Transnational Homo-Assemblages: Reading 'Gender' in Counter-terrorism Discourses

Dianne Otto*

This article offers a close reading of the gender mainstreaming report of Martin Scheinin, the U.N. Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism, and the response of states in the Question Time following its presentation to the Third Committee of the General Assembly in 2009. The report controversially defined gender to include socially constructed roles, functions and responsibilities in relation to sexual orientation and gender identity. The ensuing heated discussion about this understanding of gender is read queerly, focusing on three aspects: first, the disagreement about how to read the term gender; second, the refusal by some states to even engage in debate on the issue; and third, the claim that women, and possibly also other disadvantaged groups, will lose out if gender is understood as a social rather than biological category. The reading draws on Jasbir Puar's analysis of the sexuality of 'terrorism' in order to reflect on Scheinin's attempts to have those queer bodies targeted by counter-terrorism measures recognised by international law as 'lies that matter'. It offers some insights into the project of queering international law, including the importance of multiple readings of seemingly clear-cut events and the need to maintain a vision of justice beyond the law.

Homonationalism [...] enables a transnational discourse of US sexual exceptionalism vis-à-vis perversely racialised bodies of pathologized nationalities.

— Jasbir Puar

If these are the conditions under which rights emerge as paradoxical [...], as simultaneously politically essential and politically regressive, what are the possibilities for working these paradoxes in politically efficacious fashion? Unlike contradictions, which can be exploited, or mystification, which can be exposed, or disavowal, which can be forced into confrontation with itself, or even despair, which can be negated, the politics of paradox is very difficult to negotiate.

— Wendy Brown

* Francine V. McNiff Professor in Human Rights Law, and Director, Institute for International Law and the Humanities, Melbourne Law School, The University of Melbourne <d.otto@unimelb.edu.au>.

I. INTRODUCTION

Yet another chapter in the epic transnational contestation of the meaning of the term 'gender' erupted in the United Nations (U.N.) General Assembly's Third Committee on 26 October 2009. This time the provocation was a report by Martin Scheinin, the U.N. Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism. The report provided an analysis of counter-terrorism measures from a gender perspective, pursuant to the gender-mainstreaming mandate given to him by the Human Rights Council to "integrate a gender perspective" in all his work. In presenting the fruits of this integration, Scheinin anticipated that his report "exceeds many expectations by taking the issue of gender beyond focusing merely on human rights of women." Drawing on a number of human rights documents to support his expansive approach, including the Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity (Yogyakarta Principles) drafted by a group of human rights experts, which some states found particularly objectionable, the Special Rapporteur explains three times in his report that:


Gender is not synonymous with women but rather encompasses the social constructions that underlie how women's and men's roles, functions and responsibilities, including in relation to sexual orientation and gender identity, are defined and understood.  

The definition offered by Scheinin opens many opportunities for queer activism. Gender is treated as a social and shifting category, and although the dualism of 'men' and 'women' is maintained (no Third Sex for the Third Committee just yet), it is also recognised that everyone has a sexual orientation and gender identity, which leaves lots of room for disruption of the dualism. Taking pains to ensure that his meaning is clear, the Special Rapporteur goes on to say:

Understanding gender as a social and shifting construct rather than as a biological and fixed category is important because it helps to identify the complex and inter-related gender-based human rights violations caused by counter-terrorism measures [...].

Drawing on the queer theory of Judith Butler and others, he understands gender identity and sexual orientation to be continuously produced and reproduced, undone and redone through social interactions and performative practices rather than characteristics that one is born with.

A furious discussion about this understanding of gender ensued in the Third Committee, testing the limits of the diplomatic language of the U.N. Department of Public Information, which described it as "a vigorous exchange". Many states were plainly infuriated at the interpretation of 'gender' to include sexuality; a fury that was further fuelled by the report's suggestion that gender and sexual minorities may even be a resource in the fight against terrorism and make valuable contributions to the design of counter-terrorism measures. In contrast, those states that rallied in defence of the Special Rapporteur and his approach were eager to associate themselves with its queer liberalism and display their national credentials of open-mindedness and tolerance. On the surface, looking at the identities of the states involved, this polarisation of

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10. Id. ¶ 20; Scheinin also notes that gender as a social construct "is also informed by, and intersects with various other means by which roles, functions and responsibilities are perceived and practiced, such as race, ethnicity, culture, religion and class".
views in the Third Committee is easy to read as a heroic ‘civilisational’ struggle with the naturalised (homophobic) assemblages of non-western conceptions of nation, gender and sexuality pitted against the liberal (civilised) (homo)nationalisms of the west. It may well be that this is exactly what was intended by some of the participants.

