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The Populist Backlash to Gender Equality in International Fora: Analyzing Resistance & Response at the United Nations

SHRUTI RANA[†]

I. INTRODUCTION: THE GROWING GLOBAL BACKLASH TO GENDER EQUALITY

As the most recent wave of populism spreads around the world, a striking pattern is emerging. At the same time the populists rising to power around the world claim to represent the authentic voice of their people, they also evince a deep hostility to at least half of their population: women.¹

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1. See KURT WEYLAND, POPULISM: A POLITICAL-STRATEGIC APPROACH 2-4, in THE OXFORD HANDBOOK OF POPULISM (Cristobal Rovira Kaltwasser, Paul Taggart, Paulina Ochoa Espejo and Pierre Ostiguy, eds., 2017), available at DOI: 10.1093/oxfordhb/9780198803560.013.2 (discussing how the recent wave of populists relies on discourse as a definitional feature of their populism, and that this form of populism “sees power emanate from ‘the people’ and channel through a leader who seeks to reach followers directly); see also Peter Beinart, *The New Authoritarians Are Waging War on Women: Donald Trump's Ideological Cousins Around the World Want to Reverse the Feminist Gains of Recent Decades*, THE ATLANTIC (Jan.-Feb. 2019), <https://www.theatlantic.com/magazine/archive/2019/01/authoritarian-sexism-trump-duterte/576382/> (“ . . . besides their hostility to liberal democracy, the right-wing autocrats taking power across the world share one big thing, which often goes unrecognized in the U.S.: They all want to subordinate women.”).

The current leaders of countries as varied as the U.S., Brazil, Hungary, and the Philippines have all sought to bolster their power and mobilize their followers by exploiting this dichotomy, claiming to represent the will of the people while glorifying, if not aiding and engaging in, attacks on women and gender equality. Populist leaders including Trump, Bolsonaro and Duterte, for example, have expressly sought to paint female opponents in violent and sexualized terms while dismantling legal and other protections for women.² In Hungary, the government has sought to discredit women's organizations as "foreign agents' threatening national identity" while stripping them of state funding, shutting down the government gender equality unit, and banning gender studies programs at universities.³ The governments and leaders of Turkey, Russia, and Poland have engaged in similar rhetoric and responses that decry gender rights as they roll back human rights protections and reproductive healthcare in the name of restoring national power and prestige.⁴

These patterns are being replicated around the world as populist leaders in a wide range of countries including Bolivia, Croatia, Italy, Nicaragua, and Venezuela, similarly invoke the "will of the people" as they "promote state projects to enforce heteronormative and patriarchal family models, aim to curtail reproductive rights and are strongly oppositional to rights of sexual minorities," while women "are referred back to their roles as mothers and reproducers of the nation."⁵

2. See Beinart, *supra* note 1 (listing examples of these leaders' rhetoric and actions unraveling women's rights and gender equality protections, including that "Bolsonaro of Brazil told a Brazilian congresswoman in 2015, 'I would not rape you, because you are not worthy of it.' His supporters would chant about feeding dog food to feminists. Duterte of the Philippines informed soldiers in 2017 that they could rape up to three Mindanao women with impunity. In 2018, he ordered his soldiers to shoot female rebels 'in the vagina', because 'that would render them useless.'").

3. Alisha Haridasani Gupta, *Across the Globe, A "Serious Backlash Against Women's Rights": The Rise of Authoritarianism has Catalyzed a Rollback of Gender Violence Protections and Support Systems*, N.Y. TIMES (Jan. 22, 2020), <https://www.nytimes.com/2019/12/04/us/domestic-violence-international.html>; see also Lauren Kent & Samantha Tapfumaneyl, *Hungary's PM Bans Gender Study at Colleges Saying 'People are Born Either Male or Female'*, CNN (Oct. 19, 2018), <https://www.cnn.com/2018/10/19/europe/hungary-bans-gender-study-at-colleges-trnd/index.html>.

4. See Gupta, *supra* note 3.

5. Conny Roggeband and Andrea Krizsan, *Democratic Backsliding and Backlash Against Women's Rights: Understanding the Current Challenges for Feminist Politics*, Expert Paper prepared for the UN Women Expert Group Meeting, Sixty-Fourth Session of the Commission on the Status of Women (CSW 64) 'Beijing + 25: Current Context, Emerging Issues and Prospects for Gender Equality and Women's Rights', EGM/B+25/BGP.1, New York, New York, 25-26 September, 2019, pp. 14-15, available at <https://www.unwomen.org/en/csw/csw64-2020/preparations/expert-group-meeting#background-paper>.

