 8.

to acknowledge violence against women as a matter of international concern,<sup>276</sup> an analysis based on discrimination limits the inquiry. In practice, violence is less a product of discrimination than it is of power and domination; understanding it only in terms of discrimination can lead to strained and unconvincing arguments. As Iris Marion Young has pointed out, “[w]hile discriminatory policies sometimes cause or reinforce oppression, oppression involves many actions, practices, and structures that have little to do with preferring or excluding members of groups in the awarding of benefits.”<sup>277</sup>

Alternatives to discrimination paradigms include the concept of “undervaluation” in the context of pay disparities for women rather than that of “equal pay,” which immediately implicates a male comparator,<sup>278</sup> and discounts the sexual division of labour. Another is the notion of “policy neglect” in the area of resource allocation, which draws attention to groups that end up disadvantaged by apparently neutral policies. These ideas have resonance in the international arena; for example the concept of policy neglect could be used to capture the effect of the policies of international monetary institutions, of militarisation, and of globalised trade regimes on women’s lives

## CONCLUSION

Although, as Joan Scott has pointed out, the history of feminism is often presented as one of “cumulative progress towards an ever-elusive goal,” it is more accurately understood as one of contradiction and paradox.<sup>279</sup> UN Women illustrates these contradictions and paradoxes well. It is a significant development of the structures of global governance and provides a focal point for analysis of women’s lives at the international level. At the same time, the new “gender architecture” may offer a renovated room with no substantive view. The lack of a clear normative vision was to some extent the product of concern within the UN Secretariat that any attempt to define substantive goals may have resulted in a very restrictive mandate.

Throughout the history of UN engagement with the situation of women, there has been debate about whether it is better to create special institutions dealing with women or to address their concerns in bodies with a general mandate. Proponents of the former position feared being invisible while proponents of the latter feared marginalisation. The creation of UN Women resolves this controversy in favour of specialisation and the price of this visibility is not yet clear.

Martti Koskenniemi has noted that the purpose of specialization – “the creation of special regimes of knowledge and expertise” – is to achieve change in the international legal arena. He observes that “[i]f such regimes are bold in ambition, and able to rely on the support of some powerful sector of the political world, then they may succeed in changing the general bias in the law.”<sup>280</sup> We have argued that an appropriately bold ambition for UN Women is to pay as much attention to the legal framework for women as to achieving institutional coherence, opening the possibility of linking normative change with mobilisation. We have proposed a revival of the idea of substantive equality as a direction for normative development, undermining the male bias of the international legal system. This will require constant engagement with groups outside the UN to be effective. We acknowledge however that the institutional context of the UN will, in time, lead to the simplification, selective incorporation and possibly sloganisation of these ideas too and that they will need to be constantly challenged and revised.

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<sup>276</sup> CEDAW, General Recommendation No. 19, see note 225.

<sup>277</sup> I. M. Young, *Justice and the Politics of Difference*, 1990, 195.

<sup>278</sup> Hunter, see note 265.

<sup>279</sup> Scott, see note 223, 1.

<sup>280</sup> M. Koskenniemi, “The Politics of International Law – 20 Years Later”, *EJIL* 20 (2009), 1 et seq. (14).

