

## FEMINIST APPROACHES TO INTERNATIONAL LAW

### “THE FIRST FEMINIST WAR IN ALL OF HISTORY”: EPISTEMIC SHIFTS AND RELINQUISHING THE MISSION TO RESCUE THE “OTHER WOMAN”

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Rescuing the “other woman” has been an intractable feature of international and human rights legal interventions. This rescue narrative configures the “other woman,” invariably third world or from the Global South, as left behind in the movement toward progress and modernity. Part of the solution envisages the rescue and incorporation of the “other woman” into liberal rights discourse—the teleological endpoint of emancipation. Third World Approaches to International Law (TWAAIL) and postcolonial feminist critiques have exposed the racial and civilizational discourses that shape these rescue missions and the epistemic violence they engender. Using the example of the military invasion and occupation of Afghanistan from 2001–2021, I demonstrate how these discourses persist in contemporary women’s human rights agendas and the carceral and securitized logics that they serve. I discuss the need to delink rights from rescue missions and the epistemic shifts required to move the critique in a meaningful and productive direction.

#### *Launch of the Gender Liberation War*

In October 2001, the United States and its allies launched a military operation to topple the Taliban regime in Afghanistan. The invasion was in revenge for the attacks and deaths America suffered on 9/11, though the stated grounds were collective self-defense under the UN Charter. Women’s human rights were co-opted into servicing the newly declared “war on terror” and providing the veneer of righteous legality to the invasion. Armed with the tools of gender equality, countering sexual violence, and the UN Security Council resolutions on women, peace, and security (WPS),<sup>1</sup> the military invasion was in part justified as a mission to rescue Afghan women from the Taliban’s violent and misogynist rule, including its burqa mandates. In August 2021, the chaotic military withdrawal of U.S.-led coalition forces from Afghanistan unleashed pandemonium in the country. The Taliban was restored to power and the burqa was back.

In 1996, the U.S.-based Feminist Majority Foundation became one of the first groups to draw attention to the erosion of women’s rights in Afghanistan through its “Campaign to Stop Gender Apartheid in Afghanistan.”<sup>2</sup> The campaign was built around negative media images and stereotypes of Muslim women as oppressed by authoritarian and violent Muslim men. The Foundation subsequently became a lead player in garnering support for women’s

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<sup>1</sup> The first UN Security Council resolution, [1325](#) (2000), was followed by [1820](#) (2008); [1888](#) (2009); [1889](#) (2009); [1960](#) (2010); [2106](#) (2013); [2122](#) (2013); [2242](#) (2015); [2467](#) (2019); and [2493](#) (2019).

<sup>2</sup> Feminist Majority Foundation, [Stop Gender Apartheid in Afghanistan](#) (June 24, 2022).

human rights as a justification for the 2001 military intervention in Afghanistan, from the Hollywood glitterati to political heavyweights, as well as feminist icon, Gloria Steinem. Described as the “first feminist war in all of history,” the military intervention was saturated with the rhetoric of gender liberation, presented as a gentle civilizing mission and a better option for the natives than submission to Taliban rule that would leave the country, in particular its minorities and women, worse off.<sup>3</sup>

The commitments to Afghan women came at a time when the international legal community was increasingly recognizing women’s rights as human rights in international law. This recognition gradually converged primarily on combatting sexual violence in conflict combined with intervention strategies aligned to the carceral state, securitization as well as criminal law.<sup>4</sup> The focus on sexual violence has been largely framed within and advanced by liberal and dominance feminist agendas in the Global North.<sup>5</sup> These agendas understand women’s oppression primarily as a result of male sexual domination and female sexual subordination. This understanding operates along cultural, racial, and religious divides that represent the “other man” as dangerous and primitive, and the “other woman” in need of rescue by a racially and civilizationally superior white, Western savior. It played out in the context of feminist interventions in Afghanistan on behalf of Afghan women, specifically in relation to the veil as well as pursuit of the WPS agenda.

