

**LYSISTRATA, WOMEN AND WAR:
INTERNATIONAL LAW'S TREATMENT OF
WOMEN IN CONFLICT AND POST-CONFLICT
SITUATIONS**

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Abstract

Aristophanes' *Lysistrata* is powerful anti-war play often revived during times of international conflict. This paper uses *Lysistrata* to highlight and critique binary oppositions that underpin the treatment of women in conflict and post-conflict situations in the play and in international law. While many of the experiences of women and girls in war are similar to those of men and boys, there are important differences. Existing inequalities between women and men, and patterns of discrimination against women and girls, tend to be exacerbated in wartime. There are circumstances in which women suffer harms of a different kind and to a different degree to men or in which certain harms primarily affect women. But if women suffer the impact of conflict in ways men do not, they are also a key to the solution of conflict, as *Lysistrata* shows.

Disgraceful! – Women venturing to prate of
Of war and arms and high affairs of state!

– Leader of the Men’s Chorus, *Lysistrata*, Athens, 411 BC.¹

“We lobbied for quota for women in the future legislature, the Transitional National Assembly (the TNA). But we faced opposition from the male delegates, who told us that no man would agree to be represented by women”.

– Asha Hagi Elmie, leader of the Sixth Clan Coalition, Somalia, May 2000.²

“Just because I am a woman ... I will not fight for women’s rights”.

– Bosnian Minister for Foreign Trade.³

“There is an oracle ... that we will triumph if only we don’t fall out among ourselves”.

– *Lysistrata*.⁴

Introduction – *Lysistrata* as Feminist Manifesto or Sexist Tract?⁵

In the last ten years, 300,000 people have been killed in Brazil, many as a result of urban violence and the widespread proliferation of handguns and small arms. Many of the guns are made in Brazil, but guns are also imported from countries including France, Germany, Italy and the US. On Mother’s Day, 13 May 2001, Viva Rio, one of Brazil’s largest non-governmental organizations, launched a campaign under the slogan, “Choose gun-free! It’s your weapon or me”, calling on women from all sections of Brazilian society to force the men of Brazil to give up their guns.⁶

In his February 2003 State of the Union announcement, President George W. Bush pledged \$15 billion in new funding for the global AIDS crisis. The promise was swiftly followed by demands from Congress that a third of this money be spent on

¹ Aristophanes, *Lysistrata and Other Plays* (Penguin Classics, 2002, translated by Alan H. Sommerstein), *Lysistrata* [hereinafter *Lysistrata*], lines 626-7, 165.

² Elisabeth Rehn and Ellen Johnson Sirleaf, “Women, War, Peace: The Independent Experts’ Assessment on the Impact of Armed Conflict on Women and Women’s Role in Peace Building” (UNIFEM, 2002), 80.

³ Elisabeth Rehn and Ellen Johnson Sirleaf, “Women, War, Peace: The Independent Experts’ Assessment on the Impact of Armed Conflict on Women and Women’s Role in Peace Building” (UNIFEM, 2002), 83.

⁴ *Lysistrata*, lines 767-8, 171.

⁵ I have borrowed Jane Baron’s labels for possible readings of Frank O’Connor’s “Counsel for Oedipus”. See Jane A. Baron, “Language Matters”, 34 *J. Marshall L Rev.* 163 (2000), 168-75.

⁶ “Women in Brazil say ‘It’s your weapon or me’!”, *Terror Trade Times*, Issue No. 4, Amnesty International. Source: <http://web.amnesty.org/pages/ttt4-article_16-eng>. Date accessed: March 19, 2004.

promoting sexual abstinence.⁷ Congress's approach builds on suggestions that the dramatic drop in HIV/AIDS infections in Uganda is proof that abstinence from sex is the best way to combat the deadly disease, especially in the world's hardest-hit area, sub-Saharan Africa. Infections in the East African country, which once had the highest rate in the world, have dropped from 30 percent of the population in the early 1990s to around 10 percent today; an abstinence program launched in 1994 and supported by schools and religious organizations is credited with bringing down the infection rate.⁸

These examples show the allegorical potential of *Lysistrata* even today, nearly two and a half thousand years after Aristophanes wrote the play. In this paper, however, I do not wish to use the play, with its portrayal of a successful sex strike by the women of Greece to force the men to end the Peloponnesian war, as a metaphor for women's activity in the public sphere. Today, women have come further than that. Women comprise 15.3 percent of the world's parliamentarians, an increase of 2.6 percent since 1997,⁹ and 14 percent of lawmakers in the world's legislatures.¹⁰ Congolese women formed 30 percent of the participants at their nation's peace negotiations in 2001.¹¹ Since 2000, four out of 15 international peace-keeping operations have had dedicated staff working on gender issues.¹² Women's political power need not be channelled through the bedroom.¹³

I have chosen to use *Lysistrata* to structure my analysis because I see it as having philosophical parallels with international law, including a joint historical and cultural heritage, mutual normative assumptions and shared empirical beliefs. This is unsurprising since Classical Greek culture is one of the foundations of the essentially Western concepts embodied in international law. By adopting the law and literature strategy of compare and contrast,¹⁴ I use the play to shed light on international law's gaps, rhetoric and moral stance, to elucidate its limits and highlight its exclusions.¹⁵ *Lysistrata* is powerful anti-war play often revived during times of international

⁷ "A vote of abstinence", Special Report: AIDS and HIV, Guardian Unlimited, Sunday, November 23, 2003. Source: <<http://www.guardian.co.uk/aids/story/0,7369,1092967,00.html>>. Date accessed: March 19, 2004.

⁸ "Sexual Abstinence behind Uganda's AIDS Success Story", Stephen Mbogo, Cybercast News Service, January 13, 2003. Source: <<http://www.cnsnews.com/ViewForeignBureaus.asp?Page=percent5CForeignBureaus percent5Carchive percent5C200301 percent5CFOR20030113d.html>>. Date accessed: March 19, 2004.

⁹ "Women in National Parliaments", Inter-Parliamentary Union. Source: <<http://www.ipu.org/wmn-e/world.htm>>. Date accessed: February 2, 2004.

¹⁰ Linda Wirth, *Breaking through the Glass Ceiling* (International Labor Organization, 2001).

¹¹ "Engendering the Inter-Congolese Dialogue", Report, Femmes Africa Solidarité (2001). The Inter-Congolese Dialogue took place in Sun City, South Africa.

¹² In East Timor, Kosovo, the Democratic Republic of the Congo and Sierra Leone. See Elisabeth Rehn and Ellen Johnson Sirleaf, "Women, War, Peace: The Independent Experts' Assessment on the Impact of Armed Conflict on Women and Women's Role in Peace Building" (UNIFEM, 2002), 67.

¹³ Although it is worth noting that by taking the battle to the bedroom in *Lysistrata*, the women presage the slogan of radical second-wave feminism, "the personal is political." See e.g. Imelda Whelehan, *Modern Feminist Thought: From the Second Wave to 'Post-Feminism'* (Edinburgh University Press, 1995), 73.

¹⁴ Jane A. Baron, "Law, Literature and the Problem of Interdisciplinarity", 108 Yale L. J. 1059 (1999), 1061.

¹⁵ Jane A. Baron, "Law, Literature and the Problem of Interdisciplinarity", 108 Yale L. J. 1059 (1999), 1060.

conflict.¹⁶ It demonstrates that while many of the experiences of women and girls in war are similar to those of men and boys, there are important differences. Existing inequalities between women and men, and patterns of discrimination against women and girls, tend to be exacerbated in wartime. There are circumstances in which women suffer harms of a different kind and to a different degree to men or in which certain harms primarily affect women. But if women suffer the impact of conflict in ways men do not, they are also a key to the solution of conflict, as Aristophanes' *Lysistrata* shows.

Law and literature is "a movement of many methodologies and conclusion".¹⁷ Diverse approaches include law in literature, law as literature, law of literature and legal stories as narrative to name a few.¹⁸ Within each of these different strands, the techniques of critical literary theory have usefully been applied in order to "unpack" law. For many proponents of law and literature who use literary works in their analyses, two commonalities exist – a close proximity to the text¹⁹ and a related "fundamental commitment to particularity as opposed to grand theory".²⁰ While I intend to work closely with Aristophanes' text and employ a wide range of specific examples to develop my argument, I seek to move away from categorized approaches to law and literature and use *Lysistrata* to highlight three common themes which underpin the treatment of women in conflict and post-conflict situations in the play and in international law.

The law and literature movement has long been riven by internal debate over what exactly the field of law and literature can be expected to contribute to the understanding of law. In 1988, Stanley Fish commented that "given the present construction of the legal world, a deconstructive interpretive theory will not be readily translatable into a viable legal practice [...]; but it could be the case that the dissemination of such a theory might play a role in altering the way in which the legal world is constructed by altering the ways in which legal actors conceive of their activities".²¹ Harnessing deconstructive approaches, feminists have identified gendered components and gendered implications of seemingly neutral laws and practices. Through these approaches, among many others, feminist jurisprudence has

¹⁶ Most recently, readings of the play were held worldwide on March 3, 2003 as part of the *Lysistrata* Project to protest the rush to war on Iraq. Source: <<http://www.lysistrataproject.com>>. Date accessed: January 15, 2004. See too e.g. Charlotte Hall, "A Slap that Feels Like a Kiss, Broadway Blast, No Love in War", Ha'aretz, February 25, 2000 (discussing the relevance of *Lysistrata* to events in Israel); Swanee Hunt and Cristina Posa, "Women Waging War", Foreign Policy, May 1, 2001 (discussing how former South African President Nelson Mandela adopted *Lysistrata*'s story, namely the influence of women on warriors, during his talks on the conflict in Burundi), referred to in Marina Angel, "A Classical Greek Influences an American Feminist: Susan Glaspell's Debt to Aristophanes", 52 Syracuse L. Rev. 81 (2002), 83, note 11.

¹⁷ Jane A. Baron, "Law, Literature and the Problem of Interdisciplinarity", 108 Yale L. J. 1059 (1999), 1061.

¹⁸ Jane A. Baron, "Law, Literature and the Problem of Interdisciplinarity", 108 Yale L. J. 1059 (1999), 1063-7; Thomas Morawetz, "Ethics and Style: The Lessons of Literature for Law", 45 Stan. L. Rev. 497-498.

¹⁹ Ambreena Manji, "Law, Literature and the Politics of Culture in Kenya", Law, Social Justice and Global Development Journal (LDG) 2003 (2). Source: <<http://elj.warwick.ac.uk/global/issue/2003-2/manji.htm>>. Date accessed: February 2, 2004.

