Progress and International Law: A Cursed Relationship?
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Searching for Progress in International Law

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I. Introduction

I thank the Organising Committee for its kind invitation to join this event. It is an honour and a pleasure to participate in this forum, which gives me great hope for the new generation of international lawyers. I will offer an introduction to our conference theme, Progress and International Law: A Cursed Relationship?

Progress is a popular term in every field, and unsurprisingly, in international law. It is regularly used in the titles of articles and books dealing with both general and specific topics.[1] The notion of progress is embedded in the

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1 E.g. Manley O. Hudson, 'The Progressive Codification of International Law', AJIL 20 (1926), 655-669; Jonathan I. Charney, 'Progress in International Criminal Law?', AJIL 93 (1999), 452-464; Russell Miller and Rebecca Bratspies, *Progress in International Law* (Nijhoff 2008); Donald McRae, 'The Work of the International Law Commission, 2007-2011: Progress and Prospects', AJIL 106 (2012), 322-340; Martha C. Nussbaum, 'Women's Progress and Women's Human Rights', HRQ 38 (2016), 589-622; Payam Akhavan, 'The Perils of Progressive Jurisprudence: The Nullum Crimen Sine Lege Principle in International Criminal Law', Current Legal Probs. 75 (2022), 45-70.

text of the Charter of the United Nations. Its preamble refers to a determination 'to promote social progress'[2] and the UN General Assembly's mandate includes 'encouraging the progressive development of international law [along with] its codification'.[3] The General Assembly established the International Law Commission for precisely this purpose.

In this context, I note that the conference theme departs from the popular (usually celebratory) linkage of 'progress' and 'international law'. First it uses the powerful adjective 'cursed', which suggests a deep-seated failure of the relationship between progress and international law. It implies not only that there is a relationship between the terms but also that this is a doomed, toxic conjunction and that international law will always be regressive. So, it might be said, the idea of progress will inevitably disappoint or indeed that it will mask deep-seated inequalities.

Such a theme is echoed in the observation of the Belgian artist René Magritte – 'L'idée du progrès est liée à la croyance que nous nous rapprochons du bien absolu, ce qui permet à beaucoup de mal actuel de se manifester.'[4]

But then there is that question mark in the conference title. This punctuation mark is doing a lot of work, adding a measure of doubt, or ambivalence, to an otherwise dramatic proposition. I have been wondering whether my role is to dispel the question mark. Should I reject the notion of a curse altogether and argue that international law will, eventually, be on the right side of history through the forces of progress? Or indeed should I confirm the hex?

I've decided instead to focus on the idea of a search for progress in international law in a more descriptive sense. How should we think about progress in law? Where should we look for progress? What forms does it take? I will suggest, first, that we should be more careful when using the language of progress and should specify the frame we are using. Second, progress takes many forms in international law; it is not a linear, directional, movement, but may be best understood as a shuffle, with steps forward, back, and sideways. For this reason, it may be easier to locate in the interstices of international legal action than in its grand arcs.

II. The Idea of Progress

What is 'progress'? It isn't obvious what this means. One meaning of 'progress' is simply 'change' itself, in opposition to the idea of 'conservation'

2 See also Article 55 (a).

3 Article 13 1 (a).

4 René Magritte, 'Letter to Paul Nougé (August 1946)' in: André Blavier (ed.), *René Magritte: Écrits complets* (Flammarion 2009), 203.

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or preservation. Aphorisms such as 'you can't stand in the way of progress' draw on this sense. In this context, 'progress' may be associated with new technologies that can disrupt social orders.

Another meaning of progress is to add approbation to the word 'change' by gesturing at a moral or social advance. So, on this account, the antonym of such a meaning of progress is regress or decline. Thomas Skouteris has written lucidly about progress and international law ever since the days of his PhD thesis.

First, Skouteris notes that the idea of progress has an uppercase meaning, in the sense of a grand idea or narrative, but also a lowercase or everyday meaning. This latter sense is evident in the way that progress has become a cliché of management culture – think of terms such as 'progress reports', or the way that progress has been turned into a mundane verb – 'to progress' an agenda, for example – or (my particular *bête noire*) 'moving forward'. Second, Skouteris observes that all varieties of progress talk, whether lower or uppercase, are 'theoretical "all the way down"'.[5] This discourse provides a frame or lens on any change in direction from the past. For this reason, Skouteris posits that 'any evaluative statement that uses progress as the benchmark of choice must be treated as a normative mode of speaking the world'.[6] So, we should pay attention to the nature of the frame that progress imagery or language imposes in specific cases.