However, I want to suggest that such a reading does not leave room for understanding the provisional nature of these transnational contestations of gender and their complex intersections with other regimes of imperial power in international law and politics. My discussion brings some of these instabilities and complexities to light and raises some larger questions about the project of ‘queering’ international law which seeks to expose and challenge the law’s underlying (hetero)normative assumptions. Queer lives, relegated by law to the realms of criminality and perversity, offer lenses that make it possible to surface deeper legal narratives, exposing the reliance of the order of international law on disciplinary tropes of sexuality and gender and offering new intelligences that can inform emancipatory strategies of all varieties. In developing this reading, I reflect on three aspects of the struggle that emerged through this particular exchange in the General Assembly’s Third Committee: first, the disagreement about how to read the term gender; second, the implications of the refusal by some states to even engage in debate on the issue; and third, the claim that women, and possibly also other disadvantaged groups, will lose out if gender is understood as a social rather than biological category.

My reflection draws on Jasbir Puar’s argument that the “invocation of the terrorist as a queer, nonnational, perversely racialised other has become part of the normative script of the US war on terror.” Puar’s analysis provides a useful lens to reflect on Scheinin’s attempt to have those queer bodies targeted by counter-terrorism measures interpolated by international law as lives that matter; insisting on the inclusion of queer lives in the normative scheme of human rights law in an effort to afford them, in Butler’s terms, the human dignity of a “liveable life” and a death that is “grievable.” Puar tracks new alignments in the post-9/11 U.S. between the emergence of domestic (white) queer normativity (the recognition of gay marriage, for example) and its nationalist and imperial interests in the ‘war’ on terror which, she argues, operate to

14. Doris Buss et al. (panelists), Queering International Law, 101 AM. SOC’Y OF INT’L. L. PROCEEDINGS 119-134 (2007); Wayne Morgan, Queering International Human Rights Law, In Sexuality In the Legal Arena 208 (Carl Stychin & Didi Herman eds., 2009).

15. Puar, supra note 4, at 37.

help keep the sexually perverse racialised bodies of ‘terrorists’ outside the protection of the law. The killing of unarmed Osama bin Laden in his home in Pakistan, and the ‘dumping’ of his body into the Arabian Sea, seems to aptly illustrate her point; an ungrievable death writ large.\(^7\) Why was he not arrested and put on trial and his punishment determined according to law, as Scheinin and other U.N. Special Rapporteurs asked at the time?\(^8\) Why have so few people in the west asked this question? In an Endnote to this article, at Scheinin’s suggestion, I turn to Wikileaks for another insight into the stories behind the official record of the reception of his report which reminds us again that surface readings of epic contestations are likely to tell only part of the story and that, as Puar proposes, we need new practices of reading to supplement and extend the well-worn identity and representational categories that we have come to rely upon.

II. READING THE TERM ‘GENDER’

The Special Rapporteur’s expansive reading of gender enables him to talk about lives that have historically not mattered in international discourse and to name a broad range of ignored and under-reported human rights abuses that have resulted from measures aimed at countering terrorism. As might be expected, he identifies the negative effects that counter-terrorism measures are having on women’s rights but he also draws attention to violations of the rights of lesbian, gay, bisexual, transgender and intersex (LGBTI) individuals and to gender-based violations of the rights of men. In relation to sexual and gender minorities, Scheinin condemns vague definitions of ‘terrorism’ that have justified measures that target those who do not conform to traditional gender roles, such as attacks on meti (effeminate males or transgendered people) in Nepal,\(^9\) the arrest and persecution of ‘suspected homosexuals’ in Egypt\(^10\) and the impact of restrictive immigration controls on transgendersed people.\(^11\) In relation to men, the Special Rapporteur criticises the use of gender stereotypes in profiling male terrorist suspects as in Denmark and France\(^12\) and condemns the gender-specific

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\(^7\) Id.