Thus, a closer look at the ways the pattern is playing out globally shows that the attacks on gender equality are moving beyond rhetoric and symbolic action, as they are translated into state action aimed at rolling back rights while promoting a return to a past patriarchal and stereotypical social order. Turkey's President Erdogan, for example, stated that equality between men and women is "against nature" and that "you cannot put women and men on an equal footing," while his administration pushes legislation aimed at providing impunity for perpetrators of sexual exploitation and pressures women to increase childbearing.⁶ Likewise, in Poland, the government has launched attacks on reproductive rights, LGBTQ+ organizations, and "Western" liberal ideals like gender equality while attempting to ban many forms of reproductive healthcare and, recently, launching a campaign to encourage its population to "breed like rabbits" and increase their family size.⁷ The great cultural, economic, legal, and other diversity between these nations only serves to highlight a key unifying feature of their rhetoric and actions—a backlash to gender equality.

In a number of ways, this widespread backlash to gender equality mirrors the threats these populists pose to the global legal order. On the international stage, these figures have ushered in an era of retreat from global governance and international institutions. The United States has sought to withdraw from international agreements and frameworks including the Trans-Pacific Partnership and the Paris Climate Agreement, helped paralyze the WTO appellate body, and sought to harden national borders to both people and trade.⁸ Similarly,

6. See Maya Oppenheim, 'Marry-your-rapist' Bill to be Introduced by Lawmakers in Turkey, THE INDEPENDENT (Jan. 22, 2020), <https://www.independent.co.uk/news/world/europe/turkey-marry-rapist-bill-child-marriage-a9296681.html>.

7. See Roggeband, *supra* note 5, at 10-11, 17-18 (detailing the Polish government attacks on feminists, LGBTQ+ organizations, and "Western" liberal ideals); Daniel Boffey, *Polish Government Widely Condemned Over Morning-After Pill Law: Legislation requiring doctor's appointment is latest attack on women's rights in Poland and violates shared EU values, says MEP*, THE INDEPENDENT (June 26, 2017), <https://www.independent.co.uk/news/world/europe/turkey-marry-rapist-bill-child-marriage-a9296681.html>; see also *Poland Urges Citizens to "Breed Like Rabbits" to Counteract Falling Birth Rate*, THE INDEPENDENT (Nov. 9, 2017), <https://www.independent.co.uk/news/world/europe/poland-low-birth-rate-health-ministry-youtube-advert-rabbits-sex-population-a8045076.html>.

8. Mark Copelovitch & Jon C.W. Pevehouse, *International Organizations in a New Era of Populist Nationalism*, 14 THE REV. OF INT'L ORGANIZATIONS 169, 170 (2019), available at <https://doi.org/10.1007/s11558-019-09353-1> (discussing how "[r]ecent economic and political developments in the United States, United Kingdom, and the Eurozone have raised serious challenges to globalization and the multilateral economic and security institutions that have been the bedrock of the liberal international order since World War II" and citing President Trump's withdrawal from the TPP, the Paris Climate Agreement, and the

the United Kingdom is in the process of withdrawing from the European Union, and has joined a number of European countries in working to undermine and dismantle the international refugee protection system that was supposed to be a bedrock of the post-World War II global order.⁹ Amidst rising nationalism, populist leaders have projected domestic grievances and stratifications onto the global stage, framing these withdrawals from the international to the domestic sphere as attempts to “reclaim sovereignty from international arrangements” and as a backlash to and rejection of “cosmopolitan elites” who support both international institutions and globalization.¹⁰

From this perspective, it is unsurprising that the populist attacks on women’s rights and gender-based human rights are also beginning to transcend domestic politics and enter the international sphere.¹¹ Just as the “rise of populist, neo-sovereigntist movements and governments”¹² is being recognized as a global movement, the

Intermediate-Range Nuclear Forces (INF) treaty, attacks on NATO, and push for protectionist trade policies and immigration restrictions; citing as European examples Brexit, the refugee crisis, and the lingering effects of the financial crises as threatening to re-divide Europe along new economic and geopolitical lines). See *WTO Appellate Body Going Into Slumber is a Serious Setback*, FINANCIAL EXPRESS (Dec. 24, 2019), <https://www.financialexpress.com/opinion/wto-appellate-body-going-into-slumber-is-a-serious-setback/1802397/> (noting that on December 11, 2019, the World Trade Organization’s Appellate Body (AB) “went into hibernation” as a result of US blocking new appointments, and describing this development as “a serious setback for the rules-based multilateral trading order” and the rule of law as new appeals would now plunge into a “void.”).

9. See Copelovitch and Pevehouse, *supra* note 8; see also Max Fisher & Amanda Traub, *Trump Wants to Make it Hard to Get Asylum. Other Countries Feel the Same.*, N.Y. TIMES (Nov. 2, 2018), <https://www.nytimes.com/2018/11/02/world/europe/trump-asylum.html>.

