

When WPS Met CEDAW (and Broke Up with R2P?)

Written by Susan Harris Rimmer

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SUSAN HARRIS RIMMER, MAR 13 2014

You may not have noticed, but 18 October 2013 was a red letter day for global women's rights. On this day, the Committee for the Elimination of Discrimination against Women (CEDAW), expert guardians of the UN Convention, released General Recommendation 30 in Geneva. On this day, the United Nations Security Council released Resolution 2122 in New York as part of their Women Peace and Security thematic focus under the Presidency of Azerbaijan, the culmination of a year's worth of attention to the agenda.

Both documents seek to revolutionise the situation of women in conflict prevention, conflict & post-conflict situations, and both have legal import, even if not binding. How should we read these events? Do IR theories of gradual institutional change and discursive institutionalism explain what occurred, and what is the significance of these international documents?

My argument is that the Committee was striking back at the Security Council in an attempt to swing the Women Peace and Security (WPS) agenda back towards a human rights foundation, away from the increasing focus on protection from sexual violence in conflict at the expense of other aspects of the agenda. Partly this protection focus is due to the impact of norm entrepreneurs promoting the Responsibility to Protect (R2P) doctrine, seeking convergence between R2P norms and the WPS agenda to increase the legitimacy of the norm after Libya.

About CEDAW: Slowly Building the Legal Framework for Rights

The Convention for the Elimination of All Forms of Discrimination Against Women (CEDAW) was adopted by the UN General Assembly in 1979 and now has 186 state parties (but with many states making serious reservations to certain provisions). The 23-member elected expert Committee overseeing the Convention puts out opinions ('general comments') about how the treaty should be interpreted, responds to periodic state reports about compliance with the Convention, and deals with state complaints and individual complaints under the Optional Protocol. There are also special protections for women and girls under international humanitarian law (including the Geneva Conventions and the Rome Statute of the International Criminal Court).^[i]

Aside from the hard law of conventions, there is also increasing 'soft law' in the area of women's rights at the United Nations. The Declaration on the Elimination of All Forms of Violence Against Women was adopted by the UN General Assembly in December 1993. The Beijing Conference for Women in 1995 adopted a Platform for Action which is reviewed by the Commission for the Status of Women every five years.

In this context, *General Comment 30: Women in conflict prevention, conflict & post-conflict situations* adds to the soft law on the human rights of women, and shows a willingness to expand into an area of activity where there is no clear provision in the text of the treaty, and where the Security Council has been active for the last 13 years. Paragraph 26 states:

The Committee reiterates the need for a concerted and integrated approach that places the implementation of the Security Council agenda on women, peace and security into the broader framework of the implementation of the Convention and its Optional Protocol.

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The Committee seeks to use its power to oversee state periodic reporting to achieve this aim. Under paragraph 27, it has asked that all state parties to CEDAW to develop national action plans with adequate budgets:

...Using the reporting procedure to include information on the implementation of Security Council commitments can consolidate the Convention and the Council's agenda and therefore broaden, strengthen and operationalize gender equality.

(a) Ensure that national action plans and strategies to implement Security Council resolution 1325 (2000) and subsequent resolutions are compliant with the Convention, and that adequate budgets are allocated for their implementation...

(c) Cooperate with all United Nations networks, departments, agencies, funds and programmes in relation to the full spectrum of conflict processes, including conflict prevention, conflict, conflict resolution and post-conflict reconstruction to give effect to the provisions of the Convention

Most importantly, the Committee takes the liberty of telling the Security Council how to interpret gender equality in the text of its resolutions, and to take a broader focus than 'rape as a weapon of war':

(b) Ensure that the implementation of Security Council commitments reflects a model of substantive equality and takes into account the impact of conflict and post-conflict contexts on all rights enshrined in the Convention, in addition to those violations concerning conflict-related gender-based violence, including sexual violence.

