


RESEARCH ARTICLE

‘The world is not organized for Peace’: Feminist manifestos and utopias in the making of international law

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Abstract

Feminists have utilized manifestos and utopias in order to make important, often revolutionary, contributions to international law. However, these engagements have not been reflected in the substance of international law. The sources of international law – specifically customary international law – rely on a narrow understanding of historical knowledge. This article centres the 1924 manifesto and the ‘New International Order’ created by the Women’s International League for Peace and Freedom, as tools to assess the exclusion of the under-utilized history of feminist peace work from the sources of international law. This allows for a reflection on customary international law’s weaknesses and reaffirms the importance of feminist approaches to international law.

Keywords: customary international law; feminism; manifesto; New International Order; utopia; WILPF

I. Introduction

The story of finding the manifesto

I had no thought of discovering feminist texts in the archives of the International Labour Organization (ILO). I went to the ILO archives in Geneva with a colleague on a work trip without any prior experience in archival work or any idea about what I might find. I ended up coming across a file of correspondence between ILO representatives. The representative in Washington, DC was reporting back to the Geneva office about the 1924 congress of the Women’s International League for Peace and Freedom (WILPF)¹ and in this file

¹WILPF is a non-profit non-governmental organization whose work dates back to 1915. It has a global reach, with both international and national offices, and is committed to dismantling patriarchy, neoliberalism and militarism via a feminist praxis centred on peace. See <<https://www.wilpf.org>>; A fuller introduction will be detailed in section III. WILPF has crafted various manifestos, with each focusing on peace and the conditions needed in order to secure peace. These manifestos are predominantly released during its triannual international congress, and/or adopted in the form of a resolution: see <<https://www.wilpf.org/resolutions-from-wilpfs-triennial-congresses>>.

was a copy of WILPF's manifesto and a document called the 'New International Order' (NIO).²

The women of the WILPF saw in 1924 how international institutions, specifically the League of Nations, were replicating historical injustices rather than disrupting them, and they were concerned that international law was becoming further entrenched in maintaining the status quo. They drafted the manifesto and the NIO to set out an alternative vision of the international system to renew their organization's focus and to address historical wrongdoings through law. Specifically, the NIO laid out how the WILPF imagined the international system could operate, so the world might be better organized to facilitate peace.³ The manifesto reaffirmed the organization's focus on ongoing world issues, demanded change and seemed to reinforce the ideas in the NIO.

After reading these documents, which felt radical for 2019 let alone 1924, I quickly and excitedly showed the text to my colleague. We instantly began to extrapolate what the ILO representatives might have thought about WILPF's sketched-out blueprint for peace. Discovering these documents made me pause to consider how they could be used to understand international law, and to analyse how these findings might influence my feminist approach to international law.

What can a manifesto in the archive tell us?

After my initial finding I began to think about manifestos as a feminist tool. Sara Ahmed writes:

A manifesto: to make manifest. Moynan King in her discussion of Valerie Solanas's *SCUM Manifesto* addresses this sense of a manifesto as making manifest. She writes, 'As a manifesto, *SCUM*'s intention is to make manifest, to render perceptible, a new order of ideas'. To render a new order of ideas perceptible is simultaneously a disordering of ideas; manifestos often enact what they call for in surprising and shocking ways given how they expose the violence of an order. A feminist manifesto exposes the violence of a patriarchal order ...⁴

While manifestos are not traditional legal tools,⁵ they are a way of engaging with international law that is unburdened by legal constraints of form or substance.⁶

²The formal WILPF name for the NIO was 'The New International Order Report of the Cahier Commission'. This is discussed in section III.

³I will address the concept of 'peace' in section III.

⁴S Ahmed, *Living a Feminist Life* (Duke University Press, Durham NC, 2017) 251.

⁵War Manifestos Database, <<https://documents.law.yale.edu/manifestos>>.

⁶A manifesto, or even a feminist manifesto, will not necessarily be a progressive endeavour into international law. See M Koskenniemi, 'The Politics of International Law' (1990) 1(1) *European Journal of International Law* 4; M Koskenniemi, 'The Politics of International Law – 20 Years Later' (2009) 20(1) *European Journal of International Law* 7.

Feminists have utilized manifestos as an intervention into international law.⁷ As the editors of this special issue state:⁸

Women's manifestos are concomitant with both political convulsion and the enduring, mundane inequalities women face; they play a key role in feminist attempts to achieve political and legal ends ... Manifestos seek to fracture traditional understanding and practices of law ...

The demands WILPF made in 1924 are clear, they demonstrate ongoing issues of the time and they propose ways of addressing these problems. The manifesto was focused on enacting radical change in the international legal system, one that understood international law's purpose must be for the benefit of individuals. WILPF's 1924 manifesto is utilized in this article as a tool to highlight the gendered growth of international law, which has filtered out histories of feminist peace activism.

The NIO is utilized in this article as an example of feminist utopia. The NIO offers an account that underlines WILPF's disillusionment with the international legal system of the day, and at the same time imagines how things could be done differently. In this way, the women of WILPF are critiquing the law and then dreaming that law could be an answer to these problems. They do not ignore the importance of law or call for anarchy; rather, they stay within legal confines but imagine a different reality. The outcome of this reimagining can potentially spark legal reform and influence legal theory. Nicola Lacey has addressed the utopian element of feminist legal methodologies, and argues for a process of 'critique, utopia, reform'.⁹ Using utopias as a way to rethink international law sets aside the current constraints of the international legal system and imagines a different possibility. Kathryn McNeilly echoes this sentiment as she argues for a right to daydreaming within her work on utopias and international human rights law. McNeilly states that daydreaming can be 'a vehicle to help us dream individually but also collectively of a future of hope which is better than the present, and to do so in a politically engaged way'.¹⁰ I position utopia in this article as a method to critically assess the gendered development

⁷See, for example, some feminist manifestos on international law: 'A Letter on Feminist Peace', <<https://www.lse.ac.uk/women-peace-security/assets/documents/2020/Letter-on-Feminist-Peace.pdf>>; 'A Letter on Feminist Peace: Reflections on Working Methodology', <<https://www.lse.ac.uk/women-peace-security/assets/documents/2020/Method-letter-on-feminist-peace.pdf>>; 'Manifesto of the International Congress of Women', <<https://artsandculture.google.com/asset/manifesto-of-the-international-congress-of-women-women-s-international-league-for-peace-and-freedom-uk-section/CwGNq00oNktwFw?hl=en>>; 'Manifesto on Disarmament', <<https://documents.alexanderstreet.com/d/1000678562>>; 'UK Women's International League for Peace and Freedom 2017 General Election Manifesto', <<https://www.wilpf.org/uk-womens-international-league-for-peace-and-freedom-2017-general-election-manifesto>>. See also PA Weiss with M Brueske (eds), *Feminist Manifestos: A Global Documentary Reader* (NYU Press, New York, 2018).

⁸See Houghton and O'Donoghue's article for the special issue, specifically in their discussion of constituent power and the domestic examples of feminist manifestos; R Houghton and A O'Donoghue, "'Ourworld": A Feminist Approach to *Global Constitutionalism*' (2020) 9(1) *Global Constitutionalism* 38.

⁹N Lacey, *Unspeaking Subjects: Feminist Essays in Legal and Social Theory* (Hart, Oxford, 1998) 248, 236; G Heathcote, 'On Feminist Legal Methodologies: Split, Plural and Speaking Subjects' 8(2) *feminists@law* (2018) 2, 3; see also N Lacey, 'Feminist Legal Theory and the Rights of Women' in K Knop (ed), *Gender and Human Rights* (Oxford University Press, Oxford, 2004).

¹⁰K McNeilly, 'Rights for Daydreaming: International Human Rights Law Thought Otherwise' in I Venzke, and KJ Heller (eds), *Contingency in International Law: On the Possibility of Different Legal Histories* (Oxford University Press, Oxford, 2021) 267.

of international law via the NIO, a feminist work that celebrates imagination. I also use this method to determine whether engaging with the NIO delivers benefits for the future.¹¹

Thus, it is through reading the 1924 WILPF manifesto and the NIO utopian project together that I am able to reflect on the issues they raise, not just for international law but for feminist engagements in international law. The manifesto reaffirms WILPF's principles and demands, and the NIO sets out the blueprint of their 'utopian' international order. When read in conjunction, they present a very different possibility for world development, and appear to reflect present-day concerns despite being written almost 100 years ago. Ruth Houghton and Aoife O'Donoghue point to how utopianism can be seen throughout feminist manifestos,¹² but is often dismissed for being 'overly emotional'.¹³ While neither the 1924 manifesto or the NIO is emotional, they are both unapologetically honest in their demand for the overhaul of the international legal system. Both the WILPF manifesto and NIO speak to each other and express how feminist methods of engagement with the law must not enforce strict binaries, but rather allow for a fluidity of methods to be used in harmony. Their existence also acknowledges the importance of feminist methods that utilize archival work to recentre forgotten histories.¹⁴

These two documents are not well known in international legal scholarship. Before I chanced upon them in the ILO archives, I was unaware of their existence. The more I talked to people about the manifesto and NIO, the more I realized that these types of historical feminist documents have not filtered into mainstream international legal history. Feminists may not find this surprising, as feminist histories have only selectively and belatedly permeated international law and such stories often remain unknown to feminists themselves.¹⁵ However, the work of feminists in the interwar period, or indeed before World War I, is a thoroughly covered area in other disciplines, with important scholarship revealing the role of women's peace organizations in international legal and political theory.¹⁶ Yet these stories have not been absorbed into the international legal consciousness.

However, not all would agree that these historical examples of feminist peace work should be celebrated, let alone included in international law's foundations. In analysing

¹¹F Jameson, 'Utopia as Method, or the Uses of the Future', in MD Gordin, H Tilley and G Prakash (eds), *Utopia/Dystopia: Conditions of Historical Possibility* (Princeton University Press, Princeton, NJ, 2010) 21–44.

¹²See K Weeks, *The Problem with Work: Feminism, Marxism, Antiwork Politics, and Postwork Imaginaries* (Duke University Press, Durham, NC, 2011).

¹³O'Donoghue and Houghton (n 8).

¹⁴See for example 'The Feminists are Cackling in the Archive ...' (2017) 115(1) *Feminist Review* 155; J Ashton, 'Feminist Archiving [a Manifesto Continued]: Skilling for Activism and Organizing' (2017) 32(91–92) *Australian Feminist Studies* 126; K Eichhorn, *The Archival Turn in Feminism: Outrage in Order* (Temple University Press, Philadelphia, PA, 2013); A Farge, *The Allure of the Archives*, translated by TS Raitlon (Yale University Press, New Haven, CT, 2013).

¹⁵See D Mookerjee-Leonard, 'Futuristic Technologies and Purdah in the Feminist Utopia: Rokeya S Hossain's "Sultana's Dream"' (2017) 116(1) *Feminist Review* 144.

¹⁶See L Rupp, *Worlds of Women: The Making of an International Women's Movement* (Princeton University Press, Princeton, NJ, 1997); L Ashworth, 'Women of the Twenty Years' Crisis: The Women's International League for Peace and Freedom and the Problem of Collective Security' in P Owens and K Rietzler (eds), *Women's International Thought: A New History* (Cambridge University Press, Cambridge, 2021) 136–57; L Rupp, 'Constructing Internationalism: The Case of Transnational Women's Organizations, 1888–1945' (1994) 99(5) *The American Historical Review* 1571.

the manifesto and the NIO, I have been reminded of the long and diverse history of feminist efforts to bring peace into the international system and the issues found within feminist organizations of the time.¹⁷ The WILPF was not the only women-led organization to spearhead initiatives into international law,¹⁸ and it is not immune to critique. However, for the purposes of this article, the manifesto and the NIO serve as a focal point for discussing collective feminist peace work on international law that existed but has not been included in the making of international law. These issues, however, underscore the need to address the limits to utilizing historical examples of feminist manifestos and utopias.

What could this mean for international law?