10. See Peter G. Danchin, Jeremy Farrall, Jolyon Ford, Shruti Rana, Imogen Saunders and Daan Verhoeven, *Navigating the Backlash against Global Law and Institutions*, 38 AUSTL. Y.B. INT’L. L. (forthcoming 2020) (presenting a contextualized and nuanced definition to the present backlash). See Copelovitch & Pevehouse, *supra* note 8, at 170-72; see also *Id.* at 170 (discussing calls in Africa to stop participation in the International Criminal Court); see also Roggeband, *supra* note 5, at 5 (discussing how Eastern European countries such as Croatia, Hungary and Poland are challenging EU norms and fundamental democratic principles). See also Brandon Gorman & Charles Seguin, *What Conservatives Get Wrong About Cosmopolitans*, WASHINGTON POST (July 27, 2019) <https://www.washingtonpost.com/politics/2019/07/27/what-conservatives-gets-wrong-about-cosmopolitans/> (citing and analyzing U.S. examples of populist and nationalist rhetoric fomenting division by rejecting “an imagined cosmopolitan elite”). See also G. John Ikenberry, *The End of Liberal International Order?*, 94 INT’L AFFAIRS 7 (2018) (discussing attempts to withdraw from the liberal international order in the arenas of trade, international law, multilateralism, environment, democracy and human rights by leaders of countries including United States, Britain, Hungary, Poland, the Philippines and Turkey).

11. See Beinart, *supra* note 1; see also Roggeband, *supra* note 5, at 9-10 (discussing links between national and transnational attacks on women’s rights).

12. Yasmine Ergas, *Sexual and Reproductive Health and Rights: The Pushback and Its Implications*, Expert Paper prepared for the UN Women Expert Group Meeting, Sixty-Fourth Session of the Commission on the Status of Women (CSW 64) ‘Beijing + 25: Current Context,

“backlash” to women’s rights and gender and other equality norms occurring within nations is now also recognized as a global movement across as well as within nations.¹³ Like the larger populist backlash to the global legal order, the domestic grievances fueling this backlash “sweeping across liberal democracies,” are strikingly uniform across nations: governments’ and movements’ “aversion to rights for women and LGBTQ+ groups and also the harassment of women and minority candidates and officeholders, no matter their political agendas.”¹⁴ As attacks on equality norms and the institutions that support them grow within nations, spread globally, and then enter the international legal arena, it would not be far-fetched to presume that the international fora and institutions supporting women’s human rights would suffer a similar fate to the international institutions and treaties currently in the process of fracturing as noted above.

However, this essay argues that something different is happening in the international arena where the battles over gender equality are being fought. The populist backlash to the international legal order and the backlash to gender equality are both framed in the same terms, as efforts to “reclaim sovereignty” and reject cosmopolitan and liberal values. However, in the transnational space and international institutions created to support women’s and gender-based human rights, populists are taking a strikingly different approach. In contrast to what is happening in other international institutions and fora, populists are not attempting to withdraw from but rather are intensifying their engagement with the transnational forum focused on gender equality. While this forum for women’s rights and gender equality faces a number of challenges and threats¹⁵ and has been critiqued in the past for its perceived weaknesses and ineffectiveness,¹⁶

Emerging Issues and Prospects for Gender Equality and Women’s Rights’, EGM/B+25/BGP.1, New York, New York, 25-26 September, 2019, available at <https://www.unwomen.org/en/csw/csw64-2020/preparations/expert-group-meeting#background-paper>.

13. Jennifer M. Piscopo & Denise M. Walsh, *Introduction: Symposium on Backlash and the Future of Feminism*, 45:2 SIGNS: JOURNAL OF WOMEN IN CULTURE AND SOCIETY 265, 265 (2019) (“Intensifying right-wing opposition to the feminist project seeks to undo gender equality policies and increasingly attacks gender justice advocates, politically active women, and the marginalized. . . . This attention has triggered debate among scholars and practitioners about the nature, form, and meaning of those assaults, which we broadly conceptualize as *backlash*.”).

14. *Id.*

15. See generally Roggeband, *supra* note 5; see also Ergas, *supra* note 12.

16. See Loveday Hodson, *Women’s Rights and the Periphery: CEDAW’s Optional Protocol*, 25:2 THE EURO. J. OF INT’L L. 561, 567 (2014); RATNA KAPUR, GENDER ALTERITY AND HUMAN RIGHTS: FREEDOM IN A FISHBOWL 14-15 (Edward Elgar ed., 2018) (critiquing the human rights project for its failure to engender its promises of freedom, while acknowledging

in response to the populist surge, its institutions and spaces are now being reshaped and reconfigured, and in some ways revitalized, albeit along polarized lines.