Let me present three vignettes of progress in international law from quite different perspectives.[7]

1. The Great Hall of Justice in the Peace Palace

The first account of progress I offer is visual – the idea of progress represented in the windows of the Great Hall of Justice in the Peace Palace. Paying attention to the art and architecture of an international institution can reveal the expectations of its founders, and also the way that these continue to shape the expectations and performance of the institutions. Such an approach calls into question the modernist separation between art and law: it uncovers the 'intimate links […] between power, law and images […]'.[8]

5 Thomas Skouteris, The Notion of Progress in International Law Discourse (Asser 2009), 720.

6 Skouteris (n. 5), 720.

7 For a careful analysis of the techniques by which progress narratives are constructed in international law see Tilmann Altwicker and Oliver Digglemann, 'How is Progress Constructed in International Legal Scholarship?', EJIL 25 (2014), 425-444.

8 Costas Douzinas, 'The Legality of the Image', M. L. R. 63 (2000), 813-830 (815).

The art of the Peace Palace presents adjudication as an inexorable story of progress. The United Kingdom, on behalf of the Commonwealth, made a gift of the four huge stained-glass windows for the Great Hall. Each consists of four panels.[9] These windows infuse the Court room with light, in the manner of cathedrals, and immediately connect with a European religious tradition.[10]

The windows are titled 'The Evolution of the Peace Ideal' and they were made in 1914 by the Scottish artist Douglas Strachan. Strachan's idea was to depict the ideal of peace as it advanced through four phases: The Primitive Age; The Age of Conquest; The Present Age; and Peace Achieved. While Strachan left detailed notes about the images and allegories in the windows, a viewer can get a good idea of their meaning from simply looking at them.

The windows are read from left to right: a state of nature, a crisis, a transition, and a resolution.[11] The windows present a story of unremitting progress towards international adjudication, which emerges as a marker of civilisation. As you can see, Strachan invested his work with meaning: the windows are full of symbols, signs, and the colours all have significance, changing with each age.

What account do the windows present of the international system? Despite the Carnegie Foundation's strict taboo on religious images, we can see that the work abounds in Biblical imagery: the Fall, the Flood, the life of Jesus, the Apocalypse.[12] *The Primitive Age* depicts early human society: hunters, shepherds and harvesters live harmoniously with nature. The Latin inscription (from Ovid) declares that 'man lived in peace without the need of the military'. Panel III depicts the discovery of fire; and then Panel IV the art of metal working – figures appear with helmets, foreshadowing conflict. It is as if 'the very technologies and social hierarchies that enhanced the productive power of early societies spelled the end of their peaceful coexistence'.[13]

In the second window, *The Age of Conquest*, we see the collapse of peace: the skies are made red by Bellona, the goddess of war. Fires rage and there

9 According to Duranti, they reflect the attempts by the crafters to 'circumvent the Carnegie Foundation's prohibition on anchoring pacifist internationalism in the Christian inheritance of the West': Marco Duranti, *The Conservative Human Rights Revolution: European Identity, Transnational Politics, and the Origins of the European Convention* (Oxford University Press 2017), 42.

10 Indeed, much of the designer, Douglas Strahan's, previous work is found in Scottish cathedrals. Duranti (n. 9), 43.

11 Daniel Litwin, 'Stained Glass Windows, the Great Hall of Justice of the Peace Palace' in: Jessie Hohmann and Daniel Joyce (eds), *International Law's Objects* (Oxford University Press 2018), 463-477 (469).

12 But Strachan placed the signs of the zodiac and the seasons above them rather than Christian icons. Duranti (n. 9), 43.

13 Duranti (n. 9), 45.

are symbols of hunger and death. Labour is tied to a wooden stake and is powerless to stop the soldiers looting. Above them, fighters enter into battle. They are dressed in different national clothing, but all carry the same banner. The plough is broken. The conquered are forced to drag the battering ram to destroy the fruit of their labour. Panel IV however presents a 'Constructive Spirit' – a visionary who brings Justice and hope to encourage humans toward peace.