There is little precedent for norms being generated by the human rights treaty bodies, and adopted by the UNSC, and vice versa, it is even rarer. More often, the office of the Secretary-General is the bridge. For example the Secretary-General of the UN launched the 'era of application' campaign for the enforcement of international norms and standards for the protection of the rights of children involved in armed conflict in his 2005 report to the Security Council and the General Assembly on children and armed conflict (A/59/695-S/2005/72). The campaign resulted in a UNSC resolution establishing, among other things, a monitoring and reporting mechanism on grave violations against children in situations of conflict, as well as a commitment to implement targeted measures against those parties to conflict that commit such grave violations (Security Council resolution 1612 of 26 July 2005). What the Committee is doing in General Comment 30 is different, trying to draw the UNSC back to the rights basis of the norm.

About the Women Peace and Security Agenda: Agency and Participation

What brought about this frankness from the Committee? A cluster of UN Security Council Resolutions (UNSCR) comprise the WPS agenda. Those resolutions are UNSCR 1325 (2000), UNSCR 1820 (2008), UNSCR 1888 (2009), UNSCR 1889 (2009) and UNSCR 1960 (2010), then the two resolutions in 2013 UNSC 2106 (2013) and UNSC 2122 (2013). [ii] In July 2013, a new Resolution 2106 was passed during the UK's Presidency, the fourth to focus on conflict-related sexual violence. This resolution adds greater operational detail and a focus on Women Protection Advisers, strengthens the role of the Special Rapporteur to intervene in the field, and reiterates that all actors, including not only the Security Council and parties to armed conflict, but all Member States and United Nations entities, must do more to implement previous mandates and combat impunity for these crimes.[iii] In October 2013, after an open debate on 'Women, rule of law and transitional justice in conflict affected situations', Resolution 2122 was adopted to request more regular briefings from relevant UN agencies, more attention to WPS issues when issuing or renewing mandates of UN missions, and committing to a High Level Review of implementation of WPS in 2015.

UNSC Resolution 2122 (2013) has some similar preoccupations as General Comment 30, but is more narrowly focused on building accountability into UN processes. It is more focused on UN reporting than state party responsibility, but does talk for the first time about addressing the 'root causes of armed conflict'. One exception is the ongoing charge for states to develop National Action Plans. The pillars on Prevention and Relief & Recovery have potential for redistribution of resources – in the case of OECD countries this is in the form of development assistance, as can be seen in the Australian National Action Plan (2012-2018).

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In essence, the 1325 agenda states that women and girls experience conflict differently from men and boys. Women have an essential role in conflict prevention, peace building and post-conflict reconstruction, and States are required to ensure women are represented in all decision-making.[iv] The later resolutions focus on ending impunity for sexual violence in conflict, and increasing the participation of more women in the UN's own 'good offices' roles in mediating conflict and negotiating peace.

Resolution 1325 was ground-breaking. The agenda has led to new architecture and process at the UN, with the appointment of a new Special Rapporteur on Sexual Violence in Conflict Margot Wallström in 2010, now Zainab Hawa Bangura; as well as annual reporting by the Secretary-General.[v] One of the key actions under the WPS agenda is for states to design and implement National Action Plans. Thus far, only around 40 countries have implemented National Action Plans, few are funded, and there is little or no baseline data for many of the actions.[vi] This has led to claims that the institutional commitment is more rhetorical than real. Katrina Lee-Koo argues cogently that the participation of local women in peace processes is particularly weak in implementation[vii], and many country situations and regions have not received sustained attention from the UNSC, such as the Pacific.

Even the rhetoric has proven controversial. In the last two years, debates on the thematic agendas have been criticised by Russia and China as extending beyond the Security Council's mandate (such as the focus on sexual violence during election violence).[viii] But there is some evidence that WPS issues are being considered more routinely in debates, affecting mandate design and adding weight to the 'zero tolerance' policy for UN peacekeeping forces.[ix] Australia claims during its term as an elected member to have made progress on language in crafting the Mali mission mandate in 2013.