However, despite the close links between the rise of the new populists and the growing global backlash to gender equality, and the implications of these developments for democracy and the rule of law, this arena and its changing dynamics have received surprisingly little attention in the discourse around democratic backsliding, populism and authoritarianism.¹⁷

To help address this gap, this essay examines the impact of the recent populist wave on the international forum arising around the United Nations' institutions and efforts to promote women's and gender-based human rights. Part II below defines and delineates this forum, and its role and position within the global legal order. Part III then discusses how some of the unique and often overlooked features of this forum help create its transformative potential for re-imagining rights, a goal shared by both advocates for and against gender equality. Part IV focuses on the nature of the backlash, resistance and response in this transnational space created for the articulation, recognition and fulfillment of women's and gender-based human rights. It argues that analyzing the ways that the populist backlash and resistance are playing out in this arena can further illuminate how and why the current iteration of populism is spreading, as well as point to potential responses aimed at supporting the international liberal legal order so threatened by this wave.¹⁸ Specifically, it untangles one of the

that the human rights terrain should not be abandoned but should be engaged with "precisely because it is an arena of power, even while there is a simultaneous need for rights to be actively dissociated from the assumption that they can deliver the disenfranchised into lasting freedom").

17. Roggeband, *supra* note 5, at 4 (noting that "there is a striking lack of research into the gendered aspects and implication of democratic backsliding"); Piscopo & Walsh, *supra* note 13, at 265-66, 276 (2019) (noting that gender backlash has not been fully theorized and that while researchers, experts and organizations have begun examining the growing global assaults on women and LGBTQ+ groups, issuing a call for more work to be done to develop specific understandings of what backlash entails and how to successfully counter it). See Hodson, *supra* note 16, at 561-62 (discussing the institution of the UN Committee on the Elimination of All Forms of Discrimination Against Women and noting "In light of concerns expressed by feminists about the silencing of women's voices in international law, one might expect the jurisprudence and working methods of the Women's Committee to be of interest to a number and range of scholars; in practice, however, its work has failed to generate a great deal of excitement or debate.").

18. See Ikenberry, *supra* note 10, at 7 (arguing that the liberal international order is in crisis as trade, alliances, international law, multilateralism, the environment, democracy and human rights appear to be threatened by the leaders of the United States, Britain, Hungary, Poland, the Philippines and Turkey, among others).

“puzzles” of nationalism, showing how a movement focused on domestic grievances has become a transnational movement, with cross-border alliances that mobilize around traditional views of the family and utilize illiberal and authoritarian approaches to their goals. With gender equality as well as the international legal order at risk, it concludes by calling for deeper examination of the ways that the populist backlash to gender equality, and the response and resistance to the backlash, are playing out on the international stage, as well as their implications for the global legal order.

II. THE TRANSNATIONAL SPACE FOR THE RECOGNITION OF WOMEN’S AND GENDER-BASED HUMAN RIGHTS

Women’s and gender equality advocates have a long history of international activism and organization that includes, over the last 150 years, global movements focused on women’s suffrage, labor rights, and the attainment of equal legal status in marriage and other areas.¹⁹ Human rights advocacy and international law are also by definition diverse and broad fields and can encompass a number of arenas, movements, and spheres which overlap with gender equality spaces in different ways.²⁰ Within these fields, the United Nations (“UN”) plays an important role as an “arena of power” in the human rights terrain and the locus of much human rights activity.²¹ Both the role of the UN and the ability of the institutions and spaces surrounding its work to achieve meaningful and transformative progress in gender equality and human rights have often been contested and are themselves the subject of much substantive critique.²² Nevertheless, as a conventional site of power and because of the ability UN spaces have to greatly impact large numbers of people around the world, it is both potentially

19. SUSANNE ZWINGEL, *TRANSLATING INTERNATIONAL WOMEN’S RIGHTS: THE CEDAW CONVENTION IN CONTEXT* 36 (Palgrave Macmillan ed., 2016) (discussing the origins and development of international and transnational women’s activism dating back to the 1880s and tracing the emergence of women’s organizations with international scope).

20. See Hilary Charlesworth, *What are Women’s Human Rights?*, in *HUMAN RIGHTS OF WOMEN: NATIONAL AND INTERNATIONAL PERSPECTIVES* 58-84 (2011); see also Kapur, *supra* note 16, at 13-14.

21. Kapur, *supra* note 16, at 14.

22. See, e.g., LAURA J. SHEPHERD, *GENDER, UN PEACEBUILDING, AND THE POLITICS OF SPACE: LOCATING LEGITIMACY* 3-4 (Oxford University Press 2017) (noting that at institutions such as the United Nations “even when policy frameworks are espousing better support for the meaningful participation of women in peace and security governance, for example, or aim to ensure that peace and security governance practices are undertaken with due attention paid to the operation of gendered power, the ways in which the constitute concepts are represented can often produce unintended and note entirely helpful implementation strategies and/or new directions of policy practice.”).

transformative and necessary to focus on the UN gender equality forum when analyzing the impact of populism on global governance and institutions and the role of gender in these developments.²³