After some initial reflection on the 1924 manifesto and NIO, I began to think about the history of international law. If feminist histories of engagement with international law were to be included in the foundations of international law, would that make a difference? Would adopting a greater historical frame benefit international law? And if so, how could these feminist works be included? During a public event at the London School of Economics and Political Science, Patricia Viseur Sellers stated that if feminists want to influence customary international law (CIL), more feminist historians were needed.¹⁹ Sellers was signaling that uncovering feminist work is more than just recognizing past female accomplishments; rather, it can be used as a tool for interpretation of the law and thereby has the potential to change the understanding of CIL. This would effectively bring feminist work into the foundations of international law by expanding the sources.²⁰

The Statute of the International Court of Justice lists custom as a source of international law. International custom is defined as ‘evidence of a general practice accepted as law’.²¹ Put simply, CIL requires state practice²² and *opinio juris*.²³ Questions used to determine state practice often include: ‘What kinds of behaviour counts as state practice? And ‘How many states need to participate in the practice, and over how long a period of time?’²⁴ History is especially important, as CIL is developed by evidence of regular state

¹⁷This point reiterates the complexities existing within WILPF at the time, as well as the fact that there were women’s groups that did not support ‘peace’, but instead encouraged men to fight in World War I. See the discussion in section V; also see, for example, N Gullace, *The Blood of Our Sons: Men, Women and the Renegotiation of British Citizenship during the Great War* (Palgrave Macmillan, New York, 2022).

¹⁸Some other organizations with various aims included the International Council of Women and the International Alliance of Women.

¹⁹Recording of public event, <<https://www.lse.ac.uk/women-peace-security/events/Previous-Events/2019/02-05-2019>>; See also E Rackley and R Auchmuty, ‘The Case for Feminist Legal History’ (2020) 40(4) *Oxford Journal of Legal Studies* 878.

²⁰This is in line with the role of publicists in developing international law; they have the potential to take into account a broader spectrum of interest and activities that are progressive and diverse; found in Article 38(1)(d) of the ICJ Statute; see S Sivakumaran, ‘The Influence of Teachings of Publicists on The Development of International Law’ (2017) 66(1) *International and Comparative Law Quarterly* 1.

²¹United Nations, *Statute of the International Court of Justice*, 18 April 1946, Art 38.

²²State practice is understood to mean state practice that is general and consistent: see A Roberts, ‘Traditional and Modern Approaches to Customary International Law: A Reconciliation’ (2001) 95(4) *American Journal of International Law* 757.

²³*Opinio juris* is the belief that there is a legal obligation.

²⁴See M Byers, ‘Power, Obligation, and Customary International Law’ (2001) 11 *Duke Journal of Comparative and International Law* 81.

practice over time. The second requirement, *opinio juris*, means that the custom must be 'accepted as law', which refers to the state's understanding that it is bound by the custom. Evidence of CIL has been limited primarily to the acts and omissions (practice) and declarations/statements of legal weight and ramifications (*opinio juris*) made by state officials.²⁵ This necessarily means that evidence of CIL is already restricted to privileged individuals with power derived from the state, to the exclusion of all others.

Further still, the development of CIL has been resistant to feminist engagements, as well as other non-white non-Europeans.²⁶ Scholars have taken various approaches to CIL,²⁷ which underscores that this is not a wholly straightforward area of law. Specifically, feminist, TWAIL (Third World Approaches to International Law)²⁸ and critical race scholars²⁹ have revealed international law's gendered and racialized assumptions as well as its colonial origins. In this article, I use the WILPF's 1924 manifesto and NIO as a source of inspiration and a reminder of the rich feminist work that has been excluded from the sources of international law. As examples of a feminist manifesto and utopian vision, they are deployed as tools to interrogate CIL by asking the question: How could these documents be included in CIL? And if they are, what is the benefit? I am interested in what the answers to these questions reveal about CIL, particularly in relation to its blind spots and points of weakness.

Structure of the article

Section II of this article focuses on CIL. I first detail how CIL is defined in international law; I then discuss its critiques, particularly drawing on feminist and TWAIL scholarship, as they expose the narrowness of CIL and call to expand its parameters. After that, I turn to Isabelle Gunning's work, which lists criteria for the inclusion of non-state entities in the

²⁵See H Charlesworth, 'The Unbearable Lightness of Customary International Law: Proceedings of the Annual Meeting' (1998) 92 *American Society of International Law* 44.

²⁶See BS Chimni, 'Third World Approaches to International Law: A Manifesto' (2006) 8 *International Community Law Review* 3; series symposium on BS Chimni, 'Customary International Law: A Third World Perspective' (2018) <<https://www.cambridge.org/core/journals/american-journal-of-international-law/ajil-unbound-by-symposium/b-s-chimni-customary-international-law-a-third-world-perspective>>; A Anghie and J Gathii, 'Introduction to the Symposium on BS Chimni, 'Customary International Law: A Third World Perspective' (2018) 112 *AJIL Unbound* 290; L Eslava, M Fakhri and V Nesiiah (eds), *Bandung, Global History and International Law: Critical Past and Pending Futures* (Cambridge University Press, Cambridge, 2015).

²⁷Roberts (n 22)758–60.

²⁸See A Anghie, *Imperialism, Sovereignty and the Making of International Law* (Cambridge University Press, Cambridge, 2005) 36; A Anghie, 'The Evolution of International Law: Colonial and Postcolonial Realities' (2006) 27(5) *Third World Quarterly* 739; A Anghie, 'Human Rights and Cultural Identity: New Hope for Ethnic Peace' (1992) 33 *Harvard International Law Journal* 341; H Charlesworth and C Chinkin, 'The Gender of *Jus Cogens*' (1993) 15(1) *Human Rights Quarterly* 63; C Chinkin, 'The Challenge of Soft Law: Development and Change in International Law' (1989) 38(4) *International and Comparative Law Quarterly* 850.

²⁹See T Achiume and DW Carbado, 'Critical Race Theory Meets Third World Approaches to International Law' (2021) 67 *UCLA Law Review* 1462 <<https://www.uclalawreview.org/critical-race-theory-meets-third-world-approaches-to-international-law>>; T Achiume, 'Race, Refugees and International Law', in C Costello, J McAdam and M Foster (eds), *The Oxford Handbook of International Refugee Law* (Oxford University Press, Oxford, 2021); JT Gathii, 'Writing Race and Identity in a Global Context: What CRT and TWAIL Can Learn From Each Other' (2020) 67 *UCLA Law Review* <<https://www.uclalawreview.org/writing-race-and-identity-in-a-global-context-what-crt-and-twail-can-learn-from-each-other>>; JT Gathii, 'Studying Race in International Law Scholarship Using a Social Science Approach' (2021) 22(1) *Chicago Journal of International Law* <<https://ssrn.com/abstract=3793974>>.

making of CIL. Section III introduces the WILPF to better understand the authors of the NIO and their role in international legal history. Next, I examine the 1924 WILPF manifesto and the NIO as critical tools to highlight how its authors challenged both the dominant privileged view of world order and the narrow conception of international law's scope and substance. I will also, briefly, delve into the surrounding context of WILPF's work on the NIO.

Section IV assesses the 1924 manifesto and the NIO. I return to Gunning's criteria to determine how these documents could be included into CIL via a recognition of non-state entities as creators of CIL. Next, I consider the potential benefits both the manifesto and NIO offer, regardless of their acceptance as evidence of CIL. In doing so, I highlight the public/private divide in international legal spaces, the gendered foundations of international law and the lack of focus on peace within international legal histories. Section V links feminist manifestos to dialogues on feminist methodologies, utilizing the work of Hilary Charlesworth, Christine Chinkin and Shelly Wright,³⁰ Dianne Otto³¹ and Gina Heathcote.³² This section thinks through the limitations of feminist manifestos and utopias within international law. I close with a brief reflection on the development of the Women, Peace and Security agenda to emphasize the risks involved when feminist work enters international legal institutions and the importance of method/message in feminist methodologies.

II. Customary international law

Article 38 of the Statute of the International Court of Justice,³³ list the sources of international law. Customary international law, as it is commonly termed, is written in the Statute as 'international custom, as evidence of a general practice accepted as law'.³⁴ As one of the sources of international law, its role is extremely important: it provides authority for judges deciding a case before the court. CIL is also essential for those who work with the law – be they lawyers, scholars or activists – to understand what acts are binding in international law and what acts are not. With treaties, which are also listed as a source of international law, determining what is law and how it should be applied is more straightforward. Treaties are signed and ratified written agreements between two or more states, and are binding between those parties.³⁵ However, with CIL the elements are not so easy to establish. There are two main elements, which I will discuss below, that need to be determined in order for CIL to exist, but within these elements there is considerable debate. In this section, I will first detail the basics of customary

³⁰H Charlesworth, C Chinkin, and S Wright, 'Feminist Approaches to International Law' (1991) 85(4) *American Journal of International Law* 613; H Charlesworth and C Chinkin, *The Boundaries of International Law: A Feminist Analysis* (Manchester University Press, Manchester, 2000).

³¹D Otto, 'Feminist Approaches to International Law', in A Orford, F Hoffmann and M Clark (eds), *The Oxford Handbook of the Theory of International Law* (Oxford University Press, Oxford, 2016).

³²G Heathcote, *Feminist Dialogues on International Law: Successes, Tensions, Futures* (Oxford University Press, Oxford, 2018).

³³*Statute of the International Court of Justice* (n 21); League of Nations, *Statute of the Permanent Court of International Justice*, 16 December 1920, Art 38.

³⁴*ibid.*

³⁵United Nations, *Vienna Convention on the Law of Treaties*, 23 May 1969, United Nations, Treaty Series, vol. 1155, p 331.

international law, then I will move through some of the critiques that are especially useful for my argument.

State practice and *opinio juris*

In 1950, Manley Hudson listed four elements for determining CIL:

- (a) concordant practice by a number of States with reference to a type of situation falling within the domain of international relations
- (b) continuation or repetition of the practice over a considerable period of time
- (c) conception that the practice is required by, or consistent with, prevailing international law, and
- (d) general acquiescence in the practice by other states.³⁶

Frederic Kirgis writes that over time these elements have been identified as state practice and *opinio juris*.³⁷ To determine the existence of CIL, these two areas must be assessed; however, the way this process is undertaken is not entirely clear-cut.³⁸ The International Law Commission (ILC), in its Draft Conclusions on Identification of Customary International Law ('Draft Conclusions on CIL') has stated that both areas must be determined based on all evidence provided and in accordance with the issues at hand. This is to allow for some degree of flexibility and dynamism,³⁹ which was also seen in the dissenting opinion of Judge Tanaka in the *North Sea Continental Shelf* case, and in the *Jurisdictional Immunities of the State* case.⁴⁰ Kirgis states that the balance between state practice and *opinio juris* is more of a 'sliding scale',⁴¹ where state practice can cement CIL, even with very little evidence, *opinio juris* and vice versa. This further illustrates that there is no precise formula to be applied when determining both elements. This, on one hand, helps

³⁶M Hudson, 'Article 24 of the Statute of the International Law Commission' (1950) 2 *Yearbook of the International Law Commission* 1, UN Doc A/CN.4/16, 26.

³⁷F Kirgis, Custom on a Sliding Scale, 81 *American Journal of International Law* 146 (1987). For key cases, see *Lotus Case (France v. Turkey)* [1927] PCIJ, Ser A, No 10; *North Sea Continental Shelf Cases (Federal Republic of Germany v. Denmark; Federal Republic of Germany v. Netherlands)* [1969] ICJ Rep 3, 20 February; *Fisheries Jurisdiction Case (UK v Iceland; Federal Republic of Germany v Iceland)* [1974] ICJ Rep 3 and 175, 25 July; *Military and Paramilitary Activities in and Against Nicaragua (Nicaragua v USA)* (Merits) [1986] ICJ Rep 14, 27 June; *Jurisdictional Immunities of the State (Germany v Italy: Greece intervening)* (Judgment) [2012] ICGJ 434.

³⁸For example, 'a rule of international law, whether customary or conventional, does not operate in a vacuum; it operates in relation to facts and in the context of a wider framework of legal rules of which it forms only a part' in *Interpretation of the Agreement of 25 March 1951 Between the WHO and Egypt (Advisory Opinion)* [1980] ICJ Rep at p 76, para 10.