The Present Age (the third window) shows the realisation that war hinders progress and that scientific developments can rebalance the scales. Labour holds Bellona in chains in Panel II, as Science (Panel III), Philosophy and the Arts (Panel IV) prepare for peace. Finance looks down, one finger on a telegraph; note the bag of coins. Strachan wrote that this signals that international disputes should be 'settled between representatives, and not by the meaningless massacre of whole races.'[14] The upper Panels depict the search for mutual understanding and peace by all four quarters of the globe.

The final window, *Peace Achieved*, shows (in the artist's words) that Peace marks 'the real beginning of man's higher development'. We see Peace and Justice rising from the ashes; swords are made into ploughshares; lions lie down with the lambs; and doves fly all over the place – iconography from the Bible. There is a sense of the pastoral idyll of the first window of the Primitive Age, but this is a scientifically informed society.

In Panel II, Arbitration holds sway – symbolised by the four quarters of the earth coming together 'North and South holding the balance; East and West abiding by the verdict' (in Strachan's words). In Panel III, Bellona is dying in the arms of Peace. It is only then, in the final Panel, that international adjudication appears. This appears as the acme of civilisation.

Daniel Litwin has a marvellous chapter on the windows in the wonderful book *International Law's Objects*. His rich analysis proposes that the windows encode three major beliefs about international adjudication. First, that adjudication is essential to peace – peace can only be achieved by law; i. e. only justice and order could curb the chaos of international politics. Moreover, the windows associate law simply with adjudication.

Litwin's second observation is that, in the highly structured narrative of progress, the windows also present international adjudication as a marker of civilisation.[15] We can see an anthropological account of history, reflecting the scientific, positivist ideas of the late nineteenth century. This meshed with attempts by positivist international lawyers to detach interna-

14 Quoted in Litwin (n. 11), 470.

15 Litwin (n. 11), 471.

tional law from ideas of a natural law, and the evolutionary ideas of the era emphasised the value of science over belief. Anthropologists used categories such as civilised peoples as opposed to primitive peoples, barbarians, and savages, and these informed categorisations used by international lawyers also.

These are represented in the windows – *The Primitive Age* depicts a romantic idea of a pastoral society without weapons; *The Age of Conquest* = barbarians; and *Present* = civilised. States could only participate in international adjudication once they had reached civilised status and recognised that war could be avoided. Using the narrative of progress, Lassa Oppenheim wrote in 1908 that the science of international law requires 'a deep-rooted faith in the progress of the nations towards peace and civilization'.[16] Such a narrative shaped the story of international adjudication giving it some structure.

Third, Litwin argues, the windows present international adjudication as outside or above history – international adjudication comes out of a timeless past.[17] The windows are resolutely anti-modern in their interest in romantic symbols and in deploying a complicated story line.[18] This may be because Strahan was part of the Scottish arts and crafts tradition, which built on the Gothic style of the medieval era in stained glass.[19] But at the same time, the windows also reference improved technology, and the role of science.

In this sense, the windows reflect two contradictory accounts of progress, one cyclical and one linear.[20] One is to emphasise the legitimacy of adjudication through showing its long provenance back to time immemorial. The other is adjudication as the culmination of the struggles depicted in the three earlier windows. And yet, even at the darkest times of war, there may be visionaries who promote peace.

The architecture and iconography of the Peace Palace shows that the asserted universality of the institution is very much based on western values. It encodes a particular vision of civilisation, not a universal one. At the end of the First World War, when adjudication in the form of arbitration was largely discredited, it could mutate into a judicial form.

16 Quoted in Litwin (n. 11), 472.

17 Litwin (n. 11), 463.

18 Litwin (n. 11), 474.

19 The aim of the arts and crafts movement was to rescue local and regional folk traditions in art from the extinction threatened by the industrial revolution and its mass production. The windows are intensely romantic and traditional, referencing gothic style; the opposite of modernism. Compare the stained glass of the De Stijl movement, or the Bauhaus. An example is the work of Josef Albers, <https://www.guggenheim.org/blogs/findings/the-little-known-glass-works-of-josef-albers>, last access 26 November 2024.

20 Duranti (n. 9), 44.

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The windows, created originally for the Permanent Court of Arbitration, are now read in a different context: 'although the underlying meaning of international adjudication has changed significantly, its seeming immemorial association with peace and civilisation remains'.[21] So, although the windows were very much a creation of their time, some of that symbolism and meaning still resonates today – the idea that progress consists of strengthening adjudication. For example, we can find some of the romance and optimism about international adjudication contained in Strachan's windows in proposals for a World Court of Human Rights. So too, the creation of the courts of international criminal law is regularly hailed as progress. Adjudication is often presented as the acme of international legal endeavour.