### *Gender Unveiled*

The military invasion of Afghanistan and its feminist promoters reproduced and built upon two pervasive tropes of Islam—as fundamentalist and as despotic; and Muslim women as victims of brown men.<sup>6</sup> These tropes served to justify the military intervention in Afghanistan by liberal democratic countries and echoed the mission to save Afghan women from the veil that was part of nineteenth and twentieth century colonial feminist discourse.<sup>7</sup> The twinning of Islamic fundamentalism and female victimization continues to inform the postcolonial present, epitomized by responses to Islamic dress, amongst other practices, by feminists across the political spectrum. The Islamic veil bans in France have been upheld by the European Court of Human Rights.<sup>8</sup> The veil has fueled ongoing political controversies in several other European countries as well as in the Global South, including India, Morocco, and Sri Lanka.<sup>9</sup> Each controversy rehearses the binary of the barbaric and the civilized, racial and religious superiority and inferiority. Even when institutional frameworks have been supportive of women’s right to wear the veil, the disdain for the practice remains evident. For example, in October 2018, the Human Rights Committee declared the French ban on the burqa violated a woman’s right to religious freedom, while emphatically stating that their finding was not an endorsement of a custom, which “many on the Committee . . . regard as a form of oppression against women.”<sup>10</sup>

<sup>3</sup> Suzy Hansen, *Bush Is an Idiot, but He Was Right About Saddam*, SALON (Mar. 22, 2003) (interview with Paul Berman).

<sup>4</sup> Elizabeth Bernstein, *Militarized Humanitarianism Meets Carceral Feminism: The Politics of Sex, Rights, and Freedom in Contemporary Antitrafficking Campaigns*, 36 SIGNS 45 (2010).

<sup>5</sup> Vasuki Nesiiah, *TWAIL: Feminist Perspectives on Conflict*, VÖLKERRECHTSBLOG (Mar. 19, 2022); Ratna Kapur, *Gender, Sovereignty and the Rise of the Sexual Security Regime in International Law and Postcolonial India*, 14 MELB. J. INT’L L. 1 (2013).

<sup>6</sup> Saba Mahmood & Charles Hirschkind, *Feminism, the Taliban, and Politics of Counter-Insurgency*, 75 ANTHROPOLOGICAL Q. 339 (2002); Ratna Kapur, *Un-veiling Women’s Rights in the “War on Terrorism,”* 9 DUKE J. GENDER L. & POL’Y (2002).

<sup>7</sup> LILA ABU-LUGHOD, *DO MUSLIM WOMEN NEED SAVING?* (2013).

<sup>8</sup> *S.A.S v. France*, App. No. 43835/11, Judgment (Eur. Ct. Hum. Rts. July 1, 2014).

<sup>9</sup> The veil is used here generically to include its various manifestations—the hijab, jilbab, abaya, niqab, burqa, and chador.

<sup>10</sup> Human Rights Committee Press Release, *France: Banning the Hijab Violated Two Muslim Women’s Freedom of Religion – UN Experts* (Oct. 23, 2018).

The Muslim as “other” and claims of their treatment of women as primitive and oppressive raise a host of concerns. One of these is that the veil has become symbolic of what liberals and human rights advocates consider problematic and reflective of the misogyny and primitiveness ascribed to Islam, specifically Muslim men. Images of Afghan women unveiling with the arrival of the U.S. troops at the beginning of the U.S.-led invasion of Afghanistan were read as indicative of the Indigenous woman’s joy at the prospect of emancipation by liberal saviors. What is consciously occluded by this image of emancipation is the context within which the women are baring their faces: the devastation wreaked by the war in Afghanistan, the regrouping and reestablishment of the Taliban, and the complex politics of nationalism that attach to the signifier of the veil in Afghanistan and elsewhere. In addition, the burqa, or at least the opposition to it, reinforces a very specific understanding of the legitimate subject: one who is individual, self-willed, sexually autonomous, embodied, and *unveiled*.

Filtered through gender equality discourse, the political logic that insists on disrobing the Muslim woman continues to perpetuate the colonial fantasy that this single, essential act of unveiling will ensure her liberation from the oppressive men and oppressive practices of her oppressive culture. The problem is that the rallying cry for invading Afghanistan mobilized the pervasive negative assumptions ascribed to the veil as an oppressive and subordinating practice of religious Islam toward women and gender equality espoused as the antidote.<sup>11</sup>

The imposition of the veil in Afghanistan and elsewhere clearly violates women’s right to choose—and this right must be protected. Afghan women who speak out against these prescriptions have been accused of collaborating with the West’s oppression of their own culture, and subject to reprisals, including death. Similarly, in Iran, women who have rightly defied mandatory veiling by the state, have been subject to fines, imprisonment, and even violence. However, my argument is that neither opposition to *nor* support for the veil address a crucial aspect: the claiming of the veil as a *self-chosen* instrument of freedom by the practitioner. This choice is not based on false consciousness, subordination, or belligerent refusal to comply with the dictates of liberal secular rights. For such committed practitioners, “the veil” is not what they simply opt to wear—a garment that can be donned or removed as required. It is an expression of subjectivity that involves a relationship between the veil and the wearer’s inner disposition, piety, and inward journey to greater self-awareness in all areas of life.<sup>12</sup> For such practitioners, this inward journey is intimately connected to generating peace. It is this epistemic aspect of the practice that remains elusive and outside the grasp of liberal individualism and renders the practitioners literally and socially inscrutable. From this perspective, mandates against the veil are experienced as techniques of epistemicide—that is, the extinguishment of non-liberal knowledge, including understandings of subjectivity that do not comport with liberal individualism on which human rights are based. Her choice is exercised not only outside of the normative prescriptions of gender equality, but also outside the epistemic universe of human rights and its limited conceptions of freedom. And it is this aspect that produces such anxiety within the human rights dispensation and perceived at times as a profoundly sinister threat to the human rights project that regards itself as the one most capable of emancipating the disenfranchised and un-free.