³⁹International Law Commission, *Draft Conclusions on Identification of Customary International Law, with Commentaries* (2018) Conclusion 3, Commentary 1 and 2.

⁴⁰See Dissenting Opinion of Judge Tanaka: 'To decide whether these two factors in the formative process of a customary law exist or not, is a delicate and difficult matter. The repetition, the number of examples of State practice, the duration of time required for the generation of customary law cannot be mathematically and uniformly decided. Each fact requires to be evaluated relatively according to the different occasions and circumstances', in *North Sea Continental Shelf Cases (Federal Republic of Germany v. Denmark; Federal Republic of Germany v. Netherlands)* p 175.

⁴¹Kirgis (n 37) 149.

its flexibility and, on the other hand, makes it difficult to assess whether the prohibition of certain acts during armed conflict, for instance, can be understood as binding CIL.

Despite this, generally state practice has been understood to be based primarily on the conduct of states (executive, legislative, judicial or other functions) and international organizations in certain cases. The actions of other actors are not to be seen as 'practice', but can be used to assess state practice.⁴² The ILC goes on to say that the forms of practice can include physical acts, non-verbal acts and, in some cases, inaction. Evidence of state practice may include:

diplomatic acts and correspondence; conduct in connection with resolutions adopted by an international organization or at an intergovernmental conference; conduct in connection with treaties; executive conduct, including operational conduct 'on the ground'; legislative and administrative acts; and decisions of national courts.⁴³

Conclusion 8 of the 'Draft conclusions on CIL' details that the practice needs to be 'widespread', 'representative' and 'consistent', but that no particular timeframe is needed.⁴⁴

The 'Draft Conclusions on CIL' defines *opinio juris* as practice that is not merely habit, but accepted as law. The practice must be understood as having a 'sense of legal right or obligation'.⁴⁵ This can exist in a broad range of forms. Evidence may include

public statements made on behalf of States; official publications; government legal opinions; diplomatic correspondence; decisions of national courts; treaty provisions; and conduct in connection with resolutions adopted by an international organization or at an intergovernmental conference⁴⁶

as well as the state's 'failure to react over time'.⁴⁷

Critiques of customary international law

After reading the description above from the 'Draft Conclusions on CIL', CIL may appear to operate in a 'rulebook'-like fashion, with both primary and secondary rules. However, Monica Hakimi argues that this is not the case.⁴⁸ Hakimi states that operating on this basis turns CIL into something it is not; rather, CIL is 'variable and contingent'.⁴⁹ As noted above, the relationship between state practice and *opinio juris* can depend on the

⁴²ILC, *Draft Conclusions* (n 39) Part 3, and Conclusion 4 and 5.

⁴³Ibid Conclusion 6.

⁴⁴Ibid Conclusion 8.

⁴⁵Ibid Conclusion 9.

⁴⁶Ibid Conclusion 10.2.

⁴⁷Ibid Conclusion 10.3.

⁴⁸See debates on Hakimi's argument on *Opinio Juris* blog, <<http://opiniojuris.org/2020/07/09/concluding-post-on-making-sense-of-customary-international-law>>.

⁴⁹See M Hakimi, 'Making Sense of Customary International Law' (2020) 118(8) *Michigan Law Review* 1487.

situation, with even the ILC noting its flexibility and dynamism. Yet it would appear that this type of fluidity does not extend to non-mainstream perspectives.

Historically, the evidence used for CIL has been created without other voices – that is, feminist, Global South and Indigenous perspectives, to name a few. State practice and *opinio juris* are difficult to assess, as determining whether an act or omission is legally mandated/required, as well as consistent over a period of time, is not straightforward.⁵⁰ Ultimately, both elements are found within claims and arguments, which are presented and articulated largely from state actors. The various types of evidence will reflect a particular point of view towards specific state practice and are framed by a narrow set of interests.⁵¹ These are not neutral or unbiased claims: they are rooted in state preservation.

Therefore, TWAIL scholarship⁵² has developed the critique of CIL, highlighting that CIL is typically understood from an ahistorical perspective rather than a Eurocentric capitalist perspective. B.S. Chimni argues that the conception of CIL must move away from the mainstream Western capitalist viewpoint and CIL should instead necessitate that an ‘alternative doctrine must have its roots in a decolonized, self-determined, and plural cultural and political international order in which deliberative reason plays a central role’.⁵³ Chimni’s work highlights the underlying biases in the creation and understanding of CIL’s functionality and how these biases have not only prevented CIL from developing, but have continued to reinforce a worldview that omits the lives and histories of the people it governs.

While there have been many other discussions on CIL,⁵⁴ in this article I would like to focus on feminist work. Feminists have long demonstrated that international law is resistant to the influence of feminist and gender perspectives across the board. Karen

⁵⁰M Mendelson, ‘The Subjective Element in Customary International Law’ (1996) 66(1) *British Yearbook of International Law* 177, 195; see also *Legality of the Threat or Use of Nuclear Weapons (Advisory Opinion)* [1996] ICJ Reports, para 70.

⁵¹See I R Gunning, ‘Modernizing Customary International Law: The Challenge of Human Rights’ (1991) 31 *Virginia Journal of International Law* 211; L Sohn, ‘“Generally Accepted” International Rules’ (1986) 61(3) *Washington Law Review* 1073; N C H Dunbar, ‘The Myth of Customary International Law’ (1983) 8 *Australian Yearbook of International Law* 1; JP Kelly, ‘The Twilight of Customary International Law’ (2000) 40(2) *Virginia Journal of International Law* 449; RB Baker, ‘Customary International Law in the 21st Century: Old Challenges and New Debates’ (2010) 21(1) *European Journal of International Law* 173; JS Anaya, ‘Customary International Law: Proceedings of the Annual Meeting’ (1998) 92 *American Society of International Law*; C Ochoa, ‘The Individual and Customary International Law Formation’ (2007) 48(1) *Virginia Journal of International Law* 119.

⁵²See M Mutua and A Anghie, ‘What is TWAIL? Proceedings of the Annual Meeting’ (200) 94 *American Society of International Law* 31; A Anghie, ‘Imperialism and International Legal Theory’, in A Orford, F Hoffmann and M Clark (eds), *The Oxford Handbook of the Theory of International Law* (Oxford University Press, Oxford, 2016); A Anghie, ‘Finding the Peripheries: Sovereignty and Colonialism in Nineteenth-Century International Law’ (1999) 40 *Harvard International Law Journal* 1; BS Chimni, *International Law and World Order: A Critique of Contemporary Approaches* (Cambridge University Press, Cambridge, 2017).

⁵³BS Chimni, ‘Customary International Law: A Third World Perspective’ (2018) 112 *American Journal of International Law* 28, 46.

⁵⁴This is not an exhaustive list: see: A D’Amato, ‘Trashing Customary International Law’ (1987) 81 *American Journal of International Law* 101; JI Goldsmith and EA Posner, ‘A Theory of Customary International Law’ (1999) 66 *University of Chicago Law Review* 1113; JL Kunz, ‘The Nature of Customary International Law’ (1953) 47(4) *The American Journal of International Law* 662; H van der Wilt, ‘State Practice as Element of Customary International Law: A White Knight in International Criminal Law?’ (2019) 20(5) *International Criminal Law Review* 1.

Knop argues that the state – typically male in its ‘personification’ – as well as sovereignty must be rethought in order to incorporate feminist aims.⁵⁵ Dianne Otto discusses the Security Council’s tendency to couch ‘women’s issues’ in non-binding resolutions (i.e. the Women, Peace and Security agenda).⁵⁶ Gina Heathcote has warned that, despite feminist gains in international law, the law on the use of force reflects the gendered understanding of violence in the West.⁵⁷ This is by no means the extent of feminist work, but it does highlight the pervasive lack of feminist and gender perspectives in the foundations and framework of international law and its institutions, which inevitably results in the sources of international law failing to reflect feminist work.

Feminist perspectives on CIL have rightfully critiqued the state-centric approach to law-making, as noted above, rejecting mainstream claims of universality in international legal norms. Christine Chinkin states that,

despite feminist analyses of the internal multiple agencies of the state, externally it is still perceived as a monolithic entity acting with a single purpose and speaking with a single voice for the purpose of assessing state practice as a constituent element of customary international law, and it is not a feminist defined purpose or a female voice. The traditional sources of international law are conservative forces of retention of the status quo, but they retain a tight grip on international law-making.⁵⁸

This is further evidence of the continual resistance of international legal space to the perspectives and ideas of non-mainstream actors.

Understanding history⁵⁹ is key to locating the existence of CIL, as both elements must typically⁶⁰ be traced throughout multiple instances of state behaviour. Yet the materials, actions or inferences that are given the possibility of contributing to CIL are historically gendered/racialized.⁶¹ As a result, long-standing feminist histories have not entered into the CIL cannon. Vasuki Nesiiah argues that pluralizing the sources of international law would not only render the perpetually invisible visible, but also highlight the historical

⁵⁵K Knop, ‘Re/Statements: Feminism and State Sovereignty in International Law’ (1993) 3(2) *Transnational Law and Contemporary Problems* 293; K. Knop, ‘Borders of the Imagination: The State in Feminist International Law: Proceedings of the Annual Meeting’ (1994) 88 *American Society of International Law* 14; A O’Donoghue, ‘“The Admixture of Feminine Weakness and Susceptibility”: Gendered Personifications of the State in International Law’ (2018) 19(1) *Melbourne Journal of International Law* 227.

⁵⁶See D Otto, ‘The Exile of Inclusion: Reflections on Gender Issues in International Law Over the Last Decade’ (2009) 10(1) *Melbourne Journal of International Law* 11.

⁵⁷G Heathcote, *The Law on the Use of Force: A Feminist Analysis* (Routledge, 2013) 3.

⁵⁸C Chinkin, ‘Feminist Interventions into International Law’ (1997) 19 *Adelaide Law Review* 13, 23.

⁵⁹For scholarship on the historiographical turn in international law, see M Koskenniemi, *The Gentle Civilizer of Nations: The Rise and Fall of International Law 1870–1960* (Cambridge University Press, Cambridge, 2001); M Koskenniemi, ‘Why History of International Law Today?’ (2004) 4 *Rechtsgeschichte* 61; A Orford, ‘The Past as Law or History? The Relevance of Imperialism for Modern International Law’ (2012) *NYU IILJ Working Paper* 2; A Orford, ‘International Law and the Limits of History’ in W Werner, A Galán, and M de Hoon (eds), *The Law of International Lawyers: Reading Martti Koskenniemi* (Cambridge University Press, Cambridge, 2015).

⁶⁰For a discussion of instant custom, see B Langille, ‘It’s Instant Custom: How the Bush Doctrine Became Law after the Terrorist Attacks of September 11, 2001’ (2003) 26(1) *Boston College International & Comparative Law Review* 145; MP Scharf, ‘Seizing the Grotian Moment: Accelerated Formation of Customary International Law in Times of Fundamental Change’ (2010) 43(3) *Cornell International Law Review* 439.

⁶¹See V Nesiiah, ‘Decolonial CIL: TWAIL, Feminism, and an Insurgent Jurisprudence’ (2018) 112 *American Journal of International Law Unbound* 313.

hierarchies that limit international law's jurisprudence.⁶² Nesiah looks to subaltern practices of transnationalism that have the potential to unlock new histories of legal practice.⁶³ Likewise, feminist peace practices across the globe can be transformational. By incorporating the histories of different feminist peace groups and their understanding of the world and the necessary conditions for peace, there is a possibility that this shift in historical framing could expand the tenets of CIL.

However, with the desire to include more perspectives in international law, it is also important to note that this will almost certainly leave out others, uncomfortably prioritizing one history over another. Therefore, while the history of WILPF is being centred within this article, I recognize that in 1924 the WILPF was composed predominantly of middle- to upper-class formally educated women of Anglo-European heritage,⁶⁴ which I discuss further in the final section of this article. I also am cognisant that including this particular history is not representative of what many women's lived experiences were during this time period. Furthermore, less-formal systems of feminist organizing potentially remain undiscovered, due to a lack of written accounts or active inclusion into archives. Thus, even when suggesting reform of international law, it is necessary to view every possible development as a process that will continually need to be reassessed to avoid complacency and further exclusion.⁶⁵ I note this as a way to both recognize the problems that exist with including historical feminist examples that do not hold up against present-day criteria of inclusion and perspective, and to highlight that it is still helpful to use the 1924 WILPF manifesto and NIO as it provides a point of discussion and critique for CIL.