2. Access to International Adjudication

The idea that the arc of the moral universe bends towards adjudication is not only traced in art. Adjudication is associated with progress in legal discourse, also.[22] In a legal system where adjudication has great status, it is unsurprising that progress is often measured through access to courts. On this account, the more adjudicative fora there are, and the more accessible they are, the more advanced is the international legal system. Observers of international (and national) courts often describe developments in jurisprudence in the language of progress. The idea seems to be that, with the passage of time, judicial institutions will tend to pay greater attention to the reality of human lives.[23]

My second vignette is, then, jurisprudential progress in the field of access to international justice. As far as the International Court of Justice is concerned, this story is often presented as a tale of two cases: on the one hand, the controversial judgment in *South West Africa*; on the other, the auspicious *obiter* in *Barcelona Traction*. First, a regressive institution that evades its duty to dispense justice; then, a court manifesting its readiness to ensure the protection of basic human rights.

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21 Litwin (n. 11), 476.

22 See from the Interwar era, for example, Nicolas Politis, *La justice internationale* (Hachette 1924), 16-17, and Charles De Visscher, 'La Cour permanente de justice international et son role dans le règlement des différends entre Etats', Nordisk Tidsskrift for International Ret 4 (1933), 147-157; see Hart's criticism of international law as a legal system: Herbert L. A. Hart, *The Concept of Law* (2nd edn, Clarendon 1994), 213 f.; also Fuad Zarbiyev, 'On the Judge Centredness of the International Legal Self', EJIL 32 (2021), 1139-1166.

23 See Alaa Hachem, Oona Hathaway and Justin Cole, 'A New Tool for Enforcing Human Rights: *Erga Omnes Partes* Standing', Colum. J. Transnat'l L. 62 (2024), 259-332.

South West Africa, revolves around the 1920 League of Nations Mandate for German South West Africa, or rather around its application after the Second World War by the mandatory power, South Africa. In addition to obligations owed to foreign nationals ('special interests' provisions), the Mandate also imposed obligations on South Africa with respect to the treatment of the inhabitants of the Mandated Territory ('conduct' provisions).[24] Indeed, it was precisely because of South Africa's alleged failure to live up to the conduct obligations that Ethiopia and Liberia resorted to the International Court of Justice.

As every international lawyer knows, in 1966 the Court held that the two applicants would have the right to invoke the responsibility of South Africa only if the latter bore any 'direct obligation' towards the other members of the League of Nations individually under the Mandate.[25] As it was unable to find any such obligation owed directly and individually to Ethiopia and Liberia, the Court denied them standing.

Four years later in the course of *Barcelona Traction*, the Court (re)discovered the concept of the 'international community' as a collective whole, which is the beneficiary of some fundamental obligations.[26] The Court affirmed that all States have a legal interest in the protection of the rights corresponding to those obligations and, according to the canon, the Court indicated that such protection may be implemented through judicial proceedings. The tension raised by *South West Africa* is resolved, and progress achieved.

A longer history presents a more nuanced image. To begin with, the idea that States may have a legal interest in the protection of collective rights had been suggested since the early days of the Permanent Court of International Justice in SS *Wimbledon*.[27] And yet, this legal interest is not enough in itself to waive the fundamental requirement of consent to international adjudication, which is the basis for the legality but also for the legitimacy of the Court's decisions.

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24 The distinction between 'conduct' clauses and 'special interests' provisions was alluded to in ICJ, *South West Africa Cases* (Ethiopia v. South Africa; Liberia v. South Africa), preliminary objections, ICJ Reports 1962, 319 (343) (where it was treated as a distinction without a difference), and developed in ICJ, *South West Africa*, Second Phase, ICJ Reports 1966, 6 (para. 11). See, for example, Article 2: 'The Mandatory shall promote to the utmost the material and moral well-being and the social progress of the inhabitants of the territory subject to the present Mandate.'

25 ICJ, *South West Africa* (n. 24), para. 14.

26 ICJ, *Barcelona Traction, Light and Power Company, Limited* (Belgium v. Spain), merits, judgment of 5 February 1970, ICJ Reports 1970, 3 (paras 33-34).

