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FEMINIST APPROACHES TO INTERNATIONAL LAW

LOOKING BACK TO THINK FORWARD: WHAT WE MIGHT LEARN FROM COLD WAR FEMINIST MOVEMENTS

*Karen Engle**

The end of the Cold War wrought a shift in international legal priorities and preoccupations, including among feminists. When feminist approaches to international law, particularly to human rights and humanitarian law, began to make headway in the early 1990s, they had already left behind some of the anti-imperial and anti-military emphases of much of the internationally informed feminism of the 1970s and 80s. Here, I revisit some of those Cold War feminist approaches, with the hope of informing today's much-needed international legal attention to peace, disarmament—including nuclear disarmament—and global inequality.

Why Look Back?

Frances Tarlton "Sissy" Farenthold, one of the principal organizers of the Peace Tent held during the 1985 UN World Conference on Women in Nairobi, told the *Washington Post* shortly after the event, "[w]hat you're seeing now is the birth of a real international women's movement." According to the *Post*, women at the tent "pledged to work for peace in their own countries, to lie in the road to block the deployment of nuclear weapons, to hold peace rallies and to work to find food for the world's hungry."[1] What was that international women's movement that Farenthold saw being birthed in the final days of the UN Decade for Women (1975–1985), with its themes of peace, development, and equality? And what happened to it?

These might seem like odd questions for a symposium on feminist approaches to international law since the 1990s. Yet, as I and others have argued, we cannot fully understand the 1990s without awareness of how the women's human rights movement began to displace other important feminist approaches during that time.[2] Although women had long played an important role in theorizing gender alongside colonialism, economics, and war,[3] since the end of the Cold War, these issues have often been backgrounded or even dismissed as "political" or not truly women's issues, including by many feminist international lawyers.

* *Minerva House Drysdale Regents Chair in Law and co-director Rapoport Center for Human Rights and Justice, University of Texas at Austin School of Law, Austin, TX, United States.* *Many thanks to Samuel Moyn for earlier discussions on the history of CEDAW, and to Gowthaman Ranganathan and Maria X Davila for research assistance.*

[1] Mary Battiata, *The Feminist Finale*, Wash. Post (July 20, 1985).

[2] *See, e.g.*, Karen Engle, Vasuki Nesiah & Dianne Otto, *Feminist Approaches to International Law, in* International Legal Theory: Foundations and Frontiers 174–95 (Jeffrey Dunoff & Mark Pollack eds., 2022) and many of the scholars cited therein.

[3] *See generally* Women's International Thought: A New History (Patricia Owens & Katharina Rietzler eds. 2021).

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For instance, although the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) was adopted in 1979 and has long been one of the most ratified conventions,[4] most date the ascendance of "women's human rights" to the UN World Conference on Human Rights in Vienna in 1993. There, states recognized that violence against women, including by non-state actors, constituted a human rights issue. That result was largely attributable to the organizing efforts of feminists who had begun only a few years earlier to "retheorize" human rights to attend to the so-called private sphere.[5] In that retheorizing, feminists began to minimize the importance of CEDAW, criticizing its lack of enforcement power, its large number of reservations, and its formal approach to equality. Relatedly, some criticized it for not making clear that violence against women constituted sex discrimination.

These criticisms discounted earlier feminist praise for CEDAW, especially for its attention to economic and social rights and to the specificities of issues facing rural women. And they ignored or dismissed CEDAW's preambular paragraphs that, along with other international legal instruments of its day, align with the New International Economic Order (NIEO) and express commitment to anti-imperialism, peace, and disarmament.[6]

This downplaying of CEDAW reflects a larger post-Cold War move away from issues of peace and disarmament in international law. As we will see, in the mid-1980s, feminists worked to define the connections between interstate and interpersonal violence. Yet, interpersonal violence—along with the treatment of women during wartime—would soon take center stage.

The First Half of the UN Decade on Women and the Drafting of CEDAW

By the start of the UN Decade, women advocating for peace, development, and equality around the world were expressing opposition to war, the military-industrial complex, nuclear proliferation, and political and economic imperialism. These views came to the fore of both the intergovernmental conference and the parallel NGO Tribune of the first UN World Conference on Women, held in Mexico City in 1975. They were reflected in a conference outcome document, the Declaration of Mexico on the Equality of Women and Their Contribution to Development and Peace. Though the deliberations on that document were at times contentious, only the United States and Israel ultimately voted against it.