Other commentators feel that the resolutions and resulting actions have focused too much on protection of civilians agenda, focused on sexual violence and not enough on participation and conflict prevention, in other words, 'women's agency'[x] There are critiques that WPS has struggled with gender mainstreaming, the gendered nature of peace and security institutions,[xi] and the lack of sex-disaggregated data required to underpin policy.[xii]

Civil Society Reactions to 18 October 2013

Reactions were surprisingly muted from the wide global constituency for CEDAW and the WPS agenda in October 2013. As a piece of polylateral diplomacy,[xiii] linked to both regional and global social movements, the Women Peace and Security agenda is strong, despite wide acknowledgement of its flaws.[xiv] Advocates, including myself, argue that the core premise of the WPS agenda remains being attentive to the security needs of half the world's population, and thereby builds the legitimacy of the Security Council as a normative actor. CEDAW was hard-won and is slowly building its influence with states as a regulatory framework enforceable in domestic jurisdictions.

DAWN stated that General Comment 30 was a 'landmark resolution' and focused on the Committee's expansive definition of armed conflict and 'other forms of occupation and conflict', as well as extraterritorial jurisdiction and the inclusion of sexual and reproductive rights. They note the importance of the Committee advising the UNSC on a substantive equality approach.

The Women's International League of Peace and Freedom (WILPF) stated in relation to Resolution 2122 that it represented a 'high-water mark' in commitment and the 'pendulum' swinging back to a more holistic approach to peace and security away from sexual violence, and celebrated the first mention of 'root causes of armed conflict'.

But very few civil society groups noted or commented on the interaction between the two announcements that day or commented on the unusual step the Committee was making in telling the UNSC how to think about substantive equality. Vivien Schmidt would urge us to use the theory of discursive institutionalism to examine this further. Discursive institutionalism scholars consider the discursive processes by which such ideas are constructed in a 'coordinative' policy sphere and deliberated in a 'communicative' political sphere.[xv] We could see the Committee's comments as lying in the sphere of coordinative discourse, as one of a range of policy actors engaged in "the construction of policy ideas" trying to influence the communicative sphere.

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Why did civil society actors not seize on the comments? Was the Committee too subtle? For international lawyers, it is a seminal moment when a discretionary policy framework, even one that is promulgated by the strength of the UNSC, crosses the line to a legal reporting framework, linked to a binding treaty. It is also a legal norm entrepreneur's dream. Where were the celebrations? States are legally bound to report to CEDAW on a periodic basis on how much money they are spending to promote women's participation in peace-building and conflict prevention processes. Is this not a paradigmatic shift?

Possible Theoretical Readings of 18 October 2013

What would feminist IR and international law theorists say? Janet Halley might say it is a shining example of successful norm entrepreneurship, leading to more 'governance feminism' in the halls of power.[xvi] Hilary Charlesworth might cautiously welcome the CEDAW comments, but warn of ritualism by states in the human rights treaty body system, and in the rhetorical commitment of states to the WPS agenda. Di Otto might agree with the Committee's concerns that the narrowing of WPS to protection of women from a specific formula or 'rape as a weapon of war' is a dangerous trend, and may represent co-option of a feminist agenda:

These problems include a pattern of selective engagement with feminist ideas as they are instrumentalised to serve institutional purposes; an across-the-board absence of strong accountability mechanisms, even as the outside pressure for accountability grows; and the tendency for protective stereotypes of women to normatively re-emerge following an initial flirtation with more active and autonomous representations.[xvii]

Another useful way to think about the day might be theories of incremental institutional change, as WPS has developed to the point where there are resource implications for states. As Mahoney and Thelen describe:

In our approach, institutions are fraught with tensions because they inevitably raise resource considerations and invariably have distributional consequences. Any given set of rules or expectations – formal or informal – that patterns action will have unequal implications for resource allocation, and clearly many formal institutions are specifically intended to distribute resources to particular kinds of actors and not to others. This is true for precisely those institutions that mobilize significant and highly valued resources (e.g., most political and political-economic institutions).[xviii]

Therefore we could argue that the WPS agenda represents incremental change by the UNSC into the realm of human security, but the recent UNSC narrowing of focus on sexual violence in conflict does not yield up power in either a discursive sense (women need protection) or a distributional sense. The CEDAW Committee as a discursive community could be seen as playing the role of a mediator in the civil society demand for more accountability and budget allocations. The timing of the pincer movement on 18 October suggests discursive institutionalism at work. The new links between CEDAW and the UNSC WPS agenda may have the potential for brokering a more powerful regulatory regime, especially around the collection of data. The transformative agenda proposed by the Committee to make the UNSC widen its focus seems less clear of success.