27 PCIJ, *SS Wimbledon*, merits, judgment of 17 August 1923, Series A no. 1, 20.

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This last point was illustrated in the case of *Armed Activities (DRC v. Rwanda)*, decided over thirty-five years after *Barcelona Traction*. In that case, the Court held that the invocation of rules creating *erga omnes* obligations, indeed of peremptory norms, could not compensate for the absence of a valid title of jurisdiction.[28]

A similar juxtaposition was observed just over a decade ago. Within the course of the same year – 2012 – the Court affirmed, on the one hand, that sovereign immunity validly precludes the adjudication by domestic courts of claims concerning alleged violations of peremptory norms[29] and on the other, that all States parties to the Torture Convention may hold a State accountable for failing to prosecute the crime of torture.[30]

There are many other jurisprudential shuffles. We might think of how the *Monetary Gold* principle was diluted in *Phosphate Lands in Nauru*, only to be reinvigorated three years later in *East Timor*. They may even be detected in the same case: a few pages after its celebrated passage in the famous *Barcelona Traction*, the Court was circumspect about an unqualified right to protect victims of human rights violations.[31]

Without a clear account of the benchmark by which progress is measured, it is challenging to determine which of those jurisprudential moves are geared at the direction of progress and which ones sail against the wind. Moreover, we can see that, on any measurement, progress does not take a linear form, but can move forward and backwards. In any event, we might question the association of progress with greater access to judicial institutions.[32] As international lawyers, we tend to assume that more law, more courts are good things, but there are many other ways to regulate, or to influence the course of events. The International Court and its jurisprudence can be seen as one thread in a tapestry of effective regulation, of influencing the course of events. But the thread can break if too much weight is placed on it alone, and its strength depends on it being woven with other types of

28 ICJ, *Armed Activities on the Territory of the Congo (New Application: 2002)* (Democratic Republic of the Congo v. Rwanda), Jurisdiction and Admissibility, ICJ Reports 2006, 6 (para. 64).

29 ICJ, *Jurisdictional Immunities of the State* (Germany v. Italy: Greece intervening), judgment of 3 February 2012, ICJ Reports 2012, 99 (para. 93).

30 ICJ, *Questions relating to the Obligation to Prosecute or Extradite* (Belgium v. Senegal), merits, judgment of 20 July 2012, ICJ Reports 2012, 422 (paras 69-70).

31 ICJ, *Barcelona Traction* (n. 26), para. 91.

32 Martti Koskenniemi, 'The Function of Law in the International Community: 75 Years After', BYIL 79 (2008), 353-366 (366): 'But judicalization also has its well-known disadvantages. It prefers some interests against others; some voices become heard in courts and tribunals whereas other voices only with difficulty if at all. There is still much work to be done on how interests and preferences get filtered in different institutions and thus contribute to form the structural bias of such institutions.'

regulation.[33] These might include institutional and political pressures, publicity, and activism as well as art, architecture, and literature.

3. Women, Peace, and Security

My third vignette, the field of women, peace, and security (WPS), illustrates apparent normative progress in international law.[34] The United Nations Security Council's WPS agenda commenced formally with the adoption of Security Council Resolution 1325 in October 2000.[35]

Resolution 1325 marked the first time that the Security Council had promoted the 'full involvement [of women] in all efforts for the maintenance and promotion of peace and security'.[36] Over the following 20 years nine further WPS resolutions were adopted.[37] WPS builds on existing regimes of international law – international humanitarian law, human rights law, international criminal law, and refugee law.

From a feminist perspective, it is a seeming success story, with Resolution 1325 described as 'the focal point for galvanising worldwide efforts to deal with the many challenges that women face in situations of conflict'.[38] WPS has generated normative changes in the international landscape. It has underscored the importance of women's participation and representation in decision-making with respect to conflict prevention, management and resolution, as well as in peacekeeping field operations, transitional justice processes

33 John Braithwaite, 'Conclusion: Hope and Humility for Weavers with International Law' in: Brett Bowden, Hilary Charlesworth and Jeremy Farrall (eds), *The Role of International Law in Rebuilding Societies after Conflict* (Cambridge University Press 2009), 270-288 (276).

34 Christine Chinkin, *Women, Peace and Security and International Law* (Cambridge University Press 2022), especially chapter two.