I now turn briefly to Isabelle Gunning's discussion of CIL, which recognizes the reality of CIL, and the interconnectedness of the world, and so calls for non-state actors to be included in the making of CIL. Gunning highlights two possible approaches: one whereby non-state entities display 'collective acts of state'; the other whereby certain non-governmental groups have 'a distinct measurable impact on international affairs'.⁶⁶ Gunning provides the example of women's groups in the 1970s and 1980s that, through collective work, influenced international law under the banner of 'the equal participation of women in the development efforts of their countries both as contributors and beneficiaries'.⁶⁷ This organizing had tangible legal results in both domestic and international spaces.⁶⁸ Arguing for the incorporation of non-state organizations to be a part of the making of CIL, Gunning lists various criteria, which include:

- (i) reflect ECOSOC concerns, i.e., economic, social, cultural, educational, health, scientific, technological or human rights matters
- (ii) have aims which conform to the goals of the UN Charter
- (iii) have an international character or express views of 'major sections'

⁶²Ibid.

⁶³Ibid 316–17.

⁶⁴See M Plastas, *A Band of Noble Women: Racial Politics in the Women's Peace Movement* (Syracuse University Press, Syracuse, NY, 2011).

⁶⁵See Heathcote (n 32) Ch 5.

⁶⁶See Gunning (n 51) 221–22.

⁶⁷Ibid 228.

⁶⁸Ibid 228–29.

- (iv) have a democratically elected constitution and a largely democratic procedure regarding policy decisions; and
- (v) acquire resources from the contributions of national group members or individuals.⁶⁹

This list of criteria, used by the Economic and Social Council (ECOSOC) when bestowing NGOs with consultative status, could aid in determining what organizations are seen as able to contribute to the making of CIL. To include non-state organizations in this list would entail the need for their reach to be transnational and a wide perspective of concerns.⁷⁰ Specifically, according to Gunning, this could mean that “when academics or judges analyze treaties, domestic statutes, diplomatic statements and other state activities to determine whether a customary norm has crystalized, the actions and statements of qualified NGOs would be considered in the same fashion as actions of states”.⁷¹

Interestingly, Gunning discusses the ILO as an example of an organization where a non-state and state actors work together. The ILO’s structure includes both representatives of governments and worker and employer representatives throughout.⁷² This shows that a process whereby governmental and non-governmental entities work together is conceivable within the realms of international law. Ultimately, Gunning’s approach to CIL is to recognize that in reality international law is already made by and with non-governmental entities. I will return to Gunning’s argument again in section IV.

III. The manifesto and the ‘New International Order’

In this section, I will first briefly introduce the WILPF before detailing the manifesto and the NIO, which were proposed at the 1924 WILPF Congress. I will also provide a brief background of the NIO, explaining how the document came about. This section’s aim is to give a fuller picture of the richness of both of these documents and to reiterate that they are just one example of collective feminist peace work that has not entered into the international legal consciousness.

The International Committee for Permanent Peace, was established as a result of the 1915 Women’s International Congress, where in the midst of war women came together to discuss how they might be able to promote peace.⁷³ Committee members predominantly consisted of women from European and North American states, with Jane Adams elected as president.⁷⁴ They recognized the benefits of international law and sought to create a platform to facilitate an organized collective approach to their actions to discuss

⁶⁹Ibid 231.

⁷⁰Ibid 231.

⁷¹Ibid 232.

⁷²Ibid 232.

⁷³I Sharp, ‘Feminist Peace Activism 1915 and 2010: Are We Nearly There Yet?’ (2013) 38(2) *PeaceChange* 155; I Sharp, ‘Love as Moral Imperative and Gendered Anti-war Strategy in the International Women’s Movement 1914–1919’ (2020) 31(4) *Diplomacy & Statecraft* 630. For a collection of papers in conversation with each other, see H McCarthy, I Sharp, L Beers, G Sluga, C Donert and H Pankhurst, ‘Women, Peace and Transnational Activism, a century On’ (2015), <<https://www.historyandpolicy.org/dialogues/discussions/women-peace-and-transnational-activism-a-century-on>>.

⁷⁴States included the Netherlands, the United States, Germany, Sweden, Norway, Hungary, Austria, Denmark, Belgium, the United Kingdom, Canada and Italy. See J Paull, ‘The Women Who Tried to Stop the Great War: The International Congress of Women at The Hague 1915’, in A Campbell (eds), *Global Leadership Initiatives for Conflict Resolution and Peacebuilding* (IGI Global, 2018) 253.

possible avenues for their peace work and ways to influence international law.⁷⁵ Their efforts continued throughout the war.

After World War I, when the Treaty of Versailles was being negotiated, the International Committee became frustrated at the conditions of the treaty and worried that this would lead nations further from peace. At the 1919 Women's International Congress, they vowed to continue to work towards peace and the International Committee became a permanent body, titled The Women's International League for Peace and Freedom (WILPF).⁷⁶ WILPF still operates today, with local sections across the world and an international headquarters in Geneva and New York. While its work has evolved and the organization has gone through periods of shifting ideologies,⁷⁷ having to critically examine its own positionality in debates on race,⁷⁸ for instance, it has maintained its influence into international law, demonstrated by its work on the UN Security Council's Women, Peace and Security Resolutions.⁷⁹

Throughout the WILPF's existence, there has been a focus on 'peace'. Yet in international law there is no definition of peace. Christine Chinkin and Louise Arimatsu have often observed that there seems to be some consensus on what peace is not – it is not armed conflict or violence – but there has been little agreement about what exactly peace includes.⁸⁰ They, as well as other scholars,⁸¹ have questioned the idea that peace and conflict are binaries, and dismissed the notion that peace begins when there is a formal end to hostilities. Chinkin and Arimatsu's work highlights that peace can mean something different to everyone, and often is based on a variety of different factors, such as gender, race, religious freedom, citizenship, socio-economic status, health, sexuality, geographical location and/or a recognition of one's historical perspective, to name a few.⁸² Everyday peace is also a concept that reinforces the idea that peace and conflict need not be thought of on a global scale: peace in oneself and in daily life can be just as important.⁸³

⁷⁵See D Bell and K Pahl, 'Co-production: Towards a Utopian Approach' (2018) 21(1) *International Journal of Social Research Methodology* 105.

⁷⁶See E Ballantyne, 'WILPF history: Past, present, future' (2004) 64(2) *Peace and Freedom* 10.

⁷⁷C Confortini, 'Doing Feminist Peace' (2011) 13(3) *International Feminist Journal of Politics* 349; C Confortini, *Intelligent Compassion: The Women's International League for Peace and Freedom and Feminist Peace* (Oxford University Press, Oxford, 2012).

⁷⁸Plastas (n 64); J Blackwell, *Race and the Women's International League for Peace and Freedom, 1915–1975* (Southern Illinois University Press, Carbondale, IL, 2004); L Partridge, 'Uniting for Racial Justice' (2000) 60(1) *Peace and Freedom* 6; E Spears, 'Racial Justice and WILPF' (2004) 64(2) *Peace and Freedom* 6.

⁷⁹S Basu, P Kirby and L Shepherd (eds), *New Directions in Women, Peace and Security* (Bristol University Press, Bristol, 2020) Ch 1.

⁸⁰See C Chinkin and L Arimatsu's large breadth of work on the AHRC and ERC projects, 'A Feminist International Law of Peace and Security' and 'Gendered Peace', <<https://www.lse.ac.uk/women-peace-security/research/Feminist-International-Law-of-Peace-and-Security>> and <<https://www.lse.ac.uk/women-peace-security/research/Gendered-Peace>>.

⁸¹See S Bertotti, G Heathcote, E Jones and S Labenski, *The Law of War and Peace: A Gender Analysis* (Bloomsbury, London, 2021) Introduction.

⁸²Feminist Visions Events, LSE WPS, <<https://www.lse.ac.uk/women-peace-security/events/Current-Events/Visions-of-Feminist-Peace>>; see specifically the artistic performances of Suhaiymah Manzoor-Khan, Millicent Chapanda, The Citizens of the World Choir and Amrit Kaur Lohia.

⁸³See G Heathcote, E Koduthore and S Labenski, 'Teaching Feminist Peace Through Encounters With Female Violence', in S Smith and K Yoshida (eds), *Feminist Conversations on Peace* (Bristol University Press, Bristol, 2022); See H Charlesworth, 'International Law: A Discipline of Crisis' (2002) 65 *The Modern Law Review* 377.

For the women of the WILPF, their understanding of ‘peace’ has shifted throughout the organization’s history. Catia Cecilia Confortini and Joyce Blackwell both highlight that ‘peace’ was defined differently depending upon which WILPF member’s perspective was being taken or which time period of the organization’s history was being examined. For instance, Blackwell, who writes on race within the WILPF between 1915 and 1975, discusses how African-American women believed that to discuss peace meant discussing freedom, linking peace and racial justice, which had both domestic and international implications.⁸⁴ Confortini states that the WILPF’s ‘peace’ has always been and continues to be related to the historical and social time it inhabits.⁸⁵ Between the World Wars, the WILPF focused on its conception of a ‘just peace’; this version of peace had social, political and economic iterations, which they felt must be based on shared liberal norms. They looked to legal frameworks to provide individuals with the basis to realize their rights.⁸⁶ This conception of peace can be seen in both the 1924 manifesto and NIO, where the WILPF reaffirmed that for peace to exist, there must not only be an end to wars, but individuals must also be able to access legal structures to ensure their needs are met.

Manifesto

The 4th International Congress of the Women’s International League for Peace and Freedom, was held in 1924, to address the impact of World War I. A key focus of this Congress was to introduce the NIO,⁸⁷ which reiterates the document’s importance within the organization.⁸⁸ The Congress also introduced a manifesto to redeclare its organizational principles.

The 1924 manifesto is a reaffirmation of core WILPF principles. Given that it was still in its infancy as an organization, the early WILPF manifestos are an especially useful tool to understand the contemporary climate, but also to understand the organization’s focus. This is evident in the 1924 manifesto, which begins with an ‘Affirmation’. In 1924, there was a growing concern that the world was headed towards another war, while still dealing with the aftermath of World War I. The 1924 manifesto contains an early section titled ‘Condition of Europe’; it also has sections that look beyond the immediate post-war problems. Other topics include ‘International Justice’, ‘Dictated Treaties’, ‘Democratic Control’, ‘Social Peace’ and ‘International Organization’. These sections lay out the foundational understanding of the situation the world faced in 1924 and give the reader

⁸⁴ See Blackwell (n 78) Chs 4 and 5.

⁸⁵ Confortini ‘Doing Feminist Peace’ (n 47) 353.

⁸⁶ Ibid.

⁸⁷ C Foster, *The Women and the Warriors: The U.S. Section of the Women’s International League for Peace and Freedom, 1915–1946* (Syracuse University Press, Syracuse, NY, 1995) 50.

⁸⁸ This document was obtained in the International Labour Organization archives, Geneva, with special thanks to Jacques Rodriguez at the ILO Archives. The author has personal photographic copies which were used for reference in this article. The archival reference for this document is WN/1000/6/6; See also J Addams, ‘Preface’, in Fourth International Congress of the Women’s International League for Peace and Freedom (1924); J Addams, ‘Opening Address’, in Fourth International Congress of the Women’s International League for Peace and Freedom (1924) 1, <https://search.alexanderstreet.com/preview/work/bibliographic_entity%7Cbibliographic_details%7C1523095>; S Hellowell, ‘Building a “New International Order”: International Women’s Organizations and the UIA’, in D Laqua, W Van Acker and C Verbruggen (eds), *International Organizations and Global Civil Society: Histories of the Union of International Associations* (Bloomsbury, London, 2019) 100.

an indication of why the WILPF determined that a radical shift such as that proposed in the NIO was necessary. The theme of the 1924 congress was to discuss ‘a new international order’ and the manifesto also reflects this aim, and picks up on the work of the NIO.