\(^9\) Report of the Special Rapporteur, supra note 4, ¶ 23.

\(^10\) Id. ¶ 27.

\(^11\) Id. ¶ 48.

\(^12\) Id. ¶ 37.
interrogation techniques used by the U.S. and its private contractors in Iraq and elsewhere, which exploit perceptions of Muslim men’s homophobia and seek to induce feelings of emasculation.\(^{23}\) His reading of gender also enables him to identify a number of interrelationships and convergences between rights violations experienced by women and sexual and gender minorities, such as the ‘bartering’ of their rights in efforts to appease terrorist or extremist groups in Pakistan and Egypt\(^{24}\) and the criminalisation and stigmatisation of women’s and LGBTI human rights defenders as ‘terrorists’.\(^{25}\) His wide-ranging approach makes it possible to identify patterns of gender-based discrimination by their effects on bodies previously pathologised, stigmatised or criminalised as less than human. Exposing how tropes of sexual and gender perversity are turned to the service of global power offers a queer perspective on the multiple interests that can be served in the name of counter-terror.

What the Special Rapporteur’s report fails to do, however, is draw attention to how the U.S. and its allies have encouraged the targeting and persecution of sexual minorities in the ‘war on terror’ by, as Puar argues, associating terrorists “with sexual and bodily perversity.”\(^{26}\) She attributes the success of these associations to the emergence of a “new [white] neo-liberal sexual politics,”\(^{27}\) whereby the U.S. distinguishes itself from the ‘barbarism’ of, in this case the Muslim other, by its claimed tolerance of sexual diversity as another indicator of civilisation.\(^{28}\) This new U.S. “homonationalism,” she argues, is projected trans-nationally as western “sexual exceptionalism,” contrasting patriotic homo-normativity (modelled on hetero-normativity) with the racialised sexual deviancy of terrorists. Scheinin’s silence on this point left the putatively gay-friendly states free to trumpet their sexual liberalism in the ensuing discussion of his Report and to read it as largely not having any application to them, despite the specific references to France, Denmark and the U.S. The one exception was the (Obama) U.S. which credibly performed its ‘super-civilised’ credentials by asking the Special Rapporteur for guidance on how to avoid the reinforcement of gender stereotypes in creating counter-terrorism policies, thereby acknowledging, at least to

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\(^{23}\) *Id.* ¶ 44.

\(^{24}\) *Id.* ¶ 36.

\(^{25}\) *Id.* ¶ 27.

\(^{26}\) Puar, *supra* note 1, at 38.


\(^{28}\) Puar, *supra* note 1, at 38.
some extent, its complicity by way of the homophobic interrogation procedures that were criticised in the report.\textsuperscript{29}

Opposition to the report’s interpretation of gender was expressed by the African, Islamic and Arab regional groups, joined by the Holy See and several states in individual statements. Their concern did not lie with the lives and bodies that were being destroyed in the name of counter-terrorism, but was focused squarely on the semiotics of the language of gender. Speaking for the African Group, Tanzania said it was “alarmed at the attempt to redefine gender,”\textsuperscript{30} while Sudan, representing the Arab Group, “regretted” the approach taken, saying the report was “based on distorted interpretations of established texts in international law that introduced erroneous definitions of people based on their ‘sexual whimsies.’”\textsuperscript{31} India said it was “unfortunate” that the notion of “gender perspective” had been “redefined.”\textsuperscript{32} The Holy See was “concerned by the presumption that gender was a social construct” and, while claiming to reject a “biological determinist view of gender,” it “also rejected the notion that gender could be adapted to suit new purposes.”\textsuperscript{33} Together, these speakers project a set of nationalisms that assert a reading of gender as referring only to women and a refusal to acknowledge the humanity of those who fall outside the naturalised categories of dualistic gender and normative heterosexuality. Yet it is precisely the neatness of this apparent convergence of interests of diverse states and the Holy See that begs the question as to what queer readings of these responses are possible. Simple stories usually disguise complex relations of power.