²⁰ Jane A. Baron, "Law, Literature and the Problem of Interdisciplinarity", 108 Yale L. J. 1059 (1999), 1061.

²¹ Stanley Fish, "Don't Know Much About the Middle Ages: Posner on Law and Literature", 97 Yale L. J. 777 (1988), 790.

gained a significant place in law and legal thought at both the domestic and international levels and influences many debates on sexual and domestic violence, inequality in the workplace, and gender-based discrimination.

Much scholarship in the field of law and literature has been focused on domestic law.²² In focusing on international law, I seek to avoid the critique leveled at some proponents of law and literature that the “the vast majority of legal business is still done within the traditional notions of literal meanings, transparent intentions, determinate texts and stable precedent”.²³ This is not true of international law and, consequently, the way of thinking that literature teaches – one that is synthetic, creative and comfortable with ambiguity and ambivalence – is especially important.

In the first part of the paper, I examine *Lysistrata* and reveal the binary oppositions that pervade Aristophanes’ text. I then consider the binary oppositions in more detail by examining how they are reflected in the position of women in contemporary violent conflicts. In so doing, I demonstrate how the hierarchical nature of these binary oppositions has served to confine women’s experience to the less valued part of the opposition, although as in the play, I recognize that in some areas the oppositions are being destabilized. In the paper’s conclusion, I map the direction in which change needs to continue to fully account for the experiences of women, who constitute half the world’s population yet have gone largely unheard within the masculinized international system.

Binary Oppositions in *Lysistrata*

Aristophanes’ basic plot is a simple one: led by Lysistrata, the Grecian women withdraw their sexual favors in protest against the protracted Peloponnesian war. The play is constructed over a framework of pairings that pull against each other in constant tension. Against the backdrop of a long war, peace is sought. Family life and politics become entangled. Women are pitted against men. Three binary oppositions emerge: war/peace, public/private and men/women. These oppositions, appearing in an ancient play, persist in the structure and philosophy of international law, skewing word and action and favoring half of the world’s population while excluding or ignoring the other. A critical reading of the play reveals that these oppositions collapse immediately by the very act of constructing them. An examination of contemporary warfare and its aftermath shows that women continue to be harmed by war in ways that men are not and thus the ancient notions of war as a “manly” thing, solely the preserve of male decision makers and male combatants, which still continue to influence international law, need to be disturbed. Once we have destroyed the association of “man” with “war” and “public”, we can begin to reform international law to accord with this and perhaps be more successful in eradicating war. This process is well under way, in the work both of academics, such

²² Interesting exceptions include Theodore Meron, “Shakespeare’s Henry the Fifth and the Law of War”, 86 A.J.I.L. 1 (1992); Anita L. Allen and Michael R. Seidl, “Interdisciplinary Approaches to International Law: Cross-Cultural Commerce in Shakespeare’s Merchant of Venice”, 10 Am. U. J. Int’l L. Pol’y 837 (1995).

²³ Stanley Fish, “Don’t Know Much About the Middle Ages: Posner on Law and Literature”, 97 Yale L. J. 777 (1988), 790.

as Hilary Charlesworth and Christine Chinkin,²⁴ and of women activists.²⁵ I seek to demonstrate why it must continue. Unlike in *Lysistrata*, women's activism in the political sphere cannot end with every man taking his wife and going home.

I use "war" in the war/peace dichotomy – and in the title of this paper – in a broader sense than either international law or political science. The international legal definition of "war" is outdated. Article 2(4) of the Charter of the United Nations prohibits the use of armed force by states, whether or not a formal declaration of "war" has been made. Consequently, since 1945 the distinction in international law is probably better framed in terms of armed conflict between states and peace. Even this definition, however, has become insufficient as international lawyers struggle to add non-state actors to the equation. In political science, a common definition of war counts only conflicts producing one thousand or more battle fatalities.²⁶ While this definition encompasses the threat of non-state actors, with its emphasis on *battle* fatalities, it, like that of international law, seems to derive from the perspective of parties to and participants in conflict, which comprise almost exclusively male decision-makers, male commanders and male combatants,²⁷ rather than from the perspective of the civilian populations affected by it, of which half are women. Consequently, I seek to divest the term "war" of its established meanings and replace them with Joshua Goldstein's definition of war as "lethal intergroup violence".²⁸ I choose this characterization because it brings within its scope all conflict which causes gender-specific harm to women.

In *Lysistrata*, the men/women dichotomy is the paradigm onto which war/peace and public/private can be mapped. The differences between the sexes that Aristophanes highlights – for example, the ability of women of different Greek states to cooperate to achieve peace as opposed to the men's inability to overcome historical rivalries – are the starting point for my consideration of the gendered nature of war/peace, public/private and indeed the international system as a whole. In order to develop the gender component of my analysis, I adopt the terms masculine and feminine. These terms are intended to convey the social construction of differences between men and women, "the excess cultural baggage associated with biological sex".²⁹ For example,

²⁴ E.g. Hilary Charlesworth and Christine Chinkin, *The Boundaries of International Law: A Feminist Analysis* (Manchester University Press, 2000).

²⁵ E.g. the Israeli women of Machsom Watch, which "was set up in January 2001 in response to repeated reports about human rights abuses of Palestinians at the checkpoints which inhibit the movement of Palestinians not only into Israel but between Palestinian towns." The women go to West Bank checkpoints every day to try and stop soldiers harassing Palestinians. "Checking on the Checkpoints", *Guardian G2 Magazine*, February 2, 2004.

²⁶ Joshua S. Goldstein, *War and Gender: How Gender Shapes the War System and Vice Versa* (Cambridge University Press, 2001), 2.

²⁷ For percentages of women involved in peace keeping for the United Nations at various levels, see Elisabeth Rehn and Ellen Johnson Sirleaf, "Women, War, Peace: The Independent Experts' Assessment on the Impact of Armed Conflict on Women and Women's Role in Peace Building" (UNIFEM, 2002), 66.

²⁸ Joshua S. Goldstein, *War and Gender: How Gender Shapes the War System and Vice Versa* (Cambridge University Press, 2001), 3.

²⁹ Hilary Charlesworth, "Feminist Methods in International Law", 93 *A.J.I.L.* 379 (1999), 379. It should be noted that this definition is contested. Joshua Goldstein uses gender "to cover masculine and feminine roles and bodies alike": Joshua S. Goldstein, *War and Gender: How Gender Shapes the War System and Vice Versa* (Cambridge University Press, 2001), 2. Thomas Laqueur concludes that sexuality itself (rather than just gender) is something that is historically determined: Thomas Laqueur, *Making Sex: Body and Gender from the Greeks to Freud* (Harvard University Press, 1990), cited in

leadership, strength, fighting and the public sphere are masculine. They are generally associated with men and have traditionally been considered positive as a result. Their opposites – submissiveness, weakness, passivity, the private – are feminine, generally associated with women and seen as negative in comparison.

Aristophanes' play subversively preached peace at a time of war and demonstrated women's radical political zeal in a society where their role was exclusively domestic. As the action unfolds, *Lysistrata* destabilizes the very oppositions it presents. We see women as effective political actors capable of achieving the holy grail of international relations. As she arranges the reconciliation between the Spartan and the Athenian men, Lysistrata, is hailed as bravest – literally, “most manly” – of women, insightful, wise, experienced in discourse and educated;³⁰ she is “awesome, gentle, noble, common, proud, experienced, tender”³¹ and “the only person who can bring about a true reconciliation”.³² Thus, a critical reading of Aristophanes suggests that the masculinity/femininity paradigm is not fixed and that both traditionally masculine and traditionally feminine qualities are needed in order to achieve lasting peace. By accomplishing what the men were unable to achieve through the use of feminine methods of cooperation and inclusivity, the paradigm is destabilized in the play. This is equally true in relation to the international system. Once these oppositions are revealed, we can begin to deconstruct them and replace them with less gendered concepts. This process has begun in some areas but must be extended, quickened and legitimized by ensuring women's involvement in all areas of international law and society, their contributions must be encouraged, recognized and valued, their rights enshrined in constitutions, protected by legislation and made a reality. While advances that have been made in the position of women in the international system should not go unacknowledged, there remains a long way to go.

Throughout the play, the devastation of war throws the need for peace into stark relief; the realities and necessities of home life shape and are shaped by the wider world of politics; and the attitudes and roles of women are compared and contrasted with those of men. The play thus reveals how binary oppositions privilege one of the terms of the opposition, creating a hierarchy.³³ The women protest against the men's preference for war over peace, their “public” lives as citizens over their “private” lives as husbands and fathers, and men and their “masculine” qualities over women and their “feminine” attributes. Pervasive binary oppositions built around gender, such as these, subordinate women to objects by which the power and value of all that is male is affirmed. Another common example of a gendered binary opposition is rational

Emily Allen and Dino Felluga, “General Introduction to Theories of Gender & Sex”, *Introductory Guide to Critical Theory*. Source:

<<http://www.purdue.edu/guidetotheory/genderandsex/modules/introduction.html>>. Date accessed: March 13, 2004.

³⁰ *Lysistrata*, lines 1107-8, 185.

³¹ *Lysistrata*, lines 1109-10, 185.

³² *Lysistrata*, line 1103-4, 185.

³³ Thus philosophy talks of the concept of “hierarchical dualism” which is premised upon a two-tiered universe which sees two separate and opposing spheres and assigns a higher value to one of them. The following examples reveal the hierarchical dualisms that dominate our society: men/women, mind/body, reason/emotion, public/private, seeing/listening, linear/cyclical, fixed/changing, independent/dependent, hard/soft, impersonal/personal, order/chaos, result/process. See Cheryl M. Herden, “Women in Legal Education: A Feminist Analysis of Law School”, 63 *Rev. Jur. U.P.R.* 551 (1994), 559, note 71.

and emotional, in which the rational term is usually privileged and associated with men, while emotional is inferior and associated with women.

By giving voice and drawing attention to women's dissatisfaction with the masculinized structures of ancient Greek society, Aristophanes hints at the project of modern feminist literary criticism. Feminist literary critics seek to discover female voices in literary texts and to give value to writings by and about women.³⁴ They endeavor to demonstrate that the structures of language are male-created and reinforce male values by deconstructing "all the binary oppositions that have been falsely created and accepted over the centuries as universal and privileged value systems, or meta-narratives".³⁵ Like literature, international law is dependent on these language hierarchies and encodes similar privileged value systems. Unsurprisingly then, the struggle of feminist literary critics to break them down is reflected in feminist analyses of law.