For these reasons, this section focuses specifically on defining and delineating the global forum for discussing the status of women's and gender rights centered on the United Nations and the international human rights treaty focusing on women's rights and gender equality, *The Convention on the Elimination of All Forms of Discrimination Against Women* ("CEDAW"). This transnational forum for gender equality has arisen around the work of the United Nations Commission on the Status of Women ("CSW"), the Committee on the Elimination of Discrimination Against Women ("Committee"), and their civil society, individual, and member state participants.²⁴

The Committee is composed primarily of women and is the body of independent experts that monitors the implementation of and compliance with CEDAW.²⁵ In addition to reporting procedures under the Convention, the Committee also oversees the 1999 Optional Protocol to the Convention, which is a tribunal-like mechanism operating through an individual communications procedure. Through this venue, the Committee has been able to issue decisions and recommendations regarding complaints alleging violations of the Convention's rights and provisions.²⁶

The CSW Commission is "the principal global intergovernmental body exclusively dedicated to the promotion of gender equality and the promotion of women," promoting "women's rights, documenting the reality of women's lives throughout the world, and shaping global standards on gender equality and the empowerment of women."²⁷ Pursuant to UN resolution, it also takes a lead role in monitoring the implementation of the 1995 Beijing Declaration and Platform for

23. *See id.* (calling the United Nations a conventional center of power as well as one which feminists may engage with as "critical friends"); *see also* Kapur, *supra* note 16, at 14-15 (while critiquing the human rights project for its failure to engender its promises of freedom, arguing that the human rights terrain should not be abandoned but should be engaged with "precisely because it is an arena of power, even while there is a simultaneous need for rights to be actively dissociated from the assumption that they can deliver the disenfranchised into lasting freedom").

24. Zwingel, *supra* note 19.

25. *See* United Nations Human Rights, Office of the High Commissioner, "Committee on the Elimination of Discrimination Against Women", <https://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx> (last visited Jan 22, 2020).

26. *See* Hodson, *supra* note 16, at 562-64.

27. Commission on the Status of Women, UN Women, <https://www.unwomen.org/en/csw> (last visited Jan. 22, 2020).

Action, described as “the key global policy document on gender equality.”²⁸

This forum, narrowly defined as encompassing the above institutions, treaties, and instruments, by design and evolution also includes both formal and informal spaces for civil society participation, that is, non-governmental organizations (NGOs), researchers, and individuals.²⁹ In fact, “that the UN became an important global forum for discussing the status of women was not so much because of general institutional awareness but because of the work of committed advocates coming together in the Commission on the Status of Women (CSW)”³⁰ and the robust level of civil society participation that marks this space. For example, the CSW holds an annual two-week session at UN headquarters in New York where the key players in the field of international human rights and gender equality, including representatives of UN member states, civil society organizations, individuals, and other UN entities, gather to discuss progress and gaps in the implementation of gender equality treaties and principles, and develop outcome and recommendations.³¹

Together, these institutions, organizations and people form a unique transnational forum focusing on gender equality that has been transformative in its impact on international law and in giving voice to the reality of women’s lives worldwide. More recently, however, it has become the locus of intense backlash to women’s rights and gender equality. The ways that this backlash is playing out in this forum reveals a great deal about the nature of the current populist wave, yet has not received the attention it deserves from the scholars, institutions and practitioners seeking to understand and counter the backlash and democratic backsliding.

28. *Id.*

29. *See* Statement by the Committee on the Elimination of Discrimination Against Women on its Relationship with Non-Governmental Organizations, 45th Session, 2010, available at <https://www.ohchr.org/documents/HRBodies/CEDAW/Statements/NGO.pdf>, paras. 1-4 (statement issued “to clarify and strengthen the Committee’s Relationship with NGOs and to enhance the role of NGOs in the implementation of the Convention by States parties at the national level” and setting forth formal and informal roles that NGOs can play in the Committee’s activities relating to the promotion and monitoring of the implementation of the Women’s Convention (CEDAW), and related mechanisms such as the Optional Protocol. The Committee also notes in footnote 1 that it considers “the broad term NGOs [to] include[] representatives of civil society, trade unions, women’s grassroots organizations and others” and intends the term to be “non-exclusive.”).

30. *See* Zwingel, *supra* note 19, at 37.

31. *See* Commission on the Status of Women, *supra* note 27.