In the section ‘Condition of Europe’,⁸⁹ the manifesto recognizes that the problems facing the world in 1924 were wholly due to human actions. To establish a peaceful world, universal disarmament had to be secured. The causes of war and violence were condemned, as was the war itself. This style of outlining the issues and then setting out aims is similar to that of other manifestos. In the section titled ‘International Justice’, the WILPF goes on to affirm its core principles of ‘international cooperation’ and begins to outline its demands. It states that the world must put an end to the use of force or blockades to solve problems. All nations⁹⁰ are called upon to abide by complete disarmament and put aside ideas of ‘sovereignty’ and ‘prestige’.

Interestingly, the WILPF details its concept of ‘social peace’ in this manifesto. As discussed above, the WILPF’s understanding of peace was not just an end to war; in this section it determines that the causes of wars are related to social injustices, so in order to condemn the violence, one must also condemn the causes. The manifesto states: ‘The first step towards this end must be to bring about the organization of economic life, not for individual or class profit, but for the highest possible development of every human being.’

The manifesto reaffirms the WILPF’s desire for a legal structure, and the priorities were laid out in the section titled ‘International Organization’, the aims of which would organize international cooperation to be a ‘effective political instrument’ and impartially mediate disputes. The new organization would specifically focus on protecting minorities, addressing conditions of labour, bolstering education, health and welfare, enacting free trade, distributing food and raw materials, and encouraging world disarmament.⁹¹ The WILPF declared that all nations of the world would be involved in this organization to ‘make domination by any State or group of States impossible’.⁹²

The new international order

The focus of the 1924 Congress was on thinking through ‘a new international order’, as reflected in the manifesto, which succinctly sets out WILPF’s view on the current world dilemma and states its demands for solving the problems that existed in the post-war period. WILPF was determined to address the underlying issues that led to war and to prevent future wars. In this vein, WILPF introduced the NIO at the 1924 congress as a response to World War I and its aftermath.⁹³ However, the NIO was not just a WILPF

⁸⁹While the manifesto is focused on international peace, it is embedded in the time period, which is demonstrated by the focus on Europe and World War I and the possibility of World War II.

⁹⁰In the NIO, ‘nation’ seems to be used as a synonym for ‘state’. The UN Charter uses the terminology ‘state’. This is relevant for the understanding of equality. From this reading, the drafters of the NIO were not making a suggestion that all ‘nations’ are equal, but rather referring to all ‘states’.

⁹¹This links to the feminist political economy work that emerged much later. See J True, *The Political Economy of Violence Against Women* (Oxford University Press, Oxford, 2012); C O’Rourke, *Gender Politics in Transitional Justice* (Routledge, London, 2013); S Basu, ‘The UN Security Council and the Political Economy of the WPS Resolutions’ (2017) 13(4) *Politics & Gender* 721.

⁹²It must be noted that in the document there is reference to ‘backward races’. Sharer notes that this is indicative of racist assumptions among WILPF members; See WB Sharer, *Vote and Voice: Women’s Organizations and Political Literacy, 1915–1930* (Southern Illinois University Press, Carbondale, IL, 2004) 41.

⁹³Archival Document (n 88).

project; rather, it was part of a much larger initiative involving other international associations producing their own version of the new international order. While the NIO became embedded in the organization's approach, as shown in the manifesto and arguably already picked up on foundational WILPF principles such as total disarmament and international cooperation, the NIO was created as part of the *Les Cahiers de la Paix* (Cahiers), a project of the Union of International Associations (UIA).⁹⁴ The UIA was founded by Henri La Fontaine and Paul Otlet in 1910, with a focus on peace and cooperation among international organizations. It was envisioned as a collector and disseminator of knowledge that would facilitate achieving its goal of 'peace'.⁹⁵

Specifically, the Cahiers project was designed to 'raise the voice of the people regarding the international order'.⁹⁶ An appeal was made to all organizations – national, international, pacifists and non-pacifists – by the UIA to compose a document that listed the criticisms of the current international order and then list ways to solve these issues.⁹⁷ Once Otlet, at the UIA⁹⁸ headquarters, had received all the Cahiers from the various associations, a world congress would be held in 1925, at the Palais Mondial de Bruxelles, to discuss a 'New International Order'.⁹⁹ The WILPF Committee on Cahiers de la Paix was led by WILPF's French section, specifically by Gabrielle Duchêne and Andrée Jouve,¹⁰⁰ but included members from the Belgian, British, US, Hungarian and German national sections.¹⁰¹ WILPF's involvement in the Cahiers project demonstrates larger collaboration among other associations of the time. Far from WILPF pondering a new world order within its own organization, the UIA's founding vision was to create such a world so peace could flourish. The UIA saw the importance of international organizations for present-day and future conceptions of peace, and WILPF's inclusion in this project further emphasizes their presence in globally organized peace work predating the UN Charter.

The WILPF's approach was to draft its submission, or Cahiers, to the UIA collectively. At the 1924 WILPF Congress, after the drafted text was given to members, it was decided that the NIO, termed 'The New International Order Report of the Cahier Commission', would be 'recommended by the congress to the national sections for study'.¹⁰² WILPF's NIO comprised contributions from its national sections.¹⁰³ Talk of an additional

⁹⁴Hellawell (n 88) 99. The UIA was created by Henri La Fontaine and Paul Otlet in 1910, with a focus on peace and cooperation among international organizations. It was envisioned as a collector and disseminator of knowledge, which would facilitate achieving its goal of peace.

⁹⁵For a discussion of Otlet's internationalism vision of peace, see AP de Moura, 'Considerations on the Social Role of the Document According to Paul Otlet' (2014) 51(1) Proceedings of the American Society for Information Science and Technology 1.

⁹⁶Hellawell (n 88) 100.

⁹⁷E Carle, 'Women, Anti-Fascism and Peace in Interwar France: Gabrielle Duchêne's Itinerary' (2004) 12(3) *French History* 291, 298–99; The UIA guidance was sent in three instalments, which listed how the document should look, including the main aims, the stakes, including detailing sovereign power and its methods of control, its constitution and a declaration of rights and duties.

⁹⁸Also written as 'UAI'.

⁹⁹Hellawell (n 88) 100.

¹⁰⁰Carle (n 97) 91.

¹⁰¹Hellawell (n 88) 100.

¹⁰²Women's International League for Peace and Freedom, 'The New International Order' in *Fourth International Congress of the Women's International League for Peace and Freedom* (1924) 163, <https://search.alexanderstreet.com/preview/work/bibliographic_entity%7Cbibliographic_details%7C1523095>.

¹⁰³Hellawell (n 30) 100.

document with national section contributions was also discussed at the Congress. The report was envisioned as a larger WILPF project, whereby a fifth section, titled 'Steps Toward Realization', would be created as another document, or 'fascicule'/'pamphlet' as it was termed. Curiously, Sarah Hellawell notes, the UIA received the WILPF's NIO document, but little came of it and subsequently the NIO project was removed from the WILPF agenda.¹⁰⁴ Emmanuelle Carle also notes how the NIO project seems to have faded away from the WILPF's focus, and suggests that this could be due to the large amount of work involved. Carle particularly highlights how the task of creating the NIO was 'both utopian and supremely concrete'.¹⁰⁵

Looking to the text of the NIO and the sentiment behind its creation, it is clear that it contains both utopian ideals and practical demands. It was the members' belief that little had changed for people since the armistice, and the conditions of peace were not sufficient to maintain a peaceful existence in the long term. The WILPF presciently saw another impending war¹⁰⁶ – undoubtedly frustrated, as many feminists signalled this as inevitable during the Paris peace negotiations.¹⁰⁷ The 1924 Congress proceedings¹⁰⁸ stated:

New times demand new deeds and conditions, new work, and perhaps even new principles. We must not forget that history is evolution. Time must find us ready ... with the same self-respect and faith in what women have to give to the world as did the women in 1915.¹⁰⁹

The urgency found within the NIO in 1924 was not without cause. It was becoming apparent that the League of Nations might not be as effective as it needed to be in its current state. A few years after the NIO was published, feminists organized the Great Peace Pilgrimage of 1926 and the subsequent worldwide disarmament petition, but despite this and other efforts, the 1932 Disarmament Conference collapsed.¹¹⁰ When read with the looming trauma of World War II in mind, the NIO feels all the more sombre.

¹⁰⁴Ibid.

¹⁰⁵Carle (n 97) 299.

¹⁰⁶See WILPF Resolutions 3rd Conference 1921, <https://wilpf.org/wp-content/uploads/2012/08/WILPF_triennial_congress_1921.pdf>; see also Women's International League for Peace and Freedom, LSE Library Archives Exhibit with Google Arts and Culture, <<https://artsandculture.google.com/exhibit/women-s-international-league-for-peace-and-freedom-lse-library/wAKyop-EIuSvKA?hl=en>>.

¹⁰⁷See M Siegel, *Peace on Our Terms: The Global Battle for Women's Rights After the First World War* (Columbia University Press, New York, 2020).

¹⁰⁸In the letter written to the ILO HQ by the Washington ILO branch, whose members attended the congress, the countries involved were listed: 'Africa [sic!], Antillian Islands, Australia, Austria, Belgium, Bologia [sic], Bulgaria, Canada, Chile, China, Czecho-Slovakia [sic], Denmark, Ecuador, England, France, Germany, Greece, Guatemala, Holland, Hungary, India, Ireland, Italy, Japan, Mexico, New Zealand, Norway, Poland, Sweden, Switzerland, Ukraine, Philippines [and] Turkey'.

¹⁰⁹Lida Gustava Heymann, WILPF International Vice President, 4th Congress, Washington, DC, 1924. See WILPF 2015 Manifesto, <<https://wilpf.org/wp-content/uploads/2015/07/Manifesto-2e-print-bleed.pdf>>.

¹¹⁰See L Arimatsu, 'Transformative Disarmament: Crafting a Roadmap for Peace' (2021) 97 *International Law Studies* 833; K Yoshida and L Arimatsu, 'Women's Peace Activism Conflict' (2019) Women, Peace and Security blog, <<https://blogs.lse.ac.uk/wps/2019/07/22/womens-peace-activism-can-end-conflict>>; MA Hensley 'Feminine Virtue and Feminist Fervor: The Impact of the Women's International League for Peace and Freedom in the 1930s' (2006) 21(2) *Affilia* 146; A Webster, 'The League of Nations, Disarmament and Internationalism', in G Sluga and P Clavin (eds), *Internationalisms: A Twentieth-Century History* (Cambridge University Press, Cambridge, 2016).

The NIO is separated by four headings: principles; international political order; international economic order; and international order and the life of the individual. These headings detail the specifics of how the new order would function.

Principles

In the first section, selfishness, wastefulness and competitiveness were cited as reasons why peace had failed to flourish. Due to the interconnectedness of these issues, all areas of life were seen to be in need of reorganization. This reorganization was different from the perspective of the League of Nations. The NIO states:

War between nations is only one aspect of universal violence against which it is humanity's duty to fight. The world is not organized for Peace. Politically, international entities of more or less recent formation come into contact with one another with their selfish and even aggressive demands. Economically, there is competition between nations with the consequent of war and waste, and at the same time the exploitation in old countries of the middle classes, the industrial workers and the peasants by capitalism. The complexity and the interdependence of the mechanisms which regulate the life of human society are such that one cannot touch one part without disorganizing the whole. Therefore, a new international order demands a complete re-organization of the world, and Peace can come only as the result of such re-organization. We desire to set out here the minimum conditions which will make Peace possible.

The League of Nations saw the state as the primary actor in international law.¹¹¹ While the NIO goes on to develop provisions to protect individuals, it also acknowledges the role of the state in facilitating peace. Two of the founding principles of the NIO were that 'nations are equal in rights' and 'all nations are interdependent'.¹¹² The document was explicit in its assertion, 'That which injures one, injures all. That which benefits one benefits all.'