Deconstruction demonstrates the underlying instability or play in binary oppositions by identifying the oppositions at work and then demonstrating how the reality of the international system – or the literary text – itself undermines the hierarchy implied or asserted by the opposition. There are two ways of destabilizing a binary opposition. One is to collapse the opposition. Catharine MacKinnon, a radical feminist, has made use of this technique to argue that the distinction made between public acts of torture and private acts of torture, which are not legally categorized as torture, is specious.³⁶ Public acts of torture are perpetrated by state officials – predominantly men – and can be prosecuted as torture. In contrast, private acts of torture are perpetrated by ordinary people – again predominantly men – and are not seen as fitting under the rubric of torture despite similarities in the extent of harm inflicted. Significantly for MacKinnon, it is mostly men who are victims of public torture while it is mostly women who are victims of private torture. She thus goes on to argue that the distinction between public and private acts of torture is based on the sex of the victim and that the law unjustifiably privileges men's experience of torture over women's. The second way to challenge a binary opposition is to attack the hierarchy that is implicit within it. Cultural feminism makes this challenge by valuing, celebrating and promoting the differences between women and men rather than assigning less importance to particularly "feminine" qualities that women tend to exhibit.³⁷

³⁴ Carolyn Heilbrun and Judith Resnik, "Convergences: Law, Literature and Feminism", 99 Yale L. J. 1913 (1990).

³⁵ Serpil Tunç Opperman, "Feminist Literary Criticism: Expanding the Canon as Regards the Novel". Source: <<http://members.tripod.com/~warlight.OPPERMANN.html>>. Date accessed: January 16, 2004.

³⁶ Catharine A. MacKinnon, "On Torture: A Feminist Perspective on Human Rights", in Kathleen E. Mahoney and Paul J. Mahoney (eds), *Human Rights in the Twenty-First Century: A Global Challenge* (Nijhoff, 1993), 21.

³⁷ Carol Gilligan came to be known as the founder of cultural feminism. Many feminists insisted that there are no differences between males and females. Gilligan asserted that women have differing moral and psychological tendencies than men. According to Gilligan, women tend to think and speak in a different way to men when they confront ethical dilemmas. While men think in terms of rules and justice, women are more inclined to think in terms of caring and relationships. Gilligan asks that Western society begin to value both equally. See generally Carol Gilligan, *In a Different Voice: Psychological Theory and Women's Development* (Harvard University Press, 1982).

In my examination of how the binary oppositions I identify in *Lysistrata* are equally apparent in the international legal system, my methodology is comparable to that of cultural feminism. Women's experiences are fundamentally different to men's. However, the problem is not that women and men are different. Rather, women and men adopt different gender roles, which are rooted in the patriarchy, and thus devalue women and the "feminine". Consequently, I argue the need for explicit consideration and recategorization of women and women's experiences to bring an end to their categorization as the less valued, less important element of the opposition. By doing away with the higher sphere, the inherently masculinist structure of the opposition can begin to be destabilized.

War and Peace

From the Athens of *Lysistrata* until the beginning of the twentieth century, war was commonly seen as "good", an opportunity for young men to show valor, nobility and the spirit of sacrifice. In ancient Greece, war provided unrivalled opportunities for the (male) citizen to display courage, for the (male) general to win prestige, and for the (male) politician to claim that he had enhanced his city's glory and power.³⁸ No doubt with hopes of similar rewards, millions of men flocked to join the military at the beginning of World War One. Women gave white feathers to men who declined; mothers claimed they were happy when their sons died for their country. By the beginning of the twenty-first century, at least in the West, such attitudes have become unthinkable. But then, war has changed from pitched battles between the state armies, to the technological nightmare of nuclear, chemical and biological weapons (rare in the frequency with which they are used but vast in their capacity to destroy), to war's most prevalent form – low-grade, intra-state conflict which claims as its victims mainly civilians, not young male soldiers. Although entire communities suffer the consequences of violent conflict, women and girls are particularly affected because of their status in society and their sex. In gender-based violence during conflict, in the prosecution and punishment of crimes after conflict has ended, in the struggle of daily life during conflict, and in the long-term effects of conflict, women suffer because they are women; they suffer in ways men cannot and do not. Yet the gender-differentiated effects of war on women are largely invisible.

The types of harm men suffer in times of war (e.g. genocidal murder) have always been recognized as crimes of war. In contrast, the types of harm that women suffer (e.g. genocidal rape) have tended not to be similarly classified. Parties in conflict situations often rape women, sometimes using systematic rape as a tactic of war.³⁹ Other forms of violence committed against women in armed conflict include murder, sexual slavery, forced pregnancy and forced sterilization. However, until the 1990s sexual violence in war was generally overlooked, as the initial failure to prosecute rape and sexual violence in the *ad hoc* international criminal tribunals for the former Yugoslavia and Rwanda (hereinafter referred to as the ICTY and the ICTR

³⁸ Aristophanes, *Lysistrata and Other Plays* (Penguin Classics, 2002, translated by Alan H. Sommerstein), Preface to *Lysistrata*, 135.

³⁹ Beth Stephens, "Humanitarian Law and Gender Violence: An End to Centuries of Neglect", 3 Hofstra L. & Pol'y Symp. 87 (1999), 88-94.

respectively),⁴⁰ and the sixty-year delay preceding international recognition of the crimes committed against “comfort women” in Japan and southern Asia during the 1930s and 1940s show.⁴¹ Changes in the nature of warfare mean that violence against women is increasingly a reality of conflict. International conflict has largely been replaced by civil war and national military forces by rebel groups, insurgents and guerrilla fighters. War is no longer fought between standing armies comprising identifiable combatants in planned battles in designated combat zones. Uniformed soldiers are rarely sent to the front to fight for opposing states. War is now more likely to be continuous, low-grade conflict, its protagonists are non-state actors and it can take place anywhere, including in homes and communities. Today, war ranges from internal armed conflict, to communal strife, to organized violence, to full scale aggression. It leads to the exacerbation of poverty, illiteracy, corruption, famine, disease and debt and suddenly, everyone is involved. War is no longer only the province of combatants. One result is that it is systematically fought on and through women’s bodies and women suffer its effects long after it has ended. This reality is powerfully evoked in *Lysistrata* where the men negotiating peace “map out their respective demands” on the body of Reconciliation,⁴² “a beautiful, naked young woman”.⁴³ The Spartan’s claim “this round hill” (Reconciliation’s bottom),⁴⁴ while the Athenians demand “these Prickly Bushes here, and the Malian Gulf behind them, and the Long Legs – I mean the Long Walls of Megara”.⁴⁵

Crimes against women are not only systematically perpetrated in war. They have also generally received lesser or no punishment when compared with grave breaches of international humanitarian law such as compelling a prisoner of war to serve in enemy forces,⁴⁶ a crime generally committed by men against men. Where crimes against women are recognized as worthy of punishment, it is often not because of what has been done to the woman as victim but because of what has been done to the community as victim.⁴⁷ As Sunila Abeysekera writes,⁴⁸ most conflicts emerge out of processes of identity formation in which competing groups and communities resort to violence to affirm their equal status in society. Given this dynamic, conflict results in the heightening of all forms of conservatism and extremism, including religious fundamentalism, ultra-nationalism and ethnic chauvinism. The hardening of identity-based roles ascribed to women and men within the community that happens as a part of this process often has disastrous consequences for women. It restricts their mobility and freedom, imposes dress codes, confines them to the domestic sphere, brings them under the rigid control of male members of the family and the community and, most critically, places them in the role of “bearers of the community’s honor”

⁴⁰ Rhonda Copelon, “Gender Crimes as War Crimes: Integrating Crimes against Women into International Criminal Law”, 46 McGill L.J. 217 (2000), 223.

⁴¹ It was only in 2000 that the Women’s International War Crimes Tribunal for the Trial of Japanese Military Sexual Slavery was established. As a people’s tribunal, it could only exercise moral authority which shows that even recent advances in state attitudes to gender-based violence leave much to be desired. See Christine Chinkin, “Women’s International Tribunal on Japanese Military Sexual Slavery”, 95 A.J.I.L. 335 (2001).

⁴² *Lysistrata*, line 1162, 187.

⁴³ *Lysistrata*, line 1115, 186.

⁴⁴ *Lysistrata*, line 1163, 187.

⁴⁵ *Lysistrata*, line 1170, 188.

⁴⁶ Hilary Charlesworth, “Feminist Methods in International Law”, 93 A.J.I.L. 379 (1999), 387.

⁴⁷ Hilary Charlesworth, “Feminist Methods in International Law”, 93 A.J.I.L. 379 (1999), 387.

⁴⁸ Sunila Abeysekera, “A Women’s Human Rights Perspective on War and Conflict”. Source: <<http://www.whrnet.org/docs/perspective-abeysekera-0302.html>>. Date accessed: January 27, 2004.

and traditions. Thus, the violation of women “belonging” to the enemy community becomes a key military strategy in identity-based conflict. In the former Yugoslavia, for example, the systematic and genocidal rape of Bosnian Muslim women by Serbian military forces was an attempt to eliminate the patrilineal⁴⁹ “enemy” community by impregnating the women victims with Serbian babies.⁵⁰ In this way, crimes perpetrated against individual women are cast as attacks on the communities of which they are members. In other situations, the crime is seen as an attack on the honor of the woman’s husband, father or brother. This categorization obscures the significance of such crimes – they are acts of violence committed against women because they are women. To play this down is to make women proxies for these crimes rather than victims in their own right.

Women civilians are not the only victims of sexual violence in war. Women combatants are equally at risk of rape and other gender-based crimes, often at the hands of their fellow servicemen. In a recent study by Iowa City Veterans Affairs Medical Centre and University of Iowa, researchers indicated that, out of a nationwide sample of 556 female veterans who served in the Vietnam, post-Vietnam and Persian Gulf War eras, 79 percent reported experiences of sexual harassment during their military service and 30 percent of the women reported an attempted or completed rape.⁵¹ This masculinist culture means that women in the military face threatened and actual sexual violence even during peacetime. As recently as the mid-1980s, drill instructors in the US Marines led training runs with chants like, “One, two, three, four. Every night we pray for war. Five, six, seven, eight. Rape. Kill. Mutilate”. While slogans like this are no longer official policy, thousands of women in the US military are sexually harassed, abused and raped.⁵² At the prospect of a woman’s admission to the male stronghold of the Citadel, a powerful military-style college that had excluded women for more than 154 years, a cadet scrawled, “Let her in – then fuck her to death”, in a bathroom stall.⁵³ Almost all states restrict women from certain jobs in the armed forces and there is a near-total exclusion of women from combat roles.⁵⁴ One traditional reason advanced for such restrictions has been that it is bad for (male) morale to see women getting killed on the battlefield. But these examples hint at another, more paternalistic justification, which tacitly legitimizes the masculinization of combat – and other military – forces: women must be excluded from the forces in order to ensure their protection from sexual abuse. Such a position reinforces the fallacious idea that the abuse of women by men in the armed forces is

⁴⁹ Tracing descent on the father’s side.