35 Resolution 1325 was based on a long history of peace activism by women and more recent antecedents such as the 1995 Beijing Platform for Action and its five-year follow-up. United Nations, *Beijing +5 Political Declaration and Outcome: Outcome of the Twenty-Third Special Session of the General Assembly entitled 'Women 2000: Gender Equality, Development and Peace for the Twenty-First Century', 5-9 June 2000* (United Nations 2015), <https://www.un.org/womenwatch/daw/followup/beijing+5.htm>, last access 20 December 2024.

36 UNSC Res 1325 of 31 October 2000, S/RES/1325, preamble.

37 UNSC Res 1820 of 19 June 2008, S/RES/1820; UNSC Res 1888 of 30 September 2009, S/RES/1888; UNSC Res 1889 of 5 October 2009, S/RES/1889; UNSC Res 1960 of 16 December 2010, S/RES/1960; UNSC Res 2106 of 24 June 2013, S/RES/2106; UNSC Res 2122 of 18 October 2013, S/RES/2122; UNSC Res 2242 of 13 October 2015, S/RES/2242; UNSC Res 2467 of 23 April 2019, S/RES/2467; UNSC Res 2493 of 29 October 2019, S/RES/2493.

38 Radhika Coomaraswamy and others, *Preventing Conflict, Transforming Justice, Securing the Peace: A Global Study on the Implementation of Security Council Resolution 1325* (United Nations 2015), 28.

and as special envoys and representatives of the United Nations Secretary-General.

The WPS agenda has recognised sexual violence as a tactic of war that can 'significantly exacerbate situations of armed conflict'[39] and as a tactic of terrorism.[40] It has emphasised the need to end impunity for sexual violence. This WPS agenda has been amplified regionally and nationally, for example through the introduction of WPS policies by the African Union, the European Union and the North Atlantic Treaty Organization (NATO). It has been incorporated into military training and foreign policy.[41]

This apparent success of the WPS agenda illustrates however the simplification of feminist ideas. In using the language of gender and urging a 'gender perspective', the United Nations Security Council has confined the meaning of 'gender' to 'women', who are assumed to have 'special needs'[42] in post-conflict reconstruction and in protection from sexual violence in armed conflict. In contrast, sexual violence against men is referenced in only two WPS resolutions,[43] and harms to other persons targeted for their sexuality or gender identity are not directly mentioned at all. Women and girls are portrayed as permanent victims in need of protection by (male) peacekeepers and military forces. Their experiences of conflict are largely reduced to their sexual vulnerability rather than to other conflict-related harms such as displacement, or to pre-existing inequalities and disadvantage.[44]

Through the WPS agenda, international law has fashioned particular images of women that come within its gaze. The most popular is the victim of sexual violence during conflict. Another is the vulnerable mother with

39 UNSC Res 1820 (n. 37).

40 UNSC Res 2242 (n. 37).

41 For example, in 2012, the UK Government launched a foreign policy initiative on Preventing Sexual Violence in Armed Conflict: see Select Committee on Sexual Violence in Conflict, *Sexual Violence in Conflict: A War Crime* (House of Lords 2016, 123), paras 20 and 56-64. Over 100 states have adopted National Action Plans (NAPS) for the implementation of Resolution 1325. They include states in conflict such as Ukraine, Mali, and South Sudan and 'post-conflict' states such as Rwanda and Nepal. The Nordic states, with little overt conflict, and states that regularly undertake military actions abroad such as the United States and the United Kingdom have also adopted NAPs. See WPS National Action Plans <https://www.wpsnaps.org/>, last access 6 November 2024.

42 UNSC Res 1325 (2000) (n. 36).

43 UNSC Res 2106 (2013) (n. 37), preamble; UNSC Res 2467 (2019) (n. 37), para 18.

44 By contrast, the CEDAW Committee has presented a fuller picture of women's conflict-related experiences making recommendations for instance with respect to their access to health, education and employment, displacement and participation during and post-conflict. CEDAW Committee, 'General Recommendation no. 30 on Women in Conflict Prevention, Conflict and Post-Conflict Situations', 1 November 2013, UN Doc CEDAW/C/GC/30.

children. Yet another favoured image is the local stalwart who will detect early signs of radicalism and terrorist tendencies in their sons and spouses and their wider communities. Such limited images may be inevitable in legal systems, which operate with a unitary subject and factor out the complexity of intersecting forms of inequality.[45]

The Security Council's adoption of resolution 1325 in 2000 signaled that issues of women's lives in conflict-affected zones were brought into the most powerful body in the international legal order. WPS was promoted by women's Non-Governmental Organisations (NGOs) as a women's human rights agenda and a women's peace agenda. The latter aspect has almost entirely disappeared. Despite the three components – women and peace and security – there are only passing references in the WPS resolutions to conflict prevention[46] and no substantive actions for making or sustaining peace.