International political order

This section consists of the subsections 'Organization', 'Powers' (including a detailing of legislative, executive, judicial and economic forces), 'Sanctions' and 'Limitations'. The authors instructed nations to give up their 'jealous sovereignty' and to accept that peace cannot manifest without the cessation of 'imperialistic rivalries'.¹¹³ Thus, the League of Nations would be renamed the 'League of Peoples'. The NIO called for the review of all

¹¹¹League of Nations, *Covenant of the League of Nations*, 28 April 1919, Art 1.

¹¹²While these were two of the founding principles, they still existed within the context of that time, which included colonialism as well as tensions and biases within the WILPF.

¹¹³Ultimately, the NIO and the women of WILPF did not resolve the issue of how to approach states that do not adhere to these principles. Calling for all nations to be 'equal in right' ultimately risks supporting nations that do not have laws that end discrimination, for example. If states are abusive to the people within their borders, then should this New International Order still respect their sovereignty? These concerns go unanswered. One explanation is that WILPF believed that such a radical reorganization around the individual would shift the focus away from state interests and displays of abusive power.

treaties, including secret treaties, as many were seen as incompatible with the new organization of the world. The League of Peoples would not have a military force, as this would be seen as hypocritical after demanding universal disarmament.¹¹⁴ Moreover, the League of Peoples was viewed as a way to unite individuals across the world, but not to erase the extraordinary specifics, the ‘ethnic, linguistic, cultural, professional, and other groups’ that make people so unique and diverse.

International economic order

The document goes on to discuss that, along with the establishment of the executive, legislative and judicial branches of the new League, an economic section would be essential.¹¹⁵ Each state would undergo an assessment of its agricultural and food production, as well as its manufacturing, in order to prevent famine and regulate prices, over-production and unemployment. Customs barriers would be abolished so products could move freely. The NIO would strengthen railways and waterways to ease the travel and transit of people. Workers everywhere would have legal protections under the ‘new World Charter of labor’,¹¹⁶ outlining that pay, training, working conditions, safety measures, holidays and rest periods would be standardised and highlighted the importance of a work–life balance. International law would set the standards in each of these areas rather than them being exclusively governed by domestic law.

International order and the life of the individual

Section 4 specifically outlines the life of the individual:

The ultimate object of every political or economic organization is the security and improvement of the individual life. The only real units whose suffering and joy, action and thought, make up the life of the world. It is only in a new international order, suppressing political and economic wars that individual life can be respected.

¹¹⁴This is potentially useful *opinio juris* for developments such as the Treaty on the Prohibition of Nuclear Weapons.

¹¹⁵Pre-empting the creation of ECOSOC, while the League did have economic provisions, it did not make clear the importance of the economic sphere in peace. The United Nations would go on to link economic, social and cultural rights and establish their necessity in maintaining peace.

¹¹⁶The ILO Constitution was a part of the Treaty of Versailles in 1919. Chinkin notes that while women-specific provisions were included in the original 1919 convention, they were primarily protective; see C Chinkin, ‘100 Years of Peace Activism: Linking the International Labour Organization with the WPS Agenda’ (2019) WPS Blog LSE, <http://eprints.lse.ac.uk/103939/1/WPS_2019_12_16_100_years_of_peace_activism.pdf>; Cobble also notes the formal exclusion of women in the early stages of the ILO, and the tireless work of the Women’s Labour Congress, which was not fully incorporated into the convention; See DS Cobble, ‘The Other ILO Founders: 1919 and Its Legacies’, in E Boris, D Hoehtker and S Zimmerman (eds), *Women’s ILO Transnational Networks, Global Labour Standards, and Gender Equity, 1919 to Present* (Brill, Leiden, 2019); Natchkova and Schoeni discuss the power dynamics between women’s movements and the ILO: see N Natchkova and C Schoeni, ‘The ILO, Feminists and Expert Networks: The Challenges of a Protective Policy (1919–1934)’, in S Kott and J Droux (eds), *Globalizing Social Rights* (Palgrave Macmillan, London, 2013) 50–52, 60–61; see also C Chinkin, ‘Enhancing the Impact of International Norms with Special Reference to Women’s Labour Rights and the Women, Peace and Security Agenda’, in G Politakis, T Kohiyama and T Lieby (eds), *ILO100: Law for Social Justice* (ILO, Geneva, 2019).

This concept would now be understood as ‘human security’,¹¹⁷ an idea that has still not permeated international law to the level required to protect individual rights and provide holistic security. The NIO understood that for peace to flourish, the individual’s everyday needs must be met. Therefore, the League of Peoples would develop an ‘International Public Health Service’ to study weather-related disasters and the causes of epidemics, which is not surprising given the proximity to the Spanish flu epidemic. Housing would be improved to avoid illnesses related to hygiene, while ‘garden cities’ prioritizing comfort would be created. Large, accessible and well-stocked medical centres would be developed to cure and treat diseases, ‘including nervous and mental illness’. Healthcare professionals would focus on preventative medicine. Maternity, viewed as a social service, was envisioned as a space where a mother was aided in the completion of her important ‘task’ and her rights were ‘safeguarded’.

The NIO also recognized that it was necessary to create an environment that allowed for the exchange of ideas among ‘internationally minded people’. Thus, cultural and scientific associations would flourish due to the existence of laboratories, research centres, libraries, international exhibitions and so on. Freedom of opinion was seen as essential for world progress. The League of Peoples would not allow journalists to spread ‘false news’, and doing so would incur severe penalties.

The NIO discussed the rights of children, who would be free to grow in an environment where they were able to make their own choices, irrespective of outside influence and free from religious, political or ‘pedagogic power’. The League of Nations also adopted the first Declaration on the Rights of the Child in 1924, which indicates the growing recognition at the time of the rights and welfare of children. In the NIO, children would be taught to love their neighbour, while aiding humanity as a whole. Children would attend ‘Active Schools’ and ‘will have no other aim than that of giving to the human body and soul the surroundings and nourishment for their complete development’. It was believed that a change in education could nurture individuals to be free from prejudice and ‘curious of all that exists’. Furthermore, ‘in social life, as well as in individual life, aggressive pride, destructive selfishness, violence of all kinds, are enemies to be met with kindness and righteousness’.¹¹⁸

Lastly, the NIO stated:

As long as men [sic] do not recognize that all are subject to this law of disinterestedness and generosity, which surpasses strict justice; as long as they will not work for its realization in their personal and private life, as well as in their public life, the

¹¹⁷‘Human security’ is generally understood to have been introduced into international law in the mid-1990s via shifting national foreign policies, UN reports and so on. For a more detailed discussion, see H Hudson, ‘Doing’ Security as Though Humans Matter: A Feminist Perspective on Gender and the Politics of Human Security’ (2005) 36(2) *Security Dialogue* 155; D Otto, ‘Power and Danger: Feminist Engagement with International Law Through the UN Security Council’ (2010) 32(1) *Australian Feminist Law Journal* 97; L Basch, ‘Human Security, Globalization, and Feminist Visions’ (2004) 16(1) *Peace Review* 5; B Von Tigerstrom, *Human Security and International Law: Prospects and Problems* (Hart, Oxford, 2007).

¹¹⁸In 1932, the ILO would adopt ‘Recommendation concerning the Age for Admission of Children to Non-Industrial Employment’, Adoption: Geneva, 16th ILC session (30 Apr 1932). This recommendation stated: ‘In order that children may derive full benefit from their education and that their physical, intellectual and moral development may be safeguarded, it is desirable that so long as they are required to attend school their employment should be restricted to as great an extent as possible.’

exterior transformation of the world will not bring the expected well-being of mankind [sic].

Unfortunately, this statement still remains to be taken up by states. In this quote, the WILPF recognises the challenges faced by the public/private divide and duly notes that unless the principles of peace, as spelled out in the NIO, are worked towards in private just as much as they are in public, peace will never occur. While this dichotomy is particularly harmful to women, it also creates challenges for all humankind, which in theory should encourage everyone to work towards its deconstruction.

The NIO's vision clearly recognized the importance of addressing the economic, social and cultural needs of populations and centred the individual rather than prioritising the state. While it puts forth an alternative vision to better the lives of women, it recognizes that in order to do so, all aspects of everyday life and all people's lives must be improved for peace to flourish. Its connection to the larger UIA project, reiterates the interconnected push towards peace among international associations of the time.

IV. Feminist manifestos and utopias, and customary international law

In this section, I will first discuss why feminist manifestos and visions of utopia have encountered resistance when attempting to enter international legal spaces. Then I will look back to Gunning's criteria for the inclusion of non-state actors in the making of CIL, as a potential path that would allow documents such as the 1924 manifesto and NIO to be included as a part of custom. I will then think about what feminist work, such as manifestos and utopias, can teach us about CIL.

International law's foundations are built upon the exclusion of women and gender perspectives, among other factors. Hilary Charlesworth and Christine Chinkin state that 'the absence of women in the development of international law has produced narrow and inadequate jurisprudence that has, amongst other things, legitimated the unequal position of women around the world rather than challenged it'.¹¹⁹ One reason why feminists have highlighted this exclusion is the existence of binaries. Hilary Charlesworth, Christine Chinkin and Shelley Wright argue that the gendered public/private distinction found within both domestic and international law, which has been used to legitimize the dismissal of 'women issues', is premised on the assumption that such a binary is 'real' rather than constructed.¹²⁰ This fictional binary has had harsh (often violent) consequences for women's lives and a great deal of feminist work has been devoted to exposing and eradicating this dichotomy. The public/private binary is also reflected in the gendered domestic/international binary. Women's rights were in most cases classified as a domestic issue, which enabled states to refrain from taking responsibility for granting equal rights to women, firmly cloaking women's concerns as 'private matters'.

Furthermore, the public/private binary has resulted in the exclusion of feminist work from the international legal arena. The pervasiveness of the public/private divide goes beyond actual public/private spaces and facilitates the exclusion of public actors and subject matter. This is evidenced by the fact that WILPF and their work is 'public', yet feminists would argue that, due to its focus, content, female membership and non-state status, it has been discounted or, worse, seen as insignificant and frivolous – as something

¹¹⁹Charlesworth and Chinkin (n 30) 1.

¹²⁰Charlesworth, Chinkin and Wright (n 30) 629.

women do to amuse themselves. Feminist histories of political/legal action designed to influence international and domestic law have rarely been recognised as a component of a state's collective political/legal history, let alone entered into the makings of law. Many feminist projects being carried out today involve writing women and their work back into history.¹²¹

Due to this redaction within the societal structures and historical consciousness of many states, it is easy to see why women's histories have not influenced the making of international law, and as a result remain invisible within CIL. Charlesworth, Chinkin and Wright state that the public/private divide has 'undermined the operation of international law'.¹²² This binary has not only made women's needs invisible; it has diminished their tireless efforts to secure a lasting peace as inconsequential – or rather as a sideshow to the 'real' efforts of male state actors within international institutions. For the women of the WILPF, the NIO reflected their understanding of the harm brought about by the public/private binary, stating that 'as long as they will not work for its realization in their personal and private life, as well as in their public life, the exterior transformation of the world will not bring the expected well-being of mankind [sic]'.¹²³

As a result, feminists have continued to critique international law and developed different feminist projects to put forward new possibilities for the future of international law. Feminists have developed manifestos and utopias to rewrite mainstream international legal narratives, to shape future events around feminist principles and to highlight the consequence of current social and political structures. These tools offer a way for feminist international legal scholars and practitioners to engage with 'alternative histories that become thinkable'.¹²³

How can the WILPF manifesto and NIO be included in CIL?

Nesiah, as well as Sellers, encourages the widening of historical parameters to include the unseen work of marginalised groups into the make-up of the law and are conscious of feminist histories. Charlesworth similarly writes that 'custom also has utopian potential'.¹²⁴ The inevitable question then becomes: How could the 1924 Manifesto and NIO be considered CIL if WILPF is not a state actor? To answer this, we would need to apply Gunning's criteria to WILPF in 1924 to determine whether it could have been seen as a non-state actor capable of contributing to international law.