The Mexico declaration called, "with urgency," for the establishment and implementation of the NIEO, "founded on equity, sovereign equality, interdependence, common interest, co-operation among all States" and "on the principles of peaceful coexistence" as well as "the promotion . . . of economic and social progress of all countries, especially developing countries."[7] Peaceful coexistence might best be achieved, the declaration suggested, with "women as well as men" promoting "real, general and complete disarmament under effective international control, starting with nuclear disarmament."[8]

The declaration drew a connection among different spheres of violence in ways that would take shape in future meetings and at the Peace Tent: "[w]omen have a vital role to play in the promotion of peace in all spheres of life: in

[4] *See* United Nations, Human Rights Office of the High Commissioner, Status of Ratification Interactive Dashboard.

[5] For further discussion, see KAREN ENGLE, THE GRIP OF SEXUAL VIOLENCE IN CONFLICT: FEMINIST INTERVENTIONS IN INTERNATIONAL LAW 18–49 (2020). For early 1990s discussions on rethinking women's human rights, see Charlotte Bunch, *Women's Rights as Human Rights: Toward a Re-Vision of Human Rights*, 12 HUM. RTS. Q. 486 (1990); Hilary Charlesworth, Christine Chinkin & Shelley Wright, *Feminist Approaches to International Law*, 85 AJIL 613 (1991); Karen Engle, *International Human Rights and Feminism: When Discourses Meet*, 13 MICH. J. INT'L L. 517 (1992).

[6] Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, 1249 UNTS 13 [hereinafter CEDAW].

[7] United Nations, Declaration of Mexico on the Equality of Women and Their Contribution to Development and Peace, para. 30 (1995).

[8] *Id.*, para. 18.

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the family, the community, the nation and the world."[9] It also connected peace to the need for change in deep structural relations of global power, stating that "[i]nternational co-operation and peace require the achievement of national liberation and independence, the elimination of colonialism and neo-colonialism, foreign occupation, Zionism, *apartheid*, and racial discrimination in all its forms as well as the recognition of the dignity of peoples and their right to self-determination."[10]

The U.S. delegation at the conference opposed the inclusion of most of these issues—the NIEO, disarmament, racism, and colonialism—all of which had been considered under the rubric of peace. As historian Jocelyn Olcott explains, peace "became the catch-all theme for issues that Western countries—and the United States in particular—wanted to bracket," dismissing them "as political distractions from core women's issues."[11] While the reference to Zionism caused the most controversy, Olcott contends that opposition to the term, at least for the U.S. delegation, "arguably offered a fig leaf" disguising its additional resistance to the NIEO and related language. [12]

These debates about the declaration reflected a divide among those attending the NGO Tribune as well, with some of the most vocal U.S. feminists (principally affiliated with the National Organization for Women) worried that, as Olcott puts it, "women's concerns would take a back seat to geopolitics."[13] Although divisions between women from the Global North and South were more nuanced than often portrayed, the resistance of some U.S. feminists to take seriously peace, development, and global equality as feminist issues did not represent much of the feminist thinking and activism in the United States at the time, including by many who chose not to attend the Tribune so as not to have women from the global North dominate the space.[14]

By way of example, anti-military and anti-imperial thinking influenced the U.S. National Women's Political Caucus (NWPC), formed in 1971 to promote the election of women to public office. Its statement of purpose expressed that women it supported should adhere to a number of positions, including "[i]mmediate withdrawal from Indochina, and a resolution that the U.S. will never again violate any nation's right to self-determination." More broadly, it called for: "[a]n end to war, and support for international agreements to end the arms race; an end to the use of physical violence as a traditional 'masculine' way of resolving conflict."[15] In fact, many U.S. feminists regularly denounced U.S. imperialism and the military-industrial complex in the 1970s, particularly in the context of the Vietnam war.[16]

Drafted between 1976 and 1980, CEDAW manifests many of the Mexico declaration's commitments. Specifically, its preamble recognizes the need for the NIEO.[17] It also affirms that "general and complete disarmament, in particular nuclear disarmament . . . will contribute to the attainment of full equality between men and women,"[18] and proclaims that the elimination of discrimination against women entails "the eradication of

[9] *Id.*, para. 25.