Is 18 October 2013 One in the Eye for R2P Advocates?

By way of a provocation to conclude this examination of 18 October 2013 (W-Day), we might ask why WPS, supported by big pledges from the Group of 8 led by the UK, has become so narrowly focused on protection of women from a particular (but worthy) manifestation of conflict violence, 'rape as a weapon of war'. Laura Shepherd and Lucy Hall have taken up Di Otto's concerns that as 'R2P is still considered 'high politics' while WPS is a marginal issue', then the fear is that wholesale integration could 'subsume and silence WPS within R2P'.[xix] I believe the sexual and gender-based violence (SGBV) focus plays to a wide ideological group, both morally conservative and progressive on issues of gender identity, much like the anti-trafficking movement, plus it does not entail radical resource distribution or offer a real challenge to militarism or armament industries. There is a concerted effort post-Libya critique for R2P advocates to push the alignment of the WPS agenda with R2P, which also has a very narrow focus on prosecution of SGBV in the context of the mass atrocities.

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In 2010, Australian jurist Hilary Charlesworth published the seminal article 'Feminist Reflections on the Responsibility to Protect' in the lead journal *Global Responsibility to Protect*.^[xx] At that juncture, she found that it was 'worth engaging with concepts such as the responsibility to protect because they can unsettle the standard boundaries of the discipline and increase the possibility of its transformation' but that the design of the R2P doctrine has been 'influenced by men's lives and the dominance of masculine modes of reasoning'.^[xxi] But she also found that the doctrine in fact offers 'gendered and racialised accounts of peace and conflict and the capacity of intervention to defuse violence'.^[xxii]

I argue that this remains the case based on my reading of contemporary conflicts before the Council in 2013 such as Mali, the Democratic Republic of Congo (DRC), Syria and Afghanistan, and may have become more entrenched. The urge to intervene militarily was resisted in Syria, but so was the urge to provide humanitarian assistance. But there has undoubtedly been recognition of this critique and more movement around the protection agenda of R2P advocates, in the area of the prevention of, and increased accountability for sexual and gender-based violence. This could be interpreted as a sign of engagement with a feminist agenda of women's empowerment and participation, but also interpreted as a sign of the paternalist and essentialist gender politics observed in the founding documents of R2P, 'bred in the bone' as a concept.

The choice of language used by the Committee in paragraph 27(b) of the General Comment reminded me that in 2010, Charlesworth made very similar observations of R2P that the Committee is making of WPS:

For the doctrine to offer support for women's equality, it would need to take into account a broader set of factors that impinge on women's lives, including women's economic marginalisation, the effect of militarisation and systemic discrimination against women. It would need to engage with the private subordination of women and the widespread violence against them outside the formal structures of the state. It would need to problematise the idea of intervention, recognising that it can exacerbate injustices by reinforcing particular forms of world order. The responsibility to protect principle would also need to be framed more modestly, not as a single solution to atrocities, but as one strand of a complex response that draws inspiration and ideas from everyone affected by violence.^[xxiii]

Let us see whether the events of 18 October 2013 represent a step in this direction.

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[i] See further Christine Chinkin, and Hilary Charlesworth, 'Building Women into Peace: the international legal framework', *Third World Quarterly*, (2006) 27(5): 937-957. Gardam, Judith and Michelle Jarvis, *Women, Armed Conflict and International Law*, The Hague: Kluwer Law International, 2001.

[ii] The full texts of the WPS core resolutions are available under the year of adoption from <http://www.un.org/documents/scres.htm>.

[iii] S/RES/2106 (2013), Adopted by the Security Council at its 6984th meeting, on 24 June 2013

[iv] Louise Olsson and Theodora-Ismene Gizelis, 'An Introduction to UNSCR 1325', *International Interactions: Empirical and Theoretical Research in International Relations*, (2013) 39(4): 425-434.