III. RE-IMAGINING RIGHTS

This transnational forum has long struggled with dichotomies of its own: while it is the pre-eminent international arena for the articulation and promotion of women's rights and gender equality, it has simultaneously been marginalized within the United Nations and international law systems.³² That is, CEDAW, the key human rights treaty for women's rights and gender equality and "international bill of rights for women" has been relegated to the margins of the UN system and often seen as 'outside the concerns' of mainstream human rights institutions.³³ Similarly, while CEDAW is described as the "definitive international legal instrument requiring respect for and observance of the human rights of women", these lofty ideals are "severely clipped" in practice.³⁴ CEDAW itself is known as the most heavily reserved or excepted treaty by signing states, and compliance by signatory states is notoriously poor.³⁵ Indeed, despite often claiming the mantle of global leadership in human rights and gender rights, the United States has simply refused to ratify the treaty (and remains the only industrialized democracy in the world to fail to ratify CEDAW).³⁶

Not surprisingly, this forum has been the frequent target of critiques. On the one hand, like other human rights institutions and fora, it has failed to deliver on the hope that it could provide "lasting freedom" to the marginalized and disenfranchised. On the other hand, it is subject to the charge that its impact will be limited by the tendency of formal international institutions, whether consciously or unconsciously, to "(re)produce ways of understanding bodies and behaviours that might be at odds" with the progressive ideals of their founders and participants.³⁷

Nonetheless, this forum has in many ways delivered upon its

32. Harold Hongju Koh, *Why America Should Ratify the Women's Rights Treaty (CEDAW)*, 34 CASE W. RES. J. INT'L L. 263, 268 n. 24 ("Ironically, as Hilary Charlesworth has pointed out, the creation within the UN system of special 'women's' institutions to deal with women's human rights has, in effect, 'created a ghetto for women's interests. The creation of 'women's' institutions has mean that 'mainstream' human rights bodies and institutions have tended to downplay the application of human rights norms to women on the implicit assumption that women's rights are outside their concern' (citing Hilary Charlesworth, *Transforming the United Men's Club: Feminist Futures for the United Nations*, 4 Trans. Law & Contemp. Probs. 422, 446 (1994)); see also Hodson, *supra* note 16, at 564-566 (arguing that CEDAW and the Committee are positioned both at the core and periphery of the international human rights system).

33. See *supra* note 24 and discussion therein.

34. See Hodson, *supra* note 16, at 562.

35. *Id.* at 562-63.

36. See Koh, *supra* note 32, at 265.

37. See Shepherd, *supra* note 22, at 3.

transformative potential.³⁸ Participants have seized upon its location as “a space that vacillates between the particular and the universal, the global and the local, the periphery and the center,” opening up an “exciting and creative space for the re-imagining of women’s rights” and the possibility of “transcending the limitations of traditional international law.”³⁹

This transnational forum for gender equality, a space whose creation was premised on the idea that women were by definition not elites, and were often largely excluded from governance or public office in their country, has provided a space to hear, amplify and spread women’s voices. These voices come from a wide range of regions, countries, and perspectives. As Gladys Acosta Vargas, a CEDAW Committee member noted in 2015, CEDAW and the Beijing Platform for Action:

created better conditions for the implementation of CEDAW as an international norm. The silence of women has been broken and we have taken the first step toward demanding justice: having a voice. Women have spoken in the most diverse scenarios, not only to be heard, but to change the status quo, empowered by greater autonomy in their lives. Social and feminist movements have helped to create a critical public awareness about all forms of exclusion. Women’s voices are now qualitatively stronger in formal and political public spaces, and in their vibrant diversity continue to permeate social and cyber spaces, helping to enrich democratic expression.⁴⁰

Furthermore, in some cases marginalization has provided the opportunity to center or incorporate “counter-hegemonic values” that have transcended and reshaped traditional views of human rights.⁴¹ CEDAW itself, for example, in contrast to most core international treaties, domestic constitutions or bills of rights “acknowledges diversity (for example, in its reference to rural women); it locates

38. *Id.* at 268-69 (“a country’s ratification of CEDAW is one of the surest indicators of the strength of its commitment to internalize the universal norm of gender equality into its domestic laws”); *See also* Hodson, *supra* note 16, at 567.

39. *See* Hodson, *supra* note 16, at 561-62, 565.

40. Gladys Acosta Vargas, *The CEDAW Committee 20 Years After Beijing: Progress in Defense of Women’s Rights and Pending Challenges*, U.N. RESEARCH INSTITUTE FOR SOCIAL DEVELOPMENT (July 3, 2015), <http://www.unrisd.org/beijing+20-acosta>.

41. *Id.* at 566 (also discussing how these institutions have “been able to develop women’s rights into a body of law that departs from the normative and structural limitations of international human rights laws.”).

human rights and discrimination within a cultural context; it adopts an expansive approach to rights that recognize the equal importance of economic, social and cultural rights and development rights; and it further recognizes that the empowerment of women necessitates structural reform.”⁴² For example, measures like the formal inclusion of civil society and a range of voices speaking on gender equality into this space reflect the reality that much work in this space has had to come from the “bottom-up” but also that such approaches have been transformative in countering the exclusions of mainstream human rights discourse.⁴³

In many ways, then, this Essay argues that this transnational forum for women’s rights and gender equality has become a liminal space, the third space described by sociologists as the in-between spaces, between public and private, global and local, political and personal, where groups under siege can breathe, let their full and authentic selves show, and ultimately imagine their own liberation.⁴⁴ Indeed, as we turn attention to the backlash against gender equality, it may be precisely this forum’s “occupation of a liminal space, neither fixed at the centre nor wholly peripheral, while leading to considerable criticism and doubts about its efficacy from those who are anxious about its unstable positioning, [that] might prove to be its very strength.”⁴⁵ It is this strength, and the power it provides to shape international and domestic discourses on gender equality for non-state as well as state actors, that also makes this forum so compelling to both the proponents of gender equality and to those who seek to tear it down.