As discussed in section II of this article, Gunning argued for the ECOSOC criteria to be applied to non-state organizations as a way of assessing non-governmental entities on their ability to contribute to the making of CIL. To be included as non-state actors, groups would be required to:

- (i) reflect ECOSOC concerns, i.e., economic, social, cultural, educational, health, scientific, technological or human rights matters
- (ii) have aims which conform to the goals of the UN Charter

¹²¹See, for example, Immi Tellgren's forthcoming project, <https://helda.helsinki.fi/bitstream/handle/10138/327244/9781108488181_pp381_413_Tallgren.pdf?sequence=1>. P Owens and K Rietzler (eds), *Women's International Thought: A New History* (Cambridge University Press, Cambridge, 2021).

¹²²Charlesworth, Chinkin and Wright (n 30) 638.

¹²³Nesiah (n 61) 316.

¹²⁴Charlesworth (n 28) 44.

- (iii) have an international character or express views of “major sections”
- (iv) have a democratically elected constitution and a largely democratic procedure regarding policy decisions, and
- (v) acquire resources from the contributions of national group members or individuals.¹²⁵

I am aware that the ECOSOC was created in 1945 and its practices are being used to judge an organization that predated its existence. To apply these criteria to the WILPF in 1924 is a form of time-travelling, which may be unusual for an international legal project, but is far from unfamiliar for feminist work.¹²⁶ Moreover, this exercise allows the space for ‘daydreaming’.¹²⁷ It invites questions such as: What if WILPF were deemed capable of contributing to the creation of CIL? Why is this important and what could it potentially have changed? Including collective feminist peace work into the CIL cannon speaks both to the importance of the wider peace work that was going on at the time, as WILPF’s NIO was a part of a larger movement by the UIA,¹²⁸ which was focused on enabling peace to flourish. Including non-state organizations that focused on building peace in the making of CIL established a pattern that was built upon by the WILPF as well as other peace organizations in the years after 1924. Ultimately, it could potentially change the tone of CIL and show the widespread and consistent work of peace that runs alongside mainstream legal histories.

While I am highlighting ways of incorporating non-governmental organizations’ histories of peace work into the making of international law, this is not to say that non-governmental organizations are not currently involved in the creation and maintenance of international law. Fiona De Londras writes that institutions of all types are involved in transnational counter-terrorism – entities such as, ‘formal international organizations, informal international or multilateral institutions, hybrid entities, private actors, and regional organizations’.¹²⁹ These groups are important to take stock of, as they are complicit in creating and influencing the law in very real ways. I note de Londras’s

¹²⁵I Gunning (n 51) 231.

¹²⁶‘Charter of the Women’s International War Crimes Tribunal on Japan’s Military Sexual Slavery’, <<http://iccwomen.org/wigidraft1/Archives/oldWCGJ/tokyo/charter.html>>; C Chinkin, ‘Women’s International Tribunal on Japanese Military Sexual Slavery’ 95 *American Journal of International Law* 335; K Knop, ‘The Tokyo Women’s Tribunal and the Turn to Fiction’ in F Johns, R Joyce and S Pahuja (eds), *Events: The Force of International Law* (Routledge, London, 2011) 145, 153; L Hodson and T Lavers (eds), *Feminist Judgments in International Law* (Hart, Oxford, 2019); R Hunter, *Feminist Judgments: From Theory to Practice* (Hart, Oxford, 2012); M Enright, J McCandless and A O’Donoghue, *Northern/Irish Feminist Judgments: Judges’ Troubles and the Gendered Politics of Identity* (Hart, Oxford, 2017); S Cowan, C Kennedy and V Munro, *Scottish Feminist Judgments: (Re)creating Law from the Outside In* (Hart, Oxford, 2019); ‘The African Feminist Judgments Project’, <<https://www.lawandglobaljustice.com/the-african-feminist-judgments-project>>; ‘The Indian Feminist Judgments Project’, <<https://www.indianfeministjudgmentsproject.com>>; See V Munro, ‘Feminist Judgments Projects at the Intersection’ (2020) 29 *Feminist Legal Studies* 251.

¹²⁷McNeilly (n 10).

¹²⁸Laqua, Van Acker and Verbruggen highlight how the UIA and League of Nations’ vision for world organization differed dramatically. What might have happened if the world paid attention to the WILP NIO or the UIA’s mandate? See D Laqua, W Van Acker and C Verbruggen, ‘Introduction: Reconstructing the Identities of an International Non-Governmental Intelligence Agency’. In *International Organizations and Global Civil Society: Histories of the Union of International Associations* (Bloomsbury, London, 2019).

¹²⁹de Londras F, ‘The Institutions of Transnational Counter-Terrorism’, in *The Practice and Problems of Transnational Counter-Terrorism* (Cambridge University Press, Cambridge, 2022) 18.

argument here to highlight that there are areas of law, such as counter-terrorism/ securitization, that seem to welcome the use of non-state entities with relative ease, yet there is still apparent resistance when it comes to incorporating feminist peace work.

Shifting back to Gunning's ECOSOC discussion, the WILPF as an organization, while still in its infancy in 1924, had a core focus on peace, which it believed entailed a world without war and weapons, and a legal system based on individuals and their everyday needs. The 1924 manifesto, a reaffirmation of the organization's aims, focused on economic, social, cultural, health, education and human rights. The WILPF's manifesto also mirrored the UN Charter's focus on peace. In the Preamble, the UN Charter paints a vision of a new interconnected world. As states looked to the aftermath of World War II, they acknowledged the need for international law to regulate the way states treated individuals and groups, and the importance of holding individuals accountable for violations. The UN Preamble states:

And for these ends to practice tolerance and live together in peace with one another as good neighbors, and to unite our strength to maintain international peace and security, and to ensure, by the acceptance of principles and the institution of methods, that armed force shall not be used, save in the common interest, and to employ international machinery for the promotion of the economic and social advancement of all peoples.¹³⁰

The description of the United Nations' aims demonstrates a similarity with the vision set out in the 1924 manifesto and NIO. While the WILPF believed there was a need to look at both the public and private lives of individual in order to achieve peace, the UN Charter does not venture into this area.

The UN Charter's vision sought a world based on both peace and security, and centred states in this process. The WILPF vision is a step beyond the UN Charter in the focus on the individual and a step away from seeing states as the main actors in international law, but nevertheless the WILPF's vision aligns with the focus on peace. Carle quotes Andrée Jouve, who states:

What we were asking for was what was achieved by the United Nations and its specialised institution, establishing centres for research and action and international relation in all domains. We were also requiring of peoples that, through their non-governmental organization, they associate themselves very actively with the work of international institutions.¹³¹

Jouve was speaking about the work of the NIO, but as demonstrated in section III, both the manifesto and the NIO were an affirmation of the WILPF's principles and vision.

The WILPF had national sections that contributed to its international arm. As shown in the previous section, the NIO itself was headed by some of WILPF's French members, but they gathered input from national branches and after the 1924 congress aimed to again have national sections add/amend it and its next steps. WILPF relied on its national branches to spearhead initiatives and contribute to the goals of the organization, and at their tri-annual congresses they collectively passed resolutions on what action the

¹³⁰United Nations, *Charter of the United Nations*, 24 October 1945, 1 UNTS XVI, Preamble.

¹³¹Carle (n 97) 299.

organization would take. The previous congresses involved thousands of female representatives from different states, and were just one point in a long history of feminist collective action. The WILPF's activities continue today, involving women from across the globe. As mentioned above, I found the 1924 manifesto and NIO in a correspondence file between ILO representatives, meaning it was of relevance to international bodies at the time. This description seems to align with Gunning's criteria.

Another point to consider is that, one of the problematic foundational elements of international law is its relationship with conflict.¹³² Feminist peace organization has often pre-empted formal declarations of war, as is the case with the 1924 manifesto and NIO, which was trying to prevent World War II. Indeed, feminist groups have continually urged states to radically alter their priorities before conflicts occur. Yet, when many recall a historical timeline, they pinpoint key events that almost always involve loss, trauma and violence. For instance, consider the events that led to the creation of the United Nations. Many would indicate important world-changing events of World War II, or highlight VE Day and VJ Day as successful ends to conflict and devastation, paving the way for international (re)organization. While these moments signify shifting power alignments, the end of the war was ultimately not a peaceful enterprise, but was embedded in violence, which continued past the formal end of the war. I am not suggesting an erasure of the violent events that communities have endured; however, I do question whether the inclusion of historical evidence of peace work into mainstream understandings of a people's history might have the potential to pivot international law.

Applying Gunning's suggestion, which would see scholars looking to the work of NGOs when deciding whether there is evidence of custom,¹³³ has the potential to make visible the body of peace work that takes place within international legal spaces. Including histories of peace-making and the organizations that centre their work on peace, which encompasses the organizing, the petitioning, the lobbying, the writing and researching, and the dreaming, potentially repositions international law's development away from cries for war to cries for peace. Perhaps, as more organizations that focus on peace and disarmament are given the opportunity to contribute to international law, we will see that the history of the international legal order can be traced through peaceful action that resists violence, rather than revolving around conflict.

Furthermore, current CIL is based upon what states 'do' as far as unilateral actions are concerned, which means much of it is adversarial and leans towards competition or self-preservation of state interests. Including non-state entities who focus on peace, again expands the history of international legal development beyond the state centric system and recognizes the work of non-state actors in their continual quest for peace. The aim of the 1924 manifesto and NIO was to shift the focus of the world away from imperialist capitalistic goals and set peace and the individual at the centre. As Heathcote states, developing Charlesworth's work, the method and the message must align.¹³⁴ If peace is desired, then the method for achieving this cannot be in direct opposition to it. Therefore, any creation of CIL that is based on aggressive or confrontational acts is wholly incompatible with what peace is or needs to be, and risks damaging an international

¹³²See H Charlesworth, 'International Law: A Discipline of Crisis' (2002) 65 *The Modern Law Review* 377.

¹³³Gunning (n 51) 232.

¹³⁴Heathcote (n 32) 4–5; Hilary Charlesworth, 'Talking to Ourselves? Feminist Scholarship in International Law', in Sari Kouvo and Zoe Pearson (eds), *Feminist Perspectives on Contemporary International Law: Between Resistance and Compliance?* (Hart, Oxford, 2011) 32.

legal system that is supposed to be based on ‘maintaining peace’.¹³⁵ Thus, the inclusion of examples such as the 1924 manifesto and NIO offers an alternative example of collective organizing that is not predicated on conflict.

Redesigning the sources of international law to facilitate peace organization would in theory, as the 1924 manifesto and NIO suggest, reimagine the functionality of the entire international system. The requirements laid out in the NIO were considered to be the ‘minimum requirements for peace’; however, the possibility of carrying this out may appear to be far-fetched. While a complete restructuring of people’s daily lives and redesign of the intricacies of the way the world functions somehow seemed unimaginable prior to the start of 2020, this is no longer the case. The COVID-19 pandemic continues to illustrate the possibility of this development. People are still being forced to change their lives in both monumental and trivial ways. People have been affected on multiple levels, from the way they work and spend their free time (if they even have that luxury) to how they interact with family and friends. While the virus may not ‘discriminate’, dealing with its knock-on effects – whether it be during a lockdown, in the ability to fight/prevent illness, or access to a vaccine – has been greatly affected by socioeconomic status, race and ethnicity.¹³⁶ Therefore, the reality of reimagining both international and national structures is no longer unfathomable, and it may now be all the more necessary in order to avoid situations such as the one we are currently facing. Including feminist manifestos and peace work, like the NIO, provides opportunities to integrate alternative blueprints of a redesigned world into international law, theoretically making international law better placed to prevent global tragedies. It also highlights the limitations of CIL, which is not currently able to conceptualize the range of activities by non-state peace organizations. These entities are already influencing international law and, as Gunning argues, a shifting of CIL would allow international law to recognize this reality.

V. Risks of using historical feminist manifestos and utopias in international law

In this section, I contemplate the challenges faced when feminist aims and principles are incorporated into international law, through a reflection on the prospect of including feminist manifestos and utopias into the cannon of CIL. I first discuss the limits of incorporating historical examples of feminist manifestos and utopias into current day scholarship. I then discuss feminist methodologies, and the possible co-option of feminist principles by international organizations.