### *Gender, Conflict, and Securitized Peace*

The WPS resolutions adopted from October 2000 were hailed as a significant feminist achievement. This success included intervening at the pinnacle of undemocratic power in the UN—the Security Council. This body, authorized to launch war, ironically in the name of the rule of law and democracy, harnessed the WPS agenda

<sup>11</sup> JOAN WALLACH SCOTT, [THE POLITICS OF THE VEIL](#) (2007); Sherene Razack, [A Site/Sight We Cannot Bear: The Racial/Spatial Politics of Banning the Muslim Woman’s Niqab](#), 30 CANADIAN J. WOMEN & L. 169 (2018).

<sup>12</sup> SABA MAHMOOD, [POLITICS OF PIETY: THE ISLAMIC REVIVAL AND THE FEMINIST SUBJECT](#) (2011).

to service the security order.<sup>13</sup> This has been achieved in two ways. First, by building on the powerful “grip” of sexual violence in conflict, which has overridden other feminist agendas.<sup>14</sup> This focus on sexual violence has been pursued primarily within a criminal justice and carceral framework. Second, in the post-9/11 world, the WPS agenda has been deployed in the context of counterterrorism operations in the name of women’s protection.<sup>15</sup>

In Afghanistan, the WPS agenda was co-opted by the North Atlantic Treaty Organization and the war on terror partly to justify the military invasion of Afghanistan. Implementation included: the appointment of an extensive army of high-level gender advisers, gender experts, and deployment of all-women military units to troubled provinces; training women in police, security, and army operations; and providing gender awareness training to civilian and military teams. The militarization and securitization of gender and femininity through these techniques moved away from the focus on peace.

At one level, the WPS resolutions drew attention to women’s agency, shifting the discourse away from being represented exclusively as victims in and of war. Deploying women in security and law enforcement operations demonstrated that they can be the same as men. At the same time, these interventions did not disrupt assumptions in the resolutions about women as natural peacebuilders, more inclined to peace than violence.<sup>16</sup> And this agency continued to operate along a racial and civilizational divide, being invariably aligned with the liberal white savior. Thus, in seeking to transform women’s lives and reconceptualize gender, the WPS agenda simultaneously reinscribed the racial, cultural, and sexual divides that have continued to inform the rescue narratives.

In Afghanistan, violence against women is largely attributed to the Taliban rule and improvement in women’s condition to the subsequent intervention by Western powers. The Taliban is a brutal and violent force. Even skeptics of Western feminist interventions might be sympathetic given the Taliban’s atrocious practices toward women. At the same time, rallying around the campaign to save Afghan women from the Taliban is constructed against the complete silence over the role of Western powers in creating the appalling conditions in which Afghan women live coupled with the pervasive racist and imperialist representation of Islam more generally as a monolithic, dogmatic, and deeply conservative force that invariably subordinates women.

Peace is a concept that has its own genealogy in a space like Afghanistan and elsewhere. It is not an invention of the liberal West shaped on the anvil of the Security Council and exported to Afghanistan partly through trickle-down feminism and military interventions. There are diverse articulations about feminism and peace within and amongst Muslim women more generally. All of these cannot be read through the reductive notion of resistance to the West.<sup>17</sup> Some offer practices of peace that include the ethics of *adab* (etiquette, respect, and humaneness) that enable (non-violent) negotiations with others who are strangers. These practices need to be integrated into feminist conversations for cultivating humanity—or *insaniyat*—and seeing the human in others. Transformation happens when we work with compassion and recognize the human in the Other. There has been little space for exploration of these alternative understandings of peace and how they might frame the conversation on human rights and feminist interventions in the lives of others.

<sup>13</sup> Dianne Otto, *Women, Peace and Security: A Critical Analysis of the Security Council’s Vision* (LSE Centre for Women, Peace and Security Paper Series 1/2016, 2016).