⁵⁰ Not only would the rape of Bosnian Muslim women lead to their giving birth to Serbian babies, but it would also mean that the victims would be rejected by male members of their own community in effect putting an end to the continuation of the race. See e.g. Krishna R. Patel, “Recognizing the Rape of Bosnian Women as Gender-Based Persecution”, 60 Brooklyn L. Rev. 929 (1994).

⁵¹ “UI, VAMC Researchers Study Women’s Risk Of Rape In Military”, March 11, 2003, University of Iowa News Release. Source: <<http://www.uiowa.edu/~ournews/2003/march/031103military-rape.html>>. Date accessed: February 4, 2004.

⁵² Li Onesto, “Reality for Women in the US Military: Rape in Uniform”, December 8, 1996, Revolutionary Worker. Source: <<http://rwor.org/a/firstvol/886/rape.htm>>. Date accessed: February 4, 2004.

⁵³ Valorie K. Vodjik, “Gender Outlaws: Challenging Masculinity in Traditionally Male Institutions”, 17 Berkeley Women’s L. J. 68 (2002), 68.

⁵⁴ Joshua S. Goldstein, *War and Gender: How Gender Shapes the War System and Vice Versa* (Cambridge University Press, 2001), 10: “Designated combat forces in the world’s state armies include several million soldiers (the exact number depending on definitions of combat), of whom 99.9 percent are male.”

inevitable. It fails to take account of the fact that the exclusion of women in the military has been the essential and defining feature of an institution established to create the “whole man” through a system “structured by hypermasculinity that depended on the denigration of the female”.⁵⁵

My focus so far has been on the harms that women experience as victims of war and militarization, both as civilians and combatants. It must not be forgotten, however, that women can also be aggressors. The former Rwandan Minister for Family and Women’s Affairs, Pauline Nyiramasuhuko, was the first woman before an international criminal court.⁵⁶ She is one of the six accused in the so-called Butare trial and allegedly ordered Interahamwe militiamen and soldiers to rape young Tutsi girls and women during the massacres in Rwanda between April and July 1994. Between January and April 2002, four Palestinian women killed themselves and others as they detonated belts of explosives. Because of their gender, these women – one a seamstress, one an ambulance worker, one in college and one in high school – did not fit the profile of a Palestinian suicide bomber.⁵⁷ The LTTE, or Tamil Tigers, in Sri Lanka, the Kurdish PKK and Chechen terrorists have preferred female bombers because they attract, or used to attract, less suspicion than their male counterparts.⁵⁸ The existence of female suicide bombers demonstrates that women are often prepared to fight when they feel they have no other choice. *Lysistrata* hints at this when, referring to the Acropolis, she thunders, “we’ve got four whole companies of fully armed fighting women inside there”⁵⁹ and later when she asks, “Did you think ... that women couldn’t have any stomach for a fight?”⁶⁰ The (male) magistrate thinks she is bluffing, thus revealing his belief that women cannot really be capable of fighting, that it is men’s preserve. The same gendered assumption underlies the way in which female suicide bombers have attracted less suspicion than male suicide bombers. In killing themselves and others, women suicide bombers fail to conform to gender stereotypes; they become “gender outlaws”.⁶¹ Women aggressors also get coverage, in the press and elsewhere, that is disproportionate to their numbers when compared to the countless women victims of violent conflict. It seems that when women act in a “masculine” way as aggressors they receive recognition, but as “feminized” victims they are unworthy of attention. Woman’s role as aggressor destabilizes the passive/woman/victim and the active/man/aggressor opposition. It demonstrates that while woman can engage in violent conflict, unlike men, the majority of them choose not to.

Recently, however, there has been a growing awareness of the gendered nature of crimes, especially those of a sexual nature, committed in times of war. The *ad hoc* international criminal tribunals have brought gender into mainstream international

⁵⁵ Valorie K. Vodjik, “Gender Outlaws: Challenging Masculinity in Traditionally Male Institutions”, 17 *Berkeley Women’s L. J.* 68 (2002), 69.

⁵⁶ *Prosecutor v. Pauline Nyiramasuhuko*, ICTR Trial Chamber (26 June 2001), Case No. ICTR-97-21-T. Source: <<http://www.ictt.org>>. Date accessed: January 18, 2004.

⁵⁷ Libby Copeland, “Female Suicide Bombers: The New Factor in Mideast’s Deadly Equation”, April 27, 2002, *Washington Post*. Source: <<http://www.washingtonpost.com/wp-dyn/articles/A57052-2002Apr26.html>>. Date accessed: January 18, 2004.

⁵⁸ “Martyrdom and Murder”, *The Economist*, January 10, 2004, Special Report, 19.

⁵⁹ *Lysistrata*, line 454, 158.

⁶⁰ *Lysistrata*, lines 464-5, 159.

⁶¹ Valorie K. Vodjik, “Gender Outlaws: Challenging Masculinity in Traditionally Male Institutions”, 17 *Berkeley Women’s L. J.* 68 (2002).

jurisprudence. For example, the ICTY has devoted substantial resources to the prosecution of rape and explicitly recognized rape as torture,⁶² while the ICTR recognized rape as an act of genocide in the landmark *Akayesu* case.⁶³ It should not go unremarked that both of these developments are attributable to women. As Chief Prosecutor for both war crimes tribunals, Carla del Ponte was responsible not only for “justice being played in a new, female key”,⁶⁴ but also for the unprecedented indictment of an entire government for genocide in Rwanda. In *Akayesu*, the decision was greatly influenced by Navanethem Pillay, the ICTR’s only female judge. The Statute of the International Criminal Court (ICC), which entered into force in July 2002, entrenches the progress made by these women and others like them by codifying crimes of sexual and gender violence as part of the ICC’s jurisdiction and establishing procedures to ensure that these crimes and their victims are properly treated.⁶⁵ Furthermore, the ICC has chosen a female lawyer, Christine Cheung, to lead its first investigation, into accusations that Ugandan warlords abducted children to serve as soldiers and sex slaves in the Lord’s Resistance Army. These examples demonstrate that women’s experiences of conflict are beginning to be factored into international law and seem to indicate that this change has happened because of women’s participation at the highest levels in the international legal system. While increasing recognition of crimes of a sexual nature committed against women in times of war has belied the apparent irrelevance of women in international law, the focus on sexual violence – at the expense of protecting economic and social rights, for example – reinforces the fact that when women are seen at all, it is as men’s objects and adjuncts. In *Lysistrata*, the women’s plan to harness male sexual desire and channel it into ending the war exploits this. An exchange between the women is illustrative. Of uniting to save Greece, Calonice asks, “But how can women achieve anything so grand or noble? What do we ever do but sit at home looking pretty...?”⁶⁶ Lysistrata replies, “But don’t you see, that’s exactly what I mean to use to save Greece ... We’re at home, beautifully made up, and we walk around the house wearing sheer lawn shifts and nothing else; the men are horny and can’t wait to leap on us; and we keep our distance and refuse to come to them – then they’ll make peace soon enough, you’ll see”.⁶⁷

The difference between the economic and social rights of women and men, which exists in all countries including those in the West,⁶⁸ is exacerbated in times of war.⁶⁹ Even in peacetime the effects of discrimination against women are pervasive. Untold numbers of female fetuses are aborted in prenatal sex-selection. Their mothers do not always get the nutrition or care they need when pregnant. In many societies, girl

⁶² *Prosecutor v. Gagovic et al.*, Indictment, ICTY Trial Chamber (26 June 1996), Case No. IT-96-23/2 (International Criminal Tribunal for the Former Yugoslavia, Trial Chamber). Source: <<http://www.un.org/icty/indictment/english/foc-ii960626e.htm>>. Date accessed: January 18, 2004.

⁶³ *Prosecutor v. Jean Paul Akayesu*, Amended Indictment, ICTR Trial Chamber (June 1997), Case No. ICTR-96-4-I. Source: <<http://www.ictt.org>>. Date accessed: January 18, 2004.

⁶⁴ Ed Vulliamy, “Avenging Angel”, March 4, 2001, Guardian Unlimited. Source: <<http://www.guardian.co.uk/yugo/article/0,2763,446181,00.html>>. Date accessed: January 18, 2004.

⁶⁵ See generally the 1998 Rome Statute of the International Criminal Court. Source: <<http://www.un.org/icc/part1.htm>>. Date accessed: January 18, 2004.

⁶⁶ *Lysistrata*, lines 43-5, 142.

⁶⁷ *Lysistrata*, lines 46-7 and 149-54, 142 and 146.

⁶⁸ Clair Apodaca, “Measuring Women’s Economic and Social Rights Achievement”, 20 Human Rights Quarterly 139 (1998).