The 2015 Global Study on the implementation of resolution 1325 reported that women from around the world it had consulted overwhelmingly called for an end to militarisation and for prevention and protection through non-violent means.[47] But WPS has rather been securitised through the Council's call for the inclusion of more women in military bodies, for protective military action and the integration of WPS with agendas for countering terrorism and violent extremism. Engle, Nesiah, and Otto observe that resolution 1325 was adopted at a time of anxiety about the Security Council exerting increased powers. On this analysis, WPS bolsters the legitimacy of Council actions through its apparent concern for the welfare of women and girls during armed conflict while doing little to promote peace and to prevent such violence.[48]

Whatever the reasons for the adoption of this agenda, over twenty years after its adoption its implementation remains fragile, undermined by gendered institutional cultures. Indeed, the United Nations Secretary-General's 2022 report on WPS conceded that '[d]espite normative agreement since the year 2000 and evidence that gender equality offers a path to sustainable peace

45 Gina Heathcote, *Feminist Dialogues on International Law: Success, Tensions, Futures* (Oxford University Press 2019), 2-3. See also the critique of WPS by Ratna Kapur, '"The First Feminist War in all of History": Epistemic Shifts and Relinquishing the Mission to Rescue the "Other Woman"', AJIL Unbound 116 (2022), 270 f.

46 UNSC Res 1325 (2000) (n. 36) and subsequent resolutions urge women's increased representation in processes for conflict prevention but do not develop what those processes might require. The assumption is that peace is simply the absence of conflict.

47 Coomaraswamy and others (n. 38), 25.

48 Karen Engle, Vasuki Nesiah, and Dianne Otto, 'Feminist Approaches to International Law' in: Jeffrey L. Dunoff and Mark A. Pollack (eds), *International Legal Theory: Foundations and Frontiers* (Cambridge University Press 2022).

and conflict prevention, we are moving in the opposite direction' and that 'the world is experiencing a reversal of generational gains in women's rights while violent conflicts, military expenditures, military coups, displacements and hunger continue to increase'.[49]

Using a feminist framing, then, WPS appears as normative progress. But its effect has been constrained by gendered institutional cultures. So, progress here manifests as two steps forward and one step back; or even one step forward and two steps back.

III. Conclusion

The idea of progress animates much discussion of international law. This is precisely what inspires and sustains many of us. David Kennedy has described a distinctive attribute of international lawyers – their fervent belief in the discipline. He points out that the discipline of international law is:

> 'a project[…] of reform as much as [a] field of study. […] At a minimum, such lawyers see themselves and their work *favoring* international law and institutions in a way lawyers working in many other fields do not – to work for a bank is not to be *for* banking.'[50]

For this reason, perhaps, the discourse of progress is irresistible to international lawyers.

Altwicker and Diggelmann have observed a resurgence of progress narratives in international law over the past two decades.[51] They suggest that such narratives were more fraught in the 1990s and the early 2000 s when critical thinking in international law had more influence. With the retreat of such critiques more recently, they argue, progress is back in vogue. So, returning to the conference theme, is the relationship between progress and international law cursed, or doomed to fail? This is surely too sweeping a proposition.

I have tried to argue, first, that progress talk can be valuable if we are explicit about the frame we are using. Second, that progress in international law seldom appears in linear form and rarely entails the construction of new legal principles. It is, rather, a shuffling movement, and may involve

49 UNSC, 'Women and Peace and Security: Report of the Secretary-General', UN Doc S/2022/740 of 5 October 2022, para 2.

50 David Kennedy, 'A New World Order: Yesterday, Today, and Tomorrow', Transnat' l L. & Contemp. Probs. 4 (1994), 329, 335.

51 Altwicker and Diggelmann (n. 7), 444.

repair rather than construction.[52] We can say, then, that the relationship between progress and international law is not cursed, but neither is it charmed. It is rather a complicated relationship that is constantly being re-negotiated.

[52] See the idea of The Great Repair in the architectural literature, rejecting the notions of innovation, growth and progress associated with capitalist modernity and focussing instead on maintenance, repair and servicing.

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