[v] Christine Bell, 'Women and peace processes, negotiations, and agreements: operational opportunities and challenges', *Policy Brief*, The Norwegian Peacebuilding Resource Centre, 13 March 2013.

[vi] Aisling Swaine, 'National implementation of the UN Security Council's women, peace and security resolutions' *Policy Brief*, The Norwegian Peacebuilding Resource Centre, 14 March 2013.

[vii] Katrina Lee-Koo, 'Translating 1325 into Practice: Lessons Learned and Obstacles Ahead' in Sara E. Davies, Zim Nwokora, Eli Stamnes, Sarah Teitt (eds) *Responsibility to Protect and Women Peace and Security: Aligning the Protection Agenda*. Leiden, Boston: Martinus Nijhoff Publishers, 2013.

[viii] Security Council Reporter, 2013. 'Third Cross-Cutting Report on the Women, Peace and Security Agenda' available at <http://www.securitycouncilreport.org/cross-cutting-report/women-peace-and-security-sexual-violence-in-conflict-and-sanctions.php>, accessed 13 March 2013, at p. 9.

[ix] Op cit.

[x] Inger Skjelsbaek, 'Responsibility to Protect or Prevent? Victims and Perpetrators of Sexual Violence Crimes in Armed Conflicts' *Global Responsibility to Protect* 4 (2012) 154-171 at p. 163.

[xi] For example, Charlesworth cites a UNIFEM study in 2009 found that only 2.4 per cent of signatories to peace agreements since 1992 had been women and that no woman had ever been designated as a 'chief mediator' by the United Nations, op cit at p. 245.

[xii] Chantal de Jonge Oudraat, 'UNSCR 1325—Conundrums and Opportunities', *International Interactions*:

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[xiii] Geoffery Wiseman, 'Polylateralism' and New Modes of Global Dialogue, *Discussion Papers No. 59* (Leicester: Leicester Diplomatic Studies Programme, 1999), at p. 41. 'My working definition of this concept is: "the conduct of relations between official entities (such as a state, several states acting together, or a state-based international organisation) and at least one unofficial, non-state entity in which there is a reasonable expectation of systematic relationships, involving some form of reporting, communication, negotiation, and representation, but not involving mutual recognition as sovereign, equivalent entities".'

[xiv] For example, see the NGO Working Group on WPS website <http://www.womenpeacesecurity.org/about/>, and Women's International League of Peace and Freedom (WILPF) <http://www.peacewomen.org/>, as well as a wide array of academic and activist groups. For similar R2P groups, see The International Coalition for the Responsibility to Protect (ICRtoP) at <http://icrtopblog.org/>, and the Global Center for R2P, <http://www.globalr2p.org/>.

[xv] Vivien A. Schmidt, 'Taking ideas and discourse seriously: explaining change through discursive institutionalism as the fourth 'new institutionalism' *European Political Science Review* (2010) 2:1: 1-25 at 2.

[xvi] Janet Halley, *Split Decisions: How and why to take a break from feminism*, Princeton University Press, 2006, at p. 4.

[xvii] Dianne Otto, 'The Exile of Inclusion' *Melbourne Journal of International Law* 10 (2009) 11-26 at 24. See further Dianne Otto, 'Power and Danger: Feminist Engagement with International Law through the UN Security Council' *Australian Feminist Law Journal* 2010 32(2): 97-121.

[xviii] James Mahoney and Kathleen Thelen, *Explaining Institutional Change*. Cambridge UP, 2009 at p.8.

[xix] Lucy Hall and Laura J Shepherd, 'WPS and R2P: Theorising Responsibility and Protection' in in Sara E. Davies, Zim Nwokora, Eli Stamnes, Sarah Teitt (eds) *Responsibility to Protect and Women Peace and Security: Aligning the Protection Agenda*. Leiden, Boston: Martinus Nijhoff Publishers, 2013 at p. 76.

[xx] Hilary Charlesworth, 2010, 'Feminist Reflections on the Responsibility to Protect', *Global Responsibility to Protect*, 2(3): 232-249.

[xxi] Charlesworth, op cit at p. 249.

[xxii] Charlesworth, op cit, at p. 249.

[xxiii] Ibid.

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