⁶⁹ Hilary Charlesworth, “Feminist Methods in International Law”, 93 A.J.I.L. 379 (1999), 388.

children are valued less, fed less, and educated less or not at all. Many are married off when they are too young, physically and emotionally, to be wives and mothers, and they have more children and poorer health as a result. During conflict, the situation in which women find themselves deteriorates still further. The traditional duties of women and girls in the family – for example, fetching water and collecting firewood⁷⁰ – put them in increased danger during times of conflict as they must venture beyond the boundaries of their communities, often alone.⁷¹ Changes in the nature of conflict mean that women and girls are frequently at risk even in their own communities, which are not safe from attack by marauding and opportunistic militias. Aid packages are often distributed to (male) heads of households.⁷² This causes problems for, among others, widows who may be forced to join a son or son-in-law's family where they are often considered a burden. Alternatively, women are excluded from many aid programs “because they are not considered workers, or because they are regarded as less productive than men”.⁷³ If aid is provided to women, it is often to marginalize them “foreign aid may be available to women only in their guise as mothers although at least since 1967 it has been recognized that women are responsible for as much as 80 per cent of food production in developing countries as well as most ‘domestic’ work”.⁷⁴

Women continue to feel the effects of war long after the terms of ceasefire agreements have been drawn up and international settlements reached. Even after the conclusion of hostilities, the worsening of women's economic and social rights can be aggravated by sanctions, which affect women particularly harshly.⁷⁵ Apart from coping with their own trauma, women are left with the responsibility of raising and educating children, earning a living and caring for the wounded and maimed returning from war. In the aftermath of conflict, often over 50 percent of households are headed by women⁷⁶ – reality *Lysistrata* is acutely aware of when she reflects on the many widows that war leaves behind.⁷⁷ According to a population survey published by the Vietnamese government statistical office, the Vietnam War left the country short of young men. Of Vietnamese aged between 35 and 44, there are twice as many women as men. In addition, most of the widows aged 50 or over lost their husbands some 20-30 years ago. The proportion of widows in Vietnam is “exceptionally high” – five times greater than widowers.⁷⁸ The impact of this imbalance is likely to be greatest where women are generally not seen as heads of households, where they do not tend

⁷⁰ Awa Adjibade, “Communication and Nonformal Education — Role and Needs of the African Woman and Young Girl: Personal Views”. Source:

<<http://www.idrc.ca/books/focus/802/adjibade.html>>. Date accessed: February 5, 2004.

⁷¹ Hilary Charlesworth, “Feminist Methods in International Law”, 93 A.J.I.L. 379 (1999), 385.

⁷² Hilary Charlesworth, “Feminist Methods in International Law”, 93 A.J.I.L. 379 (1999), 385.

⁷³ Hilary Charlesworth, “The Public/Private Distinction and the Right to Development in International Law”, 12 Aust. Y. B. Intl. Law 190 (1992), 200-1.

⁷⁴ Hilary Charlesworth, “The Public/Private Distinction and the Right to Development in International Law”, 12 Aust. Y. B. Intl. Law 190 (1992), 201.

⁷⁵ Anne Orford, “The Politics of Collective Security”, 17 Mich. J. Int'l L. 373 (1996), 379-82; Nadje Al Ali, “The Impact of Economic Sanctions on Women in Iraq” – source:

<<http://www.actogether.org/impactonwomen.html>>. Date accessed: February 5, 2004.

⁷⁶ “Women, Peace and Security: A Policy Audit”, International Rescue Alert, June 2001, 12.

⁷⁷ *Lysistrata*, lines 593-94.

⁷⁸ “The Lonely Hearts of Vietnam”, March 13, 1997, *The Economist*.

to form part of the workforce and where wage disparities between men and women are high.⁷⁹

HIV/AIDS is often another consequence of conflict through which women must try to live. Women and girls comprise 58 percent of those living with HIV/AIDS in sub-Saharan Africa.⁸⁰ This percentage masks the fact that on account of disparities in nutrition and health care between women and men, it is likely that significantly more women than men are infected with HIV/AIDS. Sub-Saharan Africa is one of the regions worst affected by conflict in the world and HIV/AIDS is transmitted through the systematic sexual violence against women that occurs in wartime. The spread of the disease is quickened by the disruption of the family unit and of the wider community in conflict situations because it leads to the breakdown of social norms, including those relating to sex. The quality of life of those living with the disease is worsened by the collapse of health services, which often occurs in states with unstable governance structures, or by the diversion of funds from healthcare to defense budgets, the result of increased militarization, which frequently happens in times of war.

Thus far I have examined the gender-specific impact of war on women. When war was seen as “good” on account of the opportunities it provided, these opportunities were the province of men. War was good because it enabled men to demonstrate skills that were not necessary in peacetime and to reap rewards unavailable except in conflict. But women did not fight, they did not compete for the prizes of politics, and whereas the worst that could happen to a man in war was a glorious death, for a woman it could mean decades of misery as a bereaved wife or mother, or even the prospect of not having the chance to become a wife and mother in a society in which the unmarried woman had no role and no place.⁸¹ While war might have brought advantages for men, for women it was never good. Palestine provides a contemporary example of this tension. Cynthia Enloe describes how while “militarization is providing Palestinian men with new opportunities to prove their manhood”, Palestinian women are bearing the brunt of the *Intifadah*.⁸² In spite of this, war has now generally come to be characterized as bad, bringing with it more catastrophic harms than those suffered in peacetime. Today, war is bad for everyone, but as I have attempted to show, women still suffer gender-specific harms which go largely unrecognized. In so demonstrating, I have assumed that there is a meaningful distinction between war and peace for those living through conflict. Women’s experience of peacetime, however, undermines this assumption. For women, the distinction between war and peace is often unstable and the difference illusory.

There is often little reduction in the violence perpetrated against women after the formal resolution of violent conflict. Ostensible times of peace may be “full of

⁷⁹ It should be noted, however, that widows can make for powerful lobby groups as in the case of the wives of the fire fighters killed in the rescue operation in New York following the terrorist attacks of September 11, 2001.

⁸⁰ Human Rights Watch Report, *Policy Paralysis: A Call for Action on HIV/AIDS-Related Human Rights Abuses Against Women and Girls in Africa*, December 2003.

⁸¹ Aristophanes, *Lysistrata and Other Plays* (Penguin Classics, 2002, translated by Alan H. Sommerstein), Preface to *Lysistrata*, 135.

⁸² Cynthia Enloe, *Bananas, Beaches and Bases, Making Feminist Sense of International Politics* (1989), 58 in Christine Chinkin, “A Gendered Perspective to the International Law of Force”, 12 *Aust. Y. B. Intl. Law* 279 (1992), 286.

conflict for women and produce serious human rights violations”.⁸³ This violence against women in peacetime is often a result of their aggressors’ experiences of war. Yet these crimes, where they are dealt with, are not considered crimes of war. There is evidence from places such as Kosovo and East Timor that domestic violence increases in the aftermath of conflict, although little has been done to prevent such attacks or punish perpetrators.⁸⁴ A striking parallel can be seen in the murders of four women in six weeks during June and July 2002 at the hands of their military husbands stationed at Fort Bragg, three of whom had recently returned from combat duties in Afghanistan.⁸⁵ Domestic violence against women continues to be a persistent problem in the United States where 95 percent of the victims of domestic violence are women,⁸⁶ and on average four women are killed each day by their male partners.⁸⁷ Studies show that the US military exhibits domestic violence rates that are 3.5 times higher than in the civilian population.⁸⁸ These statistics bear out Anne Orford’s observation that “The increasing militarization of US culture [...] is a matter of particular concern for women due to the gender-differentiated effects of war and militarism”.⁸⁹

Women’s experience of violence and sexual abuse at the hands of UN peacekeepers in Mozambique, Cambodia and Bosnia is well documented and highlights another example of “the unreality of the conflict/peace dichotomy: in this context the ‘peacekeepers’ are the source of conflict and violence”.⁹⁰ Sexual exploitation and trafficking of women and girls by the aid workers and peacekeepers responsible for their welfare takes place even in refugee camps, which are meant to be safe havens from conflict and violence. The extent of the problem has been recognized by the UN Secretary-General, who has advocated a “zero-tolerance” policy in cases of sexual exploitation.⁹¹ Anne Orford suggests that “It may be that rape and sexual abuse of women are seen as a ‘private issue,’ even though the decision to send peacekeepers to particular countries is a public issue”.⁹² Her observation builds on the criticism made by Hilary Charlesworth, Christine Chinkin and Shelley Wright of the characterization of violence against women as a private, domestic issue, and thus outside the province of international law.⁹³ This leads me to a consideration of the public and private.

⁸³ Hilary Charlesworth, “Feminist Methods in International Law”, 93 A.J.I.L. 379 (1999), 389.

⁸⁴ “Women, Peace and Security: A Policy Audit”, International Rescue Alert, June 2001, 28.

⁸⁵ Barbara Starr, “Fort Bragg killings raise alarm about stress”, July 27, 2002, CNN Washington Bureau. Source: <<http://www.cnn.com/2002/US/07/26/army.wives/>>. Date accessed: February 17, 2004.

⁸⁶ H. Douglas, *Assessing Violent Couples, Families in Society*, 1991. Source <<http://www.asafeforceforhelp.org/victimstatistics.html>>. Date accessed: March 7, 2004.

⁸⁷ Women’s Action Coalition, *WAC Stats: The Facts About Women* (The New Press, 1993), 1-64, referred to in Jennifer Cotter, “War and Domestic Violence”. Source: <<http://www.geocities.com/redtheory/redcritique/SeptOct02/waranddomesticviolence.htm>>. Date accessed: March 7, 2004.

⁸⁸ Jennifer Cotter, “War and Domestic Violence”. Source: <<http://www.geocities.com/redtheory/redcritique/SeptOct02/waranddomesticviolence.htm>>. Date accessed: March 7, 2004.

⁸⁹ Anne Orford, “The Politics of Collective Security”, 17 Mich. J. Int’l L. 373 (1996), 383.

⁹⁰ Hilary Charlesworth, “Feminist Methods in International Law”, 93 A.J.I.L. 379 (1999), 389-90.

⁹¹ Report of the United Nations Secretary-General on the Activities of the Office of Internal Oversight Services, 2002.

⁹² Anne Orford, “The Politics of Collective Security”, 17 Mich. J. Int’l L. 373 (1996), 384.

⁹³ Hilary Charlesworth, Christine Chinkin and Shelley Wright, “Feminist Approaches to International Law”, 85 A.J.I.L. 613 (1991), 627-9.

Public and Private

Aristophanes distinguishes between the city-state, the public sphere which men inhabit, and the home, the private sphere that is women's realm. Any theory of the public presupposes some distinction between the private and the public and there are many public/private distinctions in international law.⁹⁴ This paper is concerned with the gender implications of public and private, with the ways in which the encoding of public and private in international law impacts on women in conflict and in post-conflict societies.

In the tradition of Western political thought, the manner in which the distinction between the public and the private spheres has been drawn has served to confine women, and typically feminine spheres of activity like housework, reproduction, nurturance, and care of the young, the sick, and the elderly, to the "private" domain, and to keep them off the public agenda in the liberal state. Along with the relegation of feminine activities to the "shadowy interior of the household", they have been treated, until recently, as "natural" and "immutable" aspects of human relations.⁹⁵ As such, they have remained inaccessible to discursive analysis.