[10] *Id.*, para 24.

[11] Jocelyn Olcott, International Women's Year: The Greatest Consciousness-Raising Event in History 158 (2017); *see also id.* at 226.

[12] *Id.* at 218.

[13] *Id.* at 118.

[14] For one nuanced account, see generally *id.* at 115–65.

[15] National Women's Political Caucus (NWPC), *Report of the Organizing Conference National Women's Political Caucus* 2 (July 10–11, 1971). Ironically, Betty Friedan—one of the most criticized of the U.S. feminists at the Mexico conference—had also been a founding member of the NWPC.

[16] For but one example, see Frances T. "Sissy" Farenthold, Speech, Inauguration Day 1973, Houston Peace Rally (Jan. 1973). Shortly thereafter, she became the first chair of the NWPC.

[17] CEDAW, *supra* note 6, para. 9.

[18] *Id.*, para. 11

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apartheid, all forms of racism, racial discrimination, colonialism, neo-colonialism, aggression, foreign occupation and domination and interference in the internal affairs of States."[19]

Although the preambular paragraphs on disarmament and racism (even without the mention of Zionism) were highly contested at various points and required a separate vote when the General Assembly adopted the Convention, no state ended up voting against them. And while several states had expressed concern about them in the Third Committee discussions of the draft, the United States cast the sole no vote there on the language. Similar to its opposition to the Mexico declaration, it contended that the paragraphs "reflected political influences and were not properly related to the purpose of the Convention."[20]

Notwithstanding all the deliberation on this language, feminist scholars have long ignored it or even affirmatively dismissed it as merely rhetorical or political, echoing arguments by the few states that sought to eliminate it. Even in 1985, feminist legal scholar Noreen Burrows who noted "that issues relating to women have become inextricably linked with questions of development and peace," nevertheless considered the language largely rhetorical, partly because the issues were not taken up elsewhere in the Convention.[21]

Post-Cold War feminist analyses of CEDAW often repeat this concern. Meghan Campbell, quoting other feminists, states that CEDAW's preamble "breaks with drafting tradition" by including "essentially political statements" that are "couched as political rhetoric, raising contemporaneous issues not immediately directed to the core goal of the Convention."[22]

This view belies the sentiments of much of the women's peace and development work of the day, both institutional and activist. It also deploys a tactic that the United States continued to use in the 1980s to oppose feminist peace activism.

The Peace Tent

The idea for the Peace Tent, with which I began this essay, came from women's peace activists who in 1984 formed Feminist International for Peace and Food (FIPF). They were mostly from the United States and Europe (with their activities largely spearheaded and funded by Genevieve Vaughan, Farenthold's cousin and collaborator).[23] Yet, they successfully built on some of the North-South feminist networks they had earlier engaged with around development, including with DAWN (Development Alternatives with Women for a New Era). Indian economist Devaki Jain, one of DAWN's founding members, later described the Peace Tent as "more than a metaphor at the NGO forum in Nairobi. Women in the tent discussed, elaborated, and mobilized opinion about the links between absence of conflict and development."[24] Jain identifies the influence of the Peace Tent on the "landmark" definition of peace in the outcome document of the intergovernmental meeting as well, which stated: "[p]eace includes not only the absence of war, violence and hostilities at the national and international levels but also enjoyment of economic and social justice, equality and the entire range of human rights and fundamental

[19] *Id.*, para. 10.

[20] UN General Assembly, Thirty-Fourth Session Official Records, Summary of the Record of the 72nd Meeting, para. 70 (December 6, 1979).

[21] Noreen Burrows, *The 1979 Convention on the Elimination of All Forms of Discrimination Against Women*, 32 Neth. Int'l L. Rev. 419, 424 (1985).

[22] Meghan Campbell, Women, Poverty, Equality: The Role of CEDAW 43 (2018).

[23] For Vaughan's account, see Genevieve Vaughan, *The Nairobi Peace Tent* (1984).

[24] Devaki Jain, Women, Development, and the UN: A Sixty-Year Quest for Equality and Justice 120 (2005).

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freedoms within society."[25] That understanding of peace jibes well with the *Washington Post*'s account of the international women's movement it witnessed.