<sup>14</sup> KAREN ENGLE, [THE GRIP OF SEXUAL VIOLENCE IN CONFLICT: FEMINIST INTERVENTIONS IN INTERNATIONAL LAW](#) (2020); Vasuki Nesiah, *Gender and Forms of Conflict: The Moral Hazards of Dating the Security Council*, in [THE OXFORD HANDBOOK OF GENDER AND CONFLICT](#) 288, 288 (Fionnuala Ní Aoláin, Naomi Cahn, Dina Francesca Haynes & Mahla Valji eds., 2018).

<sup>15</sup> Jayne Huckerby & Margaret Satterthwaite, *Introduction*, in [GENDER, NATIONAL SECURITY, AND COUNTER-TERRORISM](#) 1 (Margaret Satterthwaite & Jayne Huckerby eds., 2015).

<sup>16</sup> See especially SC Res. 1889, *supra* note 1; SC Res. 1820, *supra* note 1 (2008).

<sup>17</sup> Azza Karam, *Religion, Women and Peaceful Revolution: Perspectives from the Arab Middle East*, in [WOMEN AND PEACE IN THE ISLAMIC WORLD: GENDER, AGENCY AND INFLUENCE](#) 246 (Yasmin Saikia & Chad Haines eds., 2015).

*Alternative Lifeworlds, Epistemic Shifts, Realigning Feminist Agendas*

The binary of liberal and illiberal, civilized and uncivilized, and savior and victim persisted even in the aftermath of the chaotic departure from Afghanistan in August 2021. Women's rights advocates, amongst others, scrambled about to assess the impact of the debacle. They promptly considered how *they* could intervene (again) in the chaos to both save the Afghan woman and reinstall the project of women's human rights. The continued marginalization of Afghan women, combined with the outrage over the ravages of occupation as well as the reinstallation of the Taliban, have generated deep suspicion and distrust.<sup>18</sup> These outcomes prompt a need for serious reflection on the harms resulting from women's human rights agendas and their collaboration with rescue missions.

TWAIL and postcolonial feminist critiques have interrogated the perceived gains of feminism within the institutional human rights complex. The panoply of more rights, resolutions, and liberal imperialist chest thumping, have not perceptibly led to more liberation for women in Afghanistan and elsewhere, at least not in the form envisaged by their saviors. As demonstrated, they have had both regulatory as well as disempowering and exclusionary effects. At the same time, the epistemic violence produced through the advancement of liberal imperial endeavors in the name of women's rights have assumed knowledge about the "other woman" without doing the hard work of knowing her.

The future of feminist approaches to international law and human rights needs to take feminist critiques in a productive direction by seriously engaging with, learning from, and drawing upon alternative knowledge available in non-liberal spaces.<sup>19</sup> This includes knowledge specifically related to understandings of gender, subjectivity, and peace that challenge the rescue narratives which continue to haunt women's human rights interventions. This does not mean searching for the pure non-Western authentic native subject, nor supplicating those, including the Taliban, who denounce feminism, gender equality, and other women's rights as Western and enmeshed in the colonial legacies. Non-liberal intellectual and philosophical traditions have articulated understandings of subjectivity and peace beyond the liberal imperial episteme and liberal individualism that human rights enfold, while also refuting cultural relativist, violent, and nationalist orthodoxies that oppose human rights.

*Conclusion*

Crises and immediacy in the form of threats by tanks or tyrants cannot be a reason for foregoing consideration of non-liberal registers. The argument in this Article is twofold: first it points to the need to engage with non-liberal alternative epistemes, which remain central to questions of governance. They sharpen our critical vision and bring clarity to the issues of rights violation of the disenfranchised where intervention is sought. Second, reducing the worst forms of human suffering and cruelty and addressing immediate needs obscures how these very interventions may produce suffering and extinguish other lifeworlds and ways of being. The future of feminist approaches to international law and human rights law rests partly in developing the capacity to listen and learn from unfamiliar, non-liberal knowledge systems—ones that can shape and transform prevalent and problematic perceptions of the "other woman." Being open to understanding that there is something to be learnt about how to be human in the world and flourish in lifeworlds that are not completely aligned with the logic of pro- and anti-feminist or human rights positions is non-negotiable if feminism is to remain relevant in the field of international law and human rights.

<sup>18</sup> RAWA, [RAWA Statement on 20th Anniversary of the Occupation of Afghanistan by US/NATO](#) (Oct. 7, 2021).

<sup>19</sup> RATNA KAPUR, [GENDER, ALTERITY AND HUMAN RIGHTS: FREEDOM IN A FISHBOWL](#) (2018).