International law finds its roots in this Western, liberal tradition.⁹⁶ It is unsurprising then that much of international law, when it considered the autonomous individual, implicitly defined it from a male standpoint. The perspective of the female self was very rarely considered. The use of the masculine pronoun in the framing of laws was evidence of this tendency.⁹⁷ This practice at the international level built upon the gendered language of national legal systems, for example, the "reasonable man" test for negligence in Anglo-American law. It was only in 1989 that the international community began to use gender-neutral language in international human rights instruments.⁹⁸ Terms such as "rights of man" and "mankind", meant to apply to humanity as a whole, have been interpreted to confer rights on men and refuse them to women. Even gender-neutral language in international law translates into gender bias in practice. "Human rights", supposedly neutral and equally applicable to both women and men, in practice often amount to men's rights only.⁹⁹ In Africa, for

⁹⁴ Hilary Charlesworth, "Feminist Methods in International Law", 93 A.J.I.L. 379 (1999), 382.

⁹⁵ Seyla Benhabib, "Models of Public Space: Hannah Arendt, the Liberal Tradition and Jürgen Habermas", in Joan B. Landes, *Feminism, the Public and the Private* (Oxford University Press, 1998), 85-6.

⁹⁶ See e.g. Peter Malanczuk, *Akehurst's Modern Introduction to International Law*, Seventh Revised Edition (Routledge, 1997), 9: "The prevailing view in the study of international law is that it emerged in Europe after the Peace of Westphalia (1648), which ended the Thirty Years War." Even prior to the Thirty Years War during the Middle Ages in Western Europe international law existed, although the modern state did not.

⁹⁷ See e.g. the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. It is worth noting that gendered language is not confined to the English language. See e.g. Elizabeth Torpey, "'Allez les Francophones!' or, The Campaign to End Sexism in Human Rights Language among French Speaking Countries", 78 U. Det. Mercy L. Rev. 171 (2001).

⁹⁸ In the Convention on the Rights of the Child.

⁹⁹ Ladan Askari, "Girl's Rights Under International Law: An Argument for Establishing Gender Equality as a Jus Cogens", 8 S. Cal. Rev. L. & Women's Studies 3, 13; Leslie Kurshan, "Rethinking Property Rights as Human Rights: Acquiring Equal Property Rights for Women Using International Human Rights Treaties", 8 Am. U. J. Gender Soc. Pol'y & L. 353, 359-61.

example, despite formal legal commitment to property rights for women and men, “women’s rights to own, inherit, manage and dispose of property are under constant attack from customs, laws and individuals, including government officials, who believe that women cannot be trusted with or do not deserve to own or control property”.¹⁰⁰

Challenging both the apparent and the hidden systemic distinctions of contemporary discourse in international law, to the extent that they privatize certain issues, is central to feminist jurisprudence. In *Lysistrata*, the public/private distinction gives effect to the separate spheres of city-state and household. This separation is at the heart of radical feminism, which seeks to redefine the private as political, i.e. public, and the home and intimate relationships as the sites where power is played out. Catherine MacKinnon forcefully states the radical feminist position that “It would seem that something is not considered political if it is done to women by men, especially if it is considered to be sex”.¹⁰¹ Early in the action *Lysistrata* notes that not one of the women has a husband at home, yet even well into the play the magistrate cannot understand how the women have come to take an interest in political matters of war and peace.¹⁰² For the women in the play, as for radical feminists, the dividing line between hearth and home and affairs of state is arbitrary: the two spheres cannot help but impact on each other. In executing their plan for peace, the women of *Lysistrata* show that what goes on at home can also have a profound effect on politics. The artificiality of the distinction between the private and the public spheres, and of the separation of women and men into them respectively, is portrayed from the play’s outset.

My reading of *Lysistrata* sees the entire play as being constructed on a fault line between public and private. The women leave their homes and, by ending the war, are successful in the public sphere, albeit through an essentially “private” plan to refuse their men sex. When the older women take control of the public treasury by seizing the Acropolis, *Lysistrata* justifies women’s ability to direct state funds on the ground that they have traditionally run the household. Her response to the magistrate, “We’ve always been in charge of all your housekeeping finances”,¹⁰³ foreshadows arguments advanced by the Suffragettes in the late nineteenth and early twentieth centuries to advocate the movement of women into the public and political spheres.¹⁰⁴ The women’s chorus is forced to engage in vigorous debate regarding women’s right to participate in the political life of the state.¹⁰⁵ Today, women’s right to participate equally with men in public and civil life is enshrined in various international legal instruments.¹⁰⁶ Articles 3, 7 and 8 of the Convention on the Elimination of Discrimination against Women (“CEDAW”), for example, prohibit discrimination

¹⁰⁰ Human Rights Watch Report, *Policy Paralysis: A Call for Action on HIV/AIDS-Related Human Rights Abuses Against Women and Girls in Africa*, December 2003.

¹⁰¹ Catharine A. MacKinnon, “On Torture: A Feminist Perspective on Human Rights”, in Kathleen E. Mahoney and Paul J. Mahoney (eds), *Human Rights in the Twenty-First Century: A Global Challenge* (Nijhoff, 1993), 26.

¹⁰² *Lysistrata*, lines 99-101, 145 and line 503, 160.

¹⁰³ *Lysistrata*, line 495, 160.

¹⁰⁴ Marina Angel, “A Classical Greek Influences an American Feminist: Susan Glaspell’s Debt to Aristophanes”, 52 *Syracuse L. Rev.* 81 (2002), 97.

¹⁰⁵ *Lysistrata*, lines 626-656.

¹⁰⁶ The International Covenant on Civil and Political Rights, the Convention on the Political Rights of Women, and Convention on the Elimination of Discrimination against Women.

against women in political and public life and in particular, calls on states to ensure for women, on equal terms with men, the right to vote, to stand for election for all public bodies, to participate in the formulation of government policy, to hold public office at all levels of government, including international levels, and to participate in non-governmental organizations and civil associations.

Unfortunately, the reality is somewhat different. Some states have refused to ratify CEDAW, thus escaping the duty to implement its provisions.¹⁰⁷ Others have systematically entered reservations to CEDAW to exclude or modify the legal effect of certain provisions of the convention in their application to those states, thus avoiding obligations that run counter to domestic laws.¹⁰⁸ States have failed to ratify CEDAW's Optional Protocol, thus indicating their unwillingness to recognize and protect the rights of individual women.¹⁰⁹ Even the very fact of having a separate "women's treaty" can be criticized for reinforcing the division between the "mainstream body of human rights which houses male concerns, and a peripheral, or 'special' or 'limited' body of rights by-product which pertains to females".¹¹⁰ In a de-masculinized, de-gendered international system, a separate women's treaty would not be necessary as mainstream human rights would include women.

While at the local level women's grassroots organizations are active during and after conflict, they are often marginalized during formal peace negotiations. Women assume the vital role of ensuring family livelihood in the midst of chaos and destruction and are particularly active in peace movements at the local level. The role of women in informal peace processes can be extraordinary. In cross-clan fighting in Somalia, for example, women could travel from their clan of marriage to their clan of origin in relative safety, enabling them to act as informal envoys, mediators and negotiators between the warring factions. However, in "public" dialogue their contribution was discounted as "interesting, but peripheral to the actual forging of political peace agreements among faction leaders".¹¹¹

¹⁰⁷ As of 26 March 2004, 177 countries – over ninety percent of the members of the United Nations – are party to the Convention and an additional one, the United States, has signed the treaty but not ratified it, thus binding itself to do nothing in contravention of CEDAW's terms. "States Parties", United Nations Division for the Advancement of Women. Source:

<<http://www.un.org/womenwatch/daw/cedaw/states.htm>>. Date accessed: January 15, 2004.

¹⁰⁸ CEDAW is "inundated" by reservations based on religion and customary law, which are "particularly difficult to challenge because they gain validity from Divine sanction and tradition": Ladan Askari, "Girl's Rights Under International Law: An Argument for Establishing Gender Equality as a Jus Cogens", 8 S. Cal. Rev. L. & Women's Studies 3, 32.

¹⁰⁹ As of February 3, 2004, 75 states have signed CEDAW's Optional Protocol and 60 states have ratified it. "Signatures to and Ratifications of the Optional Protocol", United Nations Division for the Advancement of Women. Source: <<http://www.un.org/womenwatch/daw/cedaw/sigop.htm>>. Date accessed: January 15, 2004.

¹¹⁰ Ladan Askari, "Girl's Rights Under International Law: An Argument for Establishing Gender Equality as a Jus Cogens", 8 S. Cal. Rev. L. & Women's Studies 3, 12.

¹¹¹ John Paul Lederach, "New Modes of International Conflict Resolution: Building Mediative Capacity in Deep-Rooted Conflict", 26 Fletcher F. World Aff. 91 (2002), 95; Ahmed Yusuf Farah, "Roots of Reconciliation: Local Level Peace Processes in Somaliland", paper presented at the All-Africa Conference on African Principles of Conflict Resolution and Reconciliation, Addis Ababa, Ethiopia, 8-12 November 1999 (edited version), 3. Source: <www.alliancesforafrica.org/Bulletin4PCIA/YusufFarahSomaliland.doc>. Date accessed: February 2, 2004.

In spite of this lack of recognition, women's role in political processes to resolve conflict is increasing internationally, mainly due to the demands of a vibrant women's peace movement that spans Asia, Europe, Africa and the Americas. From grassroots activism to international networks and campaigns, women's organizations have brought a new energy and focus to peace building, and to the women's movement. Despite the obstacles and difficulties they face, many have impacted local and national peace processes in positive ways.¹¹² In Guatemala, women expanded the peace agenda bringing issues of social justice, land reform, and equal rights to the heart of discussions.¹¹³ In Liberia, after fourteen failed peace agreements, the Liberian Women's Initiative succeeded in mobilizing national support and campaigning successfully for disarmament before elections.¹¹⁴ In Northern Ireland and South Africa, women's coalitions have infused the values of inclusiveness and political participation in the political dialogue.¹¹⁵ In Burundi, a coalition of Hutu and Tutsi women struggled to secure their place at the peace table, in spite of deep opposition from existing political factions.¹¹⁶ In Cyprus, the Middle East, the Balkans, and South East Asia, women's networks bridge the conflict divides in their struggle for peace, despite threats, abuse and ridicule from traditional political structures.¹¹⁷

There is a growing recognition that, due to their different role in society to men, women develop and bring skills to peace negotiation that would otherwise be absent. One, as has been seen in relation to Northern Ireland and South Africa, is the value of inclusiveness. This is certainly reflected in *Lysistrata*, where the women advocate community interests. The most sustained campaign for them comes from Lysistrata in the extended wool-making metaphor.¹¹⁸ Unlike the men, who seek personal glory and financial reward, the women think from the perspective of the common good. Women are able to comb the dirt out of the yarn, to bring everyone together in a single basket of common weal and welfare, including citizens, resident aliens and foreign allies; the women are keen to promote the inclusion of all marginalized groups in Athens when peace is achieved. The importance of community is also reflected in the cooperation of the women of all the warring Greek states to achieve peace; the young effect the sex strike while the old seize the Acropolis. The plan's inclusiveness across nationality and age is notable.