Crucially, the Peace Tent's formative documents went beyond earlier calls for disarmament and peace by addressing war as part of a continuum of violence that includes interpersonal violence against women as well as men. Although the Peace Tent itself did not focus a great deal on the issue, organizers used—and perhaps even expanded—their broader understanding of violence and patriarchy to refute the by then oft-repeated claim that peace was not a women's issue. Indeed, Vaughan wrote to fellow FIPF members in the early planning stages that the United States would be "trying to push peace off the agenda by saying it is not a feminist issue." She explained that the United States' position seemed to be that "peace is a Soviet plot."[26]

Vaughan provided the counterargument for the group, insisting that "the connections between individual and political and economic violence" demonstrate that peace "most certainly is" a feminist issue.[27] Three months later, Vaughan and Robin Morgan penned a statement that began: "[w]ar is a feminist issue because there is an unbroken continuum between personal and international violence." The statement used a broad understanding of violence against women to connect as sisters "the battered homemaker fleeing from the house she maintains without possessing" (presumably in the global North) and "the refugee populations of the earth, 99% of whom are women and children."[28]

The official Peace Tent statement, though relatively short, also recognized the connection among different forms of violence, opening with: "[t]he Peace Tent is the international feminist alternative to men's conflict and war. It is the place where finding peaceful solutions to conflict, both in personal lives and in the public area, is the priority." It described the tent as facilitating that process by bringing together "women whose countries are locked in conflict" to "expose the patriarchal barriers to peace," including values and logics that underlie the violence of "men against women, men against men, race against race, nation against nation, religion against religion, and rich against poor."[29]

Personal violence against women did not take up much of the space of the Peace Tent. There and in the governmental meeting that would follow, it was recognized that patriarchal violence should be addressed in all its manifestations, though largely with the collective goal—and starting point—of disarmament and peace. The one specific mention of domestic violence in the official conference outcome document is instructive of ongoing priorities; it is placed in a paragraph on the promotion of human rights that includes equality based on sex in addition to "the rights of peoples to self-determination and the elimination of colonialism, neo-colonialism, apartheid, of all forms of racism and racial discrimination, oppression and aggression, foreign occupation, as well as domestic violence and violence against women."[30] The connections drawn among these different forms of violence had the effect and perhaps even purpose, Vaughan's letter suggests, of making it easier to argue that peace was a feminist issue.

This attention to violence against women helped set the stage for the next phase of internationally engaged feminism. But its linkages to the critiques of militarism and imperialism were at the end of the day largely lost, as the end of the Cold War took the wind out of the sails of the women's peace movement. Much of the energy of the international women's movement went into achieving the recognition of women's human rights, with a focus

[25] *Id.* (quoting paragraph 13 of the Nairobi Forward-Looking Strategies for the Advancement of Women).

[26] Genevieve Vaughan, Letter to "Peace Women" (Jan. 14, 1985).

[27] *Id.*

[28] Genevieve Vaughan & Robin Morgan, *Let Women Lead* (1985).

[29] Frances T. "Sissy" Farenthold & Genevieve Vaughan, *Peace Tent Statement* (1985).

[30] United Nations, Nairobi Forward-Looking Strategies for the Advancement of Women, para. 245 (1985). For other mentions of violence against women, see paragraphs 258 and 288.

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on violence against women. Through this new lens, CEDAW was particularly deficient because it did not explicitly address the issue.[31]

Conclusion

By the time of the UN World Conference on Women in 1995 in Beijing, women's human rights advocacy had solidified mainstream recognition of violence against women as a human rights violation. Somewhat ironically, armed conflict played an important role in that recognition, as sexual violence against women in the conflict in the former Yugoslavia received a great deal of attention during the 1993 human rights conference in Vienna. In line with human rights advocacy more generally, women's human rights advocates began to concentrate on crimes committed during wartime—calling for criminal and sometimes even militarized responses—rather than addressing the causes of war itself.

Russia's war in Ukraine makes painfully clear that international law and institutions continue to be confounded by their inability to prevent war, even the possibility of nuclear war. Criminal prosecutions are our principal fallback, with investigations of sexual violence used to garner support. Without overromanticizing the international women's movements of the 1970s and 1980s and their understandings of the patriarchal roots of war and inequality, I hope that revisiting them and their anti-military and anti-imperial commitments will at least spur us to engage in similar inquiries today. The next thirty years might well depend upon it.

[31] *See, e.g.*, Bunch, *supra* note 5, at 495–96.

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