42. *Id.*

43. See Hodson, *supra* note 16, at 567 (citing the view that “building bottom-up transformative approaches to human rights—especially from a gender perspective—requires the deconstruction and redefinition of several entrenched modes of thinking and practice that perpetuate the exclusions of mainstream human rights discourse.”).

44. See KerryAnn O’Meara, *Meeting to Transgress*, INSIDE HIGHER ED (Jan. 24, 2019), <https://www.insidehighered.com/advice/2019/01/24/important-role-third-spaces-play-higher-education-opinion> (discussing the role of third spaces such as women’s groups in education and other struggles for marginalized people); Homi Bhabha, *THE LOCATION OF CULTURE*, at 2 (Routledge 1994) (describing third spaces, urging a focus on the moments or processes produced in the articulation of cultural differences and stating “[t]hese ‘inbetween’ spaces provide the terrain for elaborating strategies of selfhood – singular or communal – that initiate new signs of identity, and innovative sites of collaboration, and contestation, in the act of defining the idea of society itself. It is in the emergence of the interstices – the overlap and displacement of domains of difference – that the intersubjective and collective experiences of nationness, community interest, or cultural value are negotiated.”).

45. See Hodson, *supra* note 16, at 567.

IV. BACKLASH AND RESPONSE

Perhaps because of its very successes, this global forum for gender equality has also been a site of backlash to gender equality. As noted in Part III above, what happens in this transnational gender equality forum is often ignored by mainstream human rights discourses, researchers, and actors. However, given the nature of the rhetoric and actions of the current populist wave, examining the ways that backlash is playing out in this arena is not only important, but also helps illuminate critical features of this populist wave. This forum, which has proved resilient in the face of these attacks, can also illuminate possible responses to combat some of the most destructive aspects of the current increasingly populist and authoritarian moment.

First, to understand the backlash and its implications for democracy and the international liberal order, gender should be moved to the core of the current attempts to understand the populist wave, from its current position at the periphery, much as the UN forum has attempted to do.⁴⁶ There is much support for the claim that the “recent, right-wing, populist surge in support of ‘illiberal democracy’” has placed gender equality at the core of the movement, as “‘antagonism to feminism is both a sentiment at the heart of the Right’s value system and a political strategy, a platform for organizing and for recruiting massive support.’”⁴⁷ Moreover, the implications of this surge and the backlash to gender equality cannot be overstated—as the United Nations Human Rights Council has warned, the “corrosion of women’s human rights is a litmus test for the human rights standards of the whole society” and is intertwined with the democratic deterioration.⁴⁸

In fact, the global forum for gender equality has long been the locus of political strategy and recruitment for the forces that have helped fuel the populist surge (and possibly helped spawn some of these strategies and platforms). As has been detailed by scholars, practitioners, and the United Nations itself, in the mid-1990s, as the gender equality movement achieved significant successes at the

46. *See supra* note 17 and accompanying text.

47. Yasmine Ergas, *Sexual and Reproductive Health and Rights: The Pushback and Its Implications*, Expert Paper prepared for the UN Women Expert Group Meeting, Sixty-Fourth Session of the Commission on the Status of Women (CSW 64) ‘Beijing + 25: Current Context, Emerging Issues and Prospects for Gender Equality and Women’s Rights’, EGM/B+25/BGP.1, New York, New York, 25-26 September, 2019, available at <https://www.unwomen.org/en/csw/csw64-2020/preparations/expert-group-meeting#background-paper>.

48. *See* Gupta, *supra* note 3; *see also supra* note 17 (discussing the links between democratic backsliding and attacks on gender equality).

international level, actors opposed to gender equality began organizing and mobilizing in response.⁴⁹

Notably, at the 1995 Beijing Conference, right-wing non-state actors including right-wing populist and nationalist groups, religious and conservative governments, men's rights groups, and groups opposed to LGBTQ+ recognition began networking transnationally, utilizing the civil society participation mechanisms described in Part II, to begin blocking the implementation of smaller gender equality measures.⁵⁰ Emboldened and then fueled by the surge in support of these "successes," this movement grew until a global "alliance between a wide range of conservative groups such as fundamentalist religious groups, both Christian and Islamic, and states with conservative governments that share a particular conservative and traditional perspective on gender issues emerged seeking to contest, undermine, and present further progress of women's rights internationally."⁵¹