As in the case of the magistrate in the play, women often receive a hostile reception from men – at least initially – to their involvement in the public sphere. When the Northern Ireland Women's Coalition won seats in the election and gained access to the Forum, an arena where political parties expressed their views, they encountered unbridled sexism. Sanam Naraghi Anderlini writes that “Men labeled them the ‘ladies coalition’ and addressed them with a mixture of ridicule and hostility”.¹¹⁹ She quotes Representative Monica McWilliam who said that “Whinging, whining, silly, feckless

¹¹² “Women, Peace and Security: A Policy Audit”, International Rescue Alert, June 2001, 13.

¹¹³ “Women, Peace and Security: A Policy Audit”, International Rescue Alert, June 2001, 13

¹¹⁴ “Women, Peace and Security: A Policy Audit”, International Rescue Alert, June 2001, 13

¹¹⁵ “Women, Peace and Security: A Policy Audit”, International Rescue Alert, June 2001, 13

¹¹⁶ “Women, Peace and Security: A Policy Audit”, International Rescue Alert, June 2001, 13

¹¹⁷ “Women, Peace and Security: A Policy Audit”, International Rescue Alert, June 2001, 13

¹¹⁸ *Lysistrata*, lines 568-70 and 574-86, 163-4.

¹¹⁹ Sanam Naraghi Anderlini, *Women at the Peace Table: Making a Difference* (UNIFEM, 2000), quoted in Agnès Callamard, *Investigating Women's Rights Violations in Armed Conflicts* (Amnesty International Publications, 2001), 202.

women” were just some of the insults thrown at her and her colleagues in the Forum. “Calls of ‘sit down you silly woman,’ and being told that it was the duty of a good loyal Ulster woman to ‘stand by her man’ did not make for a good working environment”.¹²⁰

Conflict and war create conditions in which the role and position of women in society are transformed. In some situations, this can be for the better. During conflict, women are often forced to step out of socially ascribed roles to respond to crisis situations. The fluctuation of gender roles can facilitate women’s entry into previously male-dominated sectors. This contributes to the breakdown of gender stereotypes that impede female advancement in economic, political and social spheres. Furthermore, the demographic changes and weakening of traditional social structures in the aftermath of war may permit governments to spearhead reforms to better women’s position. During World War II, some women remained at home as housewives and mothers and performed vital volunteer services but many entered, reentered or remained in the civilian labor force, often working in the defense industry, shipbuilding, aircraft production and other traditionally male jobs. In the UK, the mass wartime movement of women into the public sphere led to the creation of the National Health Service. In Rwanda, women have been successfully integrated in reconstruction and governance following the genocide in 1994 and the country now has the highest percentage of women in parliament of any country in the world.¹²¹ Rwanda’s transitional government established structures for female inclusion and implemented progressive gender policies that could serve as an example to other post-conflict societies. One of the dilemmas in post-conflict and transitional societies, however, is that the collective voice and strength discovered by women through this process in times of conflict and war can sometimes be undermined during conflict resolution and peace-building. “Restoring normalcy” in some situations can mean a return to patriarchal norms and control of women’s rights and freedoms. The “patriarchs” may win out in such a scenario and promote the return of women to their homes, families and domestic roles.¹²² For example, women who had worked for the resistance movement in East Timor have been expected by their husbands and community to return to the private sphere of home and family¹²³ – as in *Lysistrata*.

In the fantasy world of the play,¹²⁴ the women’s goal is not to take over power from the men permanently. They want only to end the war and establish peace as a necessary condition to reintegrating their families and households. Having achieved this, they return home and slip back into their traditional roles as wives and mothers. Aristophanes seems to see the war and its disastrous impact on the community as a

¹²⁰ Sanam Naraghi Anderlini, *Women at the Peace Table: Making a Difference* (UNIFEM, 2000), quoted in Agnès Callamard, *Investigating Women’s Rights Violations in Armed Conflicts* (Amnesty International Publications, 2001), 202.

¹²¹ Women in National Parliaments, World Classification, Inter-Parliamentary Union. Source <<http://www.ipu.org/wmn-e/classif.htm>>. Date accessed: February 18, 2004.

¹²² Sunila Abeysekera, “A Women’s Human Rights Perspective on War and Conflict”. Source: <<http://www.whrnet.org/docs/perspective-abeysekera-0302.html>>. Date accessed: January 27, 2004.

¹²³ Hilary Charlesworth and Mary Wood, “‘Mainstreaming Gender’ in International Peace and Security: The Case of East Timor”, 26 *Yale J. Int’l L.* 313 (2001), 315.

¹²⁴ Fantasy is traditional element of Attic Comedy. The Athenian audience would have viewed the transfer of political power in Athens from men to women as an amusing impossibility. However, it is worth noting that fifth- and fourth-century Athenians themselves thought that comedy could exert an influence on public opinion and even sometimes on public policy. *Lysistrata*, Introduction, xviii-xxii.

result of the separation between the private and the public spheres. The public sphere has become autonomous and fosters policies that are detrimental to the private sphere. Thus, it is possible to perceive in the play a strong reaction to the traditional Greek democratic ideology that insists on the primacy of the citizens' political over their social identity, placing the community ahead of their families and friends in their love and allegiance. The play offers an alternative solution through which the citizens' social and political identities are reconnected and their commitment to the community does not displace their care for their families. The health of the community rests on the health of the home – even if this requires the city-state to reduce its emphasis on the ideal of martial glory and imperial greatness.

This idea is reflected in the concept of “human”, as opposed to “state”, security. The human dimension, which women bring to discussions of security, focuses on issues crucial to people's daily lives – food, health, housing, education and employment. These issues have traditionally been relegated to the private sphere and conceptions of state security, such as military and political security, which have been the focus of male-dominated national governments and international bodies like the Security Council, preferred.¹²⁵ This has resulted in the discounting of issues which are often of greatest concern to women, the disregard of women's experiences and the marginalization of their rights. This situation has been perpetuated by the focus on civil and political rights in international law at the expense of economic and social rights. As in *Lysistrata*, where Aristophanes calls for the reintegration of home and community, of private and public, what is needed in international law is the reintegration of civil and political and economic and social rights. The proclamation made over a decade ago at the 1993 World Conference on Human Rights in Vienna that all human rights are “universal, indivisible and interdependent and interrelated” needs to be made a reality. However, at present the rhetoric of human rights is used to avoid making a commitment to solving problems involving economic and social rights and redressing their – and women's – subordinate status. The US, for example, refuses to recognize economic and social rights as rights in spite of signing the International Covenant on Economic, Social and Cultural Rights in 1977, the same year as it signed the International Covenant on Civil and Political Rights. The US ratified the latter (with significant reservations) in 1992 but has shown no likelihood of ratifying the former, despite being an insistent voice in denouncing states for choosing one class of rights (civil and political) over another (economic and social).¹²⁶

The securing of refugee status further highlights the discriminatory effect of the public/private distinction on women. The political activities that women are involved in are, in many instances, not as “public” as making speeches, attending demonstrations and writing publications. Women may provide food, clothing and medical care, hide people, pass messages from one political activist to another and so on.¹²⁷ These activities put women in danger and at risk but they are not seen as

¹²⁵ It should be noted, however, that the Security Council has examined the possible impact of famine and food shortages on international peace and security. Report of the Secretary-General on the situation in Afghanistan and its implications for international peace and security, April 2001. Source: <<http://www.hri.ca/fortherecord2001/documentation/genassembly/a-55-907-s-2001-384.htm>>. Date accessed: March 23, 2004.

¹²⁶ Linda M. Keller, “The Indivisibility of Economic and Political Rights”, 1 Human Rights and Human Welfare 9 (2001), 11.

¹²⁷ Heaven Crawley, *Refugees and Gender: Law and Process* (Jordans, 2001), 82-3.

sufficiently public to attract the label of “political” for refugee status. The role Latin American women played in opposing military regimes is indicative. For example, soup kitchens became a visible political protest because their existence demonstrated the existence of hunger and unemployment. Much publicized was the struggle of the Mothers of the Disappeared in Chile and Argentina during the 1970s and 1980s under the regimes of Pinochet in Chile and Massera, Agosti, and Videla in Argentina. During General Pinochet’s military coup in 1973 and his subsequent reign of terror, mothers of the many who disappeared protested by dancing the national dance, the cueca, in the streets. A man and woman traditionally danced the cueca together, but the mothers danced it alone. The Madres de Plaza De Mayo¹²⁸ of Argentina marched around the Plaza in Buenos Aires every Thursday wearing photographs of their children and other relatives who had disappeared following the seizure of power by the military in 1976 to demand their return.¹²⁹ Equally in *Lysistrata*, women’s protests against the war involve the “banging of drums and shouting” according to the magistrate.¹³⁰ Their methods are very different to those of the men, who debate their concerns in the rarified atmosphere of the Assembly. The magistrate encapsulates the difference between what he considers the proper, rational and public way in which the men raise their concerns and the improper, emotional and private way in which the women raise theirs when he dismisses the women as having “had a bit to drink”.¹³¹

Men and Women/Masculine and Feminine

Aristophanes seems to veer between biological determinism – “It’s against nature”¹³² – and social construction – “we positively teach them to be wicked”¹³³ – as the basis for gender roles in the play. Nevertheless, he uses gender role reversal very effectively. *Lysistrata* is given character traits that mark her as the quintessentially good citizen.¹³⁴ That Athenian citizens were necessarily male means that Aristophanes equates *Lysistrata* with a man: she is as good as the best man could be. The men, in contrast, are characterized as bad for not caring about the common good, which has been the women’s focus throughout the play. The women reject their traditional role of being silent and subservient because they too make a major contribution to the war effort, the men have mismanaged affairs, and women also have the qualities needed to be good citizens. *Lysistrata* thus inverts official values and political ideologies in several important respects. Aristophanes alerts his audience to the impact of war on all members of the community, not just those involved in the fighting, he begins to elide the public and private by focusing on their interrelatedness, and he advances the idea – an impossibility at the time – that women can, if temporarily, be the equals of men. Thus, Aristophanes himself goes some way to breaking down the binary oppositions he adopts to structure the play.