Feminist work can be a continuous process of re-visioning, remaking and retelling. Particularly for the feminist international legal scholar, such methods speak to key principles of international law. Dianne Otto states:

Hilary Charlesworth and Christine Chinkin capture something of this vision when they imagine a feminist re-visioning of the list of *jus cogens* norms (the ‘most essential’ or peremptory rules of international law that can never be derogated from). They suggest the list, which includes the prohibition of genocide, slavery, murder/disappearances, torture, prolonged arbitrary detention, and systematic

¹³⁵UN Charter (n 130).

¹³⁶See G Heathcote and M Staggs Kelsall, ‘COVID-19 Symposium: Law in the Time of Corona (or: Dear Dr ...)’ *Opinio Juris* blog, <<http://opiniojuris.org/2020/04/07/covid-19-symposium-law-in-the-time-of-corona-or-dear-dr>>.

racial discrimination, would be expanded to also include the right to peace, to food, to primary health care, to reproductive freedom, and, not least, to be free from systematic gender discrimination – a different world indeed.¹³⁷

As Otto suggests, to enact feminist ideals within international law a different world would need to exist. This is one of the key lessons revealed in the 1924 manifesto and NIO. Specifically, the NIO stresses reprioritizing values, reorganizing institutional structures, reimagining the understanding of law itself and redistributing power. Finding and analysing a document from 1924 is itself an act of adopting an alternative feminist methodology.¹³⁸ A turn to the archives offers the opportunity to gather a fuller picture of past experiences, worries, frustrations, emotions and engagement with the law.

However, despite my excitement (still), I am also cautious. While the possibility of imbuing the sources of international law with feminist work has the potential to expand international legal tenets, it also has the potential to increase law's power in unintended ways. Incorporating feminist histories of peace into the very foundation of international law in many ways legitimizes international law, and thereby state control. The NIO specifically wanted to do away with self-interest and focus on cooperation amongst *peoples*, as nations were viewed as transitory. Therefore, if the NIO was then used as a way to justify the current form of international law, without radical change to law's foundations, could the women of 1924 ever forgive us?

Travelling back into the archives can be exhilarating: finding a set of documents I was previously ignorant of was thrilling and sparked new ideas on international law. However, my finding on the 1924 manifesto and the NIO in the ILO archives was an accident, which is not surprising. All too often, feminist work is not saved, collected and cherished in the same way as other historical documents and objects. The act of archiving is political, as noted earlier. Finding these documents renewed frustrations at the historic dismissal of feminist peace work.¹³⁹ It also forced me to confront the reality of feminist spaces in the 1920s. As much as I was inspired by the work of WILPF's manifesto and NIO, the racial and colonial tensions within the WILPF could not (and should not) be ignored. As previously mentioned, scholars such as Wendy Sharer reveal the underlying assumptions members had about civilized versus uncivilized peoples. Sharer states that both racist and classist beliefs permeated WILPF resolutions in the first decade of the organization.¹⁴⁰ In the 1924 manifesto, when describing the 'International Organization', one of the organization's aims is listed as concerning itself with the 'welfare of backwards races'. In the NIO, there is also a reference to civilized peoples. Moreover, Blackwell and Melinda Plastas detail the racial tensions that existed within the WILPF at the time, with the African American members demanding that their work towards freedom not be sidelined by their white comrades.¹⁴¹ Further still, there is a need to make certain that the Black women's peace movement is not written out of the history of the feminist interwar period.

So what do we do with historic examples of feminist peace work that do not measure up to today's standards of equality and progressiveness? If we hope to rework the foundations of international law by including the many examples of feminist collective

¹³⁷Otto (n 31) 493.

¹³⁸Heathcote (n 32) 13.

¹³⁹See J Vellacott, 'A Place for Pacifism and Transnationalism in Feminist Theory: The Early Work of the Women's International League for Peace and Freedom' (1993) 2(1) *Women's History Review* 23.

¹⁴⁰Sharer (n) 41.

¹⁴¹Plastas (n 64); Blackwell (n 78).

peace work, then do we include them and ‘ignore the bad parts’? As Confortini notes, the WILPF is the oldest international women’s peace organization.¹⁴² It influenced international law prior to the creation of the League of Nations. It might provide the best chance of demonstrating its ‘state-like’ collectivity to influence the sources of international law, as discussed in section IV. There is concern that historical feminist work will never enter the canon of international law, as its issues around diversity could be used as a ‘convenient’ method of exclusion by those currently in power. As a result, feminist histories of influencing international law never really make it in to the halls of power. Feminists might also find that it is uncomfortable to include the histories of organizations that were not always leading the way on progressive causes. These feminist examples do not pass our current ‘feminist test’ as it were. Possibly, part of the answer is to not hide the hurtful and harmful histories of past attempts to make peace. To be upfront and aware that any feminist attempt to address word issues of violence or everyday instances of harm will need to be constantly reimagined and reassessed to ensure it meets feminist standards. Utilizing the feminist method of listening,¹⁴³ focusing on recognizing past histories and the harms brought about by some women’s exclusion from both legal and feminist spaces, has the potential to benefit a rethinking of CIL. A self-critique of CIL, and the harms CIL has inflicted, is necessary before any hope of expanding its tenets can come to fruition.

The other worry is the control relinquished by feminists relinquish when their work enters into international legal spaces. This dilemma will be familiar to many feminists. Otto discusses these issues in relation to the adoption of Security Council Resolution 1325, the first resolution of the Women, Peace and Security agenda, which was originally developed by various civil society organizations, including the WILPF, International Alert, Amnesty International Women’s Commission for Refugee Women and Children and the Hague Appeal for Peace. Initially, the goal for the WILPF was to put its manifestos into law. Ultimately, the aim was full disarmament of the United Nations, its member states and thereby the world. However, as the WILPF and other NGOs debated, the WILPF decided to ‘repackage its approach to make it more palatable to its NGO partners and to those it wanted to persuade in the UN’.¹⁴⁴ Sanam Naraghi-Anderlini also notes that, ‘Everyone was lobbying for their own priorities. But we had to be savvy and realistic about how far we could aim for the ideal without losing the real.’¹⁴⁵ This is a brief example of the complications that arise when different feminist perspectives are forced to condense into one position.

Resolution 1325 was adopted on 31 October 2000, and since that date nine further resolutions have been passed under the Women, Peace and Security agenda. Resolution 1325 was an incredible achievement by civil society and the first time the UNSC recognized women’s agency and that women should not be relegated to the category of helpless victims of war.¹⁴⁶ But the tireless work needed to make Resolution 1325

¹⁴²Confortini, ‘Doing Feminist Peace’ (n 47) 349.

¹⁴³See D Otto, ‘Impunity in a Different Register: People’s Tribunals and Questions of Judgment, Law, and Responsibility’, in Karen Engle, Zinaida Miller and DM Davis (eds), *Anti-Impunity and the Human Rights Agenda* (Cambridge University Press, Cambridge, 2016); Heathcote (n 32) Ch 6.

¹⁴⁴D Otto, ‘The Security Council’s Alliance of Gender Legitimacy: The Symbolic Capital of Resolution 1325’, in H Charlesworth and J Coicaud (eds), *Fault Lines of International Legitimacy* (Cambridge University Press, Cambridge, 2010) 255.

¹⁴⁵S Naraghi-Anderlini, ‘Civil Society’s Leadership in Adopting 1325 Resolution’, in SE Davies and J True (eds), *The Oxford Handbook of Women, Peace and Security* (Oxford University Press, Oxford, 2019) 46.

¹⁴⁶Otto (n 144) 259.

possible did not end with its adoption. These triumphs have led to further complications. Otto notes that despite Resolution 1325 being passed by the Security Council, it is not binding international law.¹⁴⁷ As soft law, it has been seen as a type of lip service, the United Nations *doing gender*. Moreover, Otto suggests that sometimes working as an outsider is an advantage,¹⁴⁸ and highlights the concern of having feminist principles used to legitimize international legal structures. Arguably, the 1924 WILPF manifesto and NIO are outsiders. They do not yet ‘pass the test’ of evidence of CIL but, as discussed above, they instead provide a different purpose. They expose the limits of current CIL. This is often a difficult decision for feminists: should feminist work sit on the outside or is it sometimes better for it to be incorporated into international legal instruments?

For instance, Heathcote discusses how the vast array of feminist knowledge and experiences across different geographical planes has been filtered out of Security Council Resolutions, including resolutions from the Women, Peace and Security agenda and the broader gender and conflict-focused resolutions.¹⁴⁹ Heathcote argues that these resolutions have retained feminist messaging (often in their preamble), but simultaneously ignored feminist methods. Feminist methodologies like ‘ways of knowing, and calls for transformation of structures and institutions: including calls for demilitarisation, disarmament and attention to the nexus between everyday security and global security agendas’¹⁵⁰ have been pushed aside, and instead feminist-type messaging has been used as a ‘normative weapon’.¹⁵¹ I use Heathcote’s argument to make a distinction between the superficial inclusion of feminist work within international law and the actioning of feminist methods, which would involve a rethinking of what international law means, among other things. Utilizing feminist peace work within the historical framing of CIL requires a rethinking of international law rather than just added language or references that nod to a larger feminist history.

Yet Naraghi-Anderlini reiterates that Resolution 1325 has been a crucial tool for various local communities,¹⁵² which underscores one of the benefits of enshrining some feminist ideals in international law. My goal is not to solve these tensions, but rather to draw attention to the balancing act facing feminists when entering international institutions with the goal of securing feminist principles within international law. Unfortunately, the potential for cooption is a constant worry for feminists.¹⁵³ Incorporating feminist histories, like the 1924 manifesto and NIO, into international law will always carry a risk. For the cautious, at the very least the manifesto and NIO provides an important critique of CIL and an argument for the future expansion of CIL’s parameters to include non-state actors who centre their work on non-violence and peace.

¹⁴⁷Ibid 263–64.

¹⁴⁸Ibid 272–73.

¹⁴⁹G Heathcote, ‘Protesting the Preamble: The UN Security Council and the Dilution of Feminist Activism’ (2020) *OpenGlobalRights*, <<https://www.openglobalrights.org/protesting-the-preamble-the-un-security-council-and-the-dilution-of-feminist-activism>>.

¹⁵⁰Ibid 3.

¹⁵¹Ibid 2.

¹⁵²Naraghi-Anderlini (n 145) 49. See also C O’Rourke, ‘Feminist Strategy in International Law: Understanding Its Legal, Normative and Political Dimensions’ (2017) 28(4) *European Journal of International Law* 1019.

¹⁵³See also S Kouvo and Z Pearson, *Feminist Perspectives on Contemporary International Law: Between Resistance and Compliance* (Hart, Oxford, 2011).

VI. Conclusion

Feminist approaches to international law have utilized various creative methods in order to reshape the law, which is key to exploring an alternative way of imagining CIL. In this article, I used the 1924 manifesto and NIO as my source of inspiration to rethink ‘who’ is capable of contributing to the sources of international. I questioned whether adding feminist work had the potential to change the landscape of CIL. I positioned the inclusion of feminist manifestos and utopias as an important tool in the rethinking of international law and as a way to shift law’s paradigm.¹⁵⁴ Specifically, I questioned whether including the histories of feminist peace into the canon of international law could change the accepted legal history to one that also gives prominence to acts of peace-making. This conversation around feminist peace work, which also gathered critical insights from TWAIL approaches, exposed how CIL in its current form is deficient, unable to utilize the rich feminist peace efforts such as the 1924 WILPF manifesto and NIO without recognizing the work of non-state actors, and therefore prioritizes conflict over peace.

Through the 1924 manifesto and the NIO, the WILPF created a vision for a reimagined future, where every part of society would function with the same goal of creating an environment for peace. One could extrapolate how different everyday life might have operated with this framework. Stepping into this redesigned world is to find oneself in a place where competition among states and economic, political or social rivalries do not exist. This is almost impossible to fathom, yet to sit inside their world for a while provides a much-needed reprieve from today’s institutional and legal challenges. Importantly, the 1924 manifesto and NIO also highlight the legacy of feminist work. Revisiting these documents for this article has been a welcome break. I look at their words in 1924, and I am inspired. The excitement I felt in coming across this document fills me with hope. What else is out there sitting in the archives waiting for recognition? What other histories hold the potential to reimagine international law?

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¹⁵⁴See Houghton and O’Donoghue in this issue.