Importantly, this coalition operated and mobilized at both the domestic and international levels and gathered momentum, power, and numbers.⁵² By the 2000s, these forces became both "visible and effective" in curbing "debate, research, legislation, and public policy challenging gender inequalities and violence or promoting LGBTQ+ rights—mobilizing around what became known as "gender ideology."⁵³ These forces have grown significantly in strength, power, and organization since then, to the point that their alliance now "potentially threatens existing international agreements and commitments and may undermine the work of international organizations and treaty monitoring bodies."⁵⁴ This is precisely what has happened as the new right-wing populists surge worldwide.⁵⁵

These developments in the gender space shed light on what many

49. See Roggebund, *supra* note 5, at 7.

50. *Id.* at 8.

51. *Id.*

52. *Id.*

53. Flavia Biroli, *The Crisis of Democracy and the Backlash Against Gender*, Expert Paper prepared for the UN Women Expert Group Meeting, Sixty-Fourth Session of the Commission on the Status of Women (CSW 64) 'Beijing + 25: Current Context, Emerging Issues and Prospects for Gender Equality and Women's Rights', EGM/B+25/BGP.1, New York, New York, 25-26 September, 2019, at 4-5, available at <https://www.unwomen.org/en/csw/csw64-2020/preparations/expert-group-meeting#background-paper>.

54. See Roggebund, *supra* note 5, at 7.

55. See *supra* notes 9-10 and accompanying text (discussing the populist retreat from the international treaties, institutions, and fora supporting the international liberal order).

regard as a “puzzle” of the current populist and nationalist wave—the “fundamental irony of this political moment: the globalization of nationalism.”⁵⁶ That is, populist and nationalist regimes, leaders, and actors—at the same time that they decry “globalists” and “cosmopolitan elites”—are themselves part of a transnational movement, a network of globally interconnected groups that collaborate with and support one another. While on the surface, it appears that the emphasis on nationalism, the hardening of borders, and the rejection of “foreigners” would preclude or limit such activity, the history of the global forum for gender equality shows otherwise. Rather, including gender in the analysis reveals that this neo-conservative, populist and nationalist wave is not necessarily “defined by its content, but by the transnational organization of its actors, their capacity to mobilize their citizens based on the supposed corruption of the natural sexual order and the reinforcement of an anti-pluralist rationality in formal democratic contexts, adding to authoritarian tendencies.”⁵⁷

Moreover, the actions of this right-wing alliance in the global forum for gender equality also reveal more specifically the nature of their ties and the substance of their claims. This space has been described as “a transnational dialectic space where the actors come together to speak the language of modernity.”⁵⁸ The actors centered on attacks on gender, however, come together not speaking the language of modernity, and the liberal human rights based order that this language represents, but rather they invoke the language of authoritarianism and tradition, weaponizing this space to ultimately challenge not just gender, but democratic processes and outcomes themselves, as democratic processes protecting minorities become another threat to be subjugated by the majoritarian “will of the people.”⁵⁹

In these ways, looking at the global forum for gender equality provides us with important context, history and information on the nature of the populist and nationalist wave. Significantly, perhaps because of the valuable platforms and opportunities for collaboration

56. Jo Becker, *The Global Machine Behind the Rise of Far-Right Nationalism*, N.Y. TIMES (Aug. 10, 2019), <https://www.nytimes.com/2019/08/10/world/europe/sweden-immigration-nationalism.html>; see also Joshua Keating, *Dictators Without Borders*, SLATE.COM (Jan. 21, 2020), <https://slate.com/news-and-politics/2020/01/authoritarianism-democracy-trump-borders.html>.

57. See Biroli, *supra* note 53.

58. Sally Engle Merry, CREATING HUMAN RIGHTS, at 37-38.

59. See Biroli, *supra* note 53; see also Ergas, *supra* note 12.

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that this international forum provides, the populists who are withdrawing from other international liberal fora are engaging quite deeply in the gender fora. For this reason, we should expect the gender fora to remain an important site for analysis as it will likely remain as a testing ground for strategic politics and messaging for populists and nationalists.

Ultimately, however, the true value of this global forum might lie not in the backlash currently unspooling in this arena, but in the various forms of resistance that also grow and take form in this arena, that can provide models and strategies for success in resisting the destructive elements of the current populist, authoritarian, and nationalist wave.

As one author noted, “defeating them [populists] requires empowering women” but also “requires normalizing their empowerment so autocrats can’t turn women leaders and protesters into symbols of political perversity. And that requires confronting the underlying reason[s] many men—and some women—view women’s political power as unnatural.”⁶⁰

As this task has long been centered at the core of the global forum for gender equality,⁶¹ it will serve us well to consider its claims, successes, and models with the seriousness they deserve.

60. See Beinart, *supra* note 1.

61. See Hodson, *supra* note 16, at 567-68.