Women in *Lysistrata* seek to end war by influencing men, by working with and within patriarchy. For the duration of the action, women abandon their traditional, gendered

¹²⁸ Mothers of the Plaza de Mayo.

¹²⁹ Heaven Crawley, *Refugees and Gender: Law and Process* (Jordans, 2001), 83.

¹³⁰ *Lysistrata*, line 389, 156.

¹³¹ *Lysistrata*, line 395, 156.

¹³² *Lysistrata*, line 501, 160.

¹³³ *Lysistrata*, lines 405-6, 156.

¹³⁴ *Lysistrata*, lines 1107-8, 185.

role but only insofar as becoming involved in affairs of state, in the public sphere. In putting into effect their boycott on sex, the younger women implement a very gendered plan in which they police the boundaries of male desire and keep male sexuality in check. The older women go further than this by taking over the traditionally male-run treasury. However, even if one takes into account the gendered nature of the sex strike and sees the younger women's abandonment of gendered stereotypes in the more limited sense I have outlined, there is still no restructuring of society to take account of their success in the public domain nor is any considered necessary by the men, although they are made to see the need for improved communication, a quality the women exhibit throughout the play: "we're always looking for ways to make things more complicated. Result is, we don't hear what they do say, and we hunt for implications in what they don't say – and we bring back quite incompatible reports of what went on".¹³⁵ The women themselves do not seek societal change to account for their success in the public sphere; they appear to strive for neither equality nor full political participation in spite of advocating these as their right.¹³⁶ In Athens the *demos* – the electorate who choose and elect senators, and are therefore the rulers of the nation – is male and that, it seems, is that.

The situation has largely been the same in international law as Hilary Charlesworth and Christine Chinkin have observed.¹³⁷ In all areas of international law, women are grossly underrepresented. Where they are represented, they, like the young women in the play, are often confined to gendered posts. For example, in the interim administration in Afghanistan, two women were given positions out of the thirty available. They were made minister for women's affairs and minister for health. Of the members of the current UK government there are five women in the twenty-one member cabinet and twenty-two women junior ministers, about a third of the total number.¹³⁸ Women cabinet ministers hold positions as Secretary of State for the Environment, Food and Rural Affairs, Secretary of State for International Development, Secretary of State for Trade and Industry and Minister for Women, Secretary of State for Culture, Media and Sport, and Parliamentary Secretary to HM Treasury (Chief Whip). While less obviously gendered than the positions held by women in Afghanistan's interim government, the environment, food, development, culture and – most obviously – women are all feminized spheres. It is notable that in any decision to go to war or to deploy troops, no woman would be involved. This situation is replicated in most of the world's governments and makes it less unexpected, perhaps, that any appeal to the legitimacy of using military force by governments under international law is made without reference to the implications for women of either side.¹³⁹

Dominated by men, it is not surprising that international institutions – and those which act internationally, such as state governments – make for a gendered system. In international law, concepts of sovereignty, political identity and security can be

¹³⁵ *Lysistrata*, lines 1233-6, 190.

¹³⁶ "I'm a full member of your civic club", *Lysistrata*, line 651, 167.

¹³⁷ Hilary Charlesworth and Christine Chinkin, "Sex, Gender and September 11", 96 A.J.I.L. 600 (2002), 601.

¹³⁸ Centre for the Advancement of Women in Politics. Source: <<http://www.qub.ac.uk/cawp/UKpercent20htmls/UKministers.htm>>. Date accessed: March 19, 2004.

¹³⁹ Christine Chinkin, "A Gendered Perspective to the International Law of Force", 12 Aust. Y. B. Intl. Law 279 (1992), 287.

identified as masculine. The male-dominated Security Council was established to deal with military and political – i.e. masculine – threats to the peace, breaches of the peace and acts of aggression under its mandate in Article 39 of the UN Charter. Recently, however, it has tried to extend its reach to encompass threats to human security, such as HIV/AIDS, which has been recognized as capable of posing a risk to international security and thus potentially coming within the Council’s sphere of competence under Article 39.¹⁴⁰ Traditionally private concerns, such as those relating to health and food security,¹⁴¹ are beginning to be recast as public issues. In Resolution 1325, the Security Council furthered this nascent process by calling on all actors involved in negotiating and implementing peace agreements to adopt a gender perspective that included the special needs of women and girls during repatriation and resettlement, rehabilitation, reintegration and post-conflict reconstruction. According to the Security Council, such a perspective must include measures to ensure the human rights of women and girls. However, the particular human rights the Security Council has in mind are those that relate to the constitution, the electoral system, the police and the judiciary. The Security Council thus prioritizes civil and political rights when, as I have discussed previously, it is often protection of their economic and social rights that would most improve the lives of women and girls. Thus, even in its most far-reaching attempt to include women in and to recognize and protect their needs through international law, the Security Council uses male experience as a yardstick.

Judith Gardam has commented that the “reproductive system of international law seems to involve men alone and is designed to produce male offspring”.¹⁴² She even sees the basic unit of classical international law, the state, as a masculine construct and, for Gardam, the assumptions of Western masculinity and femininity permeate the law of armed conflict, as they do law in general.¹⁴³ The historical engendering of the state as masculine and the reinforcing of traditional social constructions of gender further institutionalize male authority. In light of this, it is no surprise that in spite of the fact that in several states, including the United Kingdom and the United States, women occupy high-level decision-making posts, including as secretary of state and departmental heads, posts which have important implications for conflict prevention and peace processes, there are very few female heads of state and women are rarely involved in the decision to go to war.¹⁴⁴ But what if women were involved in the decision to go to war? Would there be less conflict? The answer is perhaps not, but societal gender roles and the different experiences that women and men have as a result can contribute to women’s reluctance to go to war and their effectiveness at the negotiating table prior to (and in the aftermath of) conflict.¹⁴⁵ Gender stereotypes mean that men are generally accustomed to wielding authority, whereas women, of necessity, are better at compromise and consensus-building.

¹⁴⁰ UN Security Council Resolution 1308 (2000).

¹⁴¹ See *infra* note 125.

¹⁴² Hilary Charlesworth, “The Sex of the State in International Law”, in Ngaire Naffine and Rosemary J. Owens (eds), *Sexing the Subject of Law* (Sweet & Maxwell, 1997), 264.

¹⁴³ Judith Gardam, “An Alien’s Encounter with the Law of Armed Conflict”, in Ngaire Naffine and Rosemary J. Owens (eds), *Sexing the Subject of Law* (Sweet & Maxwell, 1997), 249-50.

¹⁴⁴ Hilary Charlesworth and Christine Chinkin, “Sex, Gender and September 11”, 96 A.J.I.L. 600 (2002), 600-1.

¹⁴⁵ Africa Recovery, February 2003.

As for the business of fighting itself, Joshua Goldstein argues that killing in war does not come naturally to either men or women, yet the potential for war has been universal in human societies. To help overcome soldiers' reluctance to fight, cultures develop gender roles that equate "manhood" with toughness under fire.¹⁴⁶ For this reason, Goldstein sees women's peace movements as creating a dilemma.¹⁴⁷ He argues that women peace activists can reinforce masculine war roles by feminizing peace and thus masculinizing war. Cultural feminists would argue that women, because of their greater experience with nurturing and human relations, are generally more effective at conflict resolution and group decision making and less effective than men in combat.

While it is clear that the international system remains masculinist in nature, one purpose of the foregoing analysis has been to show how, in certain areas, this reality is beginning to be destabilized. The distinction between public and private on which much of the edifice of international law has been built is starting to collapse. International law was interstate law, made by states (masculine) in the international public sphere (also masculine). Intrastate matters were relegated to the international private sphere (feminine). Wars continue to erupt but mostly they occur within rather than between states.¹⁴⁸ In efforts to resolve these conflicts, international actors have necessarily become involved in the "private" affairs of states. Similarly, human rights law has succeeded in bringing international law into the international private sphere of intrastate matters, although violations still remain within the public sphere at the national level.

Conclusion

While it is only relatively recently that scholarship has focused on the gender-specific effects of war on women, the effects themselves have existed throughout history. In this paper, I have employed Aristophanes' *Lysistrata* as a lens through which to demonstrate this point and to seek potential solutions to improve the situation of women in conflict and post-conflict situations, as well as in the international system more generally. I have attempted to show the inherent unreality of the dichotomies of war/peace, public/private and masculine/feminine. All three fail under a critical analysis which reveals them to be socially constructed by patriarchal structures to privilege men's experience over women's.

How, then, can women's situation in be improved? One way would be to eliminate the root causes of conflict, and especially of civil wars, which have been identified as poverty, low economic growth and a high dependence on natural resources, such as oil or diamonds.¹⁴⁹ It is unrealistic to hope that such a solution could be achieved in anything but the very distant future. In any case, it would do nothing to address the gendered structure of international law, which serves to undermine women's position even more dramatically in times of war than in times of peace. Rather, because the

¹⁴⁶ Joshua S. Goldstein, *War and Gender: How Gender Shapes the War System and Vice Versa* (Cambridge University Press, 2001), 9.

¹⁴⁷ Joshua S. Goldstein, *War and Gender: How Gender Shapes the War System and Vice Versa* (Cambridge University Press, 2001), 5.

¹⁴⁸ Christine Gray, *International Law and the Use of Force* (Oxford University Press, 2000), 1.

¹⁴⁹ "Coping with Conflict", *The Economist*, Special Report, January 17, 2004, 3.

“private” – i.e. the home and women – suffers disproportionately from decisions of the “public” – i.e. the state and men as in *Lysistrata*, there needs to be a reconnection of two spheres. In order to achieve this it is necessary to destroy the hierarchy between them. The immediate inclusion of women’s voices in international decision-making processes, especially those which concern armed conflict, is essential because women have a right to participate in the decision-making processes that impact their lives directly. Moreover, women’s views of security and their access to the private sphere can contribute to the implementation of security reform programs that enhance peace-building processes.

The breaking down of distinctions that discriminate against women is quickened by their increased participation in the international system. The experiences of the ICTY and ICTR suggest that the involvement of women in the international legal system will result in international law being more responsive to women. A critical mass of women in the international system will have the effect not only of placing issues of specific concern to them squarely on the international agenda but also of creating new styles of leadership, giving value to women and the “feminine”, and changing the prism of masculine and feminine through which international law and society have traditionally been regarded.