Before turning to this question, it is necessary to also outline the support for the Report’s gender analysis of counter-terrorism measures. Endorsement of the report came from states in the Western European and Other Group (WEOG) and the Latin American Group, many of whom performed their gay-friendliness by making a point of showing their familiarity and ease with using the identity categories of sexual and gender minorities. The U.S. was the first of this grouping to speak, saying that it was “especially interested in the effects of counter-terrorism work on women and the Lesbian, Gay, Bi-Sexual, Transgender community” and feared the controversy about the meaning of gender meant that


\textsuperscript{30} Id. ¶ 2.

\textsuperscript{31} Id. ¶ 12, 14.

\textsuperscript{32} Id. ¶ 29.

\textsuperscript{33} Id. ¶ 17.
“serious issues raised in the report were being overlooked.” Sweden, on behalf of the European Union (EU), noted that “discrimination against people on the basis of sexual orientation and gender identity” violated their human rights and that the Special Rapporteur’s treatment of the issue was “relevant” to his mandate. Other EU members, the Netherlands and the United Kingdom, affirmed that universal human rights extended to the “lesbian, gay, bisexual and transgender” community and Norway agreed that human rights should be enjoyed by all regardless of “sexual orientation and gender identity.” Others used more constrained language to express their support. For example, Argentina agreed with the Special Rapporteur’s concern about the “overbroad definition of terrorism,” Finland noted approvingly that the report addressed its subject in a “multi-faceted manner,” Mexico said it had always supported the work of “Mr Scheinin” and Chile agreed that discrimination against anyone should be prohibited “regardless of their agenda or sexual characteristics.”

Although Puwar’s mapping of the emergence of homo-nationalism as a component of the war on terror is confined to the U.S., the eagerness of such a broad group of nation-states to declare their ‘sexual exceptionalism’ in the form of gay-friendliness suggests that the phenomenon of homo-nationalism is more widespread and has become a transnational symbol of civilizational status, as well as loyalty, in the war on terror. The liberal use of the terminologies of sexual diversity by the supportive states works rhetorically to distance them from the taint of homophobic denial and illiberality that attaches to those in opposition. Yet jumping to the conclusion that this reveals an entrenched sexual divide which can simply be mapped onto the protagonists in the war on terror – confirming the freedom-loving credentials of states under attack and the repressiveness of states always already suspect – does not serve the project of queering international law. Queer activists need to engage their well-developed survival skills of reading everyday appearances subversively, to look behind the camouflage provided by the bluff and bluster of jockeying to win the point (which may have little to do with the immediate subject matter), in order to uncover opportunities that may nevertheless be present; opportunities to make a full life more possible for those marginalised people whose survival has been made more precarious by the fight against terror. At the very least, it is possible

34. Id. ¶ 15.
35. Id. ¶ 20.
36. Id. ¶ 27, 28, 32.
37. Id. ¶ 21, 23, 30, 31.
to read the Special Rapporteur’s approach to gender as considerably more queer than the expressions of homo-nationalism proffered in its support.

While this ‘vigorously exchange’ in the Third Committee neatly illustrates Puu’s thesis that sexual liberalism has emerged as a new marker of civilizational superiority, it also echoes the long history of rhetorical justifications of European colonialism in terms of the deviant masculinities of non-western traditions, which were teamed up with markers of racial inferiority. As Teemu Ruskola has argued, the colonial fiction of “uncivilised” Africa as “hyper-masculine” helped to justify the disciplinary violence of colonialism. He notes the relentless deployment of the metaphor of homo-erotic “penetration” as a means of producing the full sovereign “manhood” that would justify the eventual entry of Africa into the international community of modern states. However, Ruskola warns against reducing the diversity of the imperial relations that European states entered with non-European communities to a simple binary of civilised-versus-barbarian. To make this point, he uses the example of China, which was represented in the nineteenth century European imagination as “hypercivilised” and therefore “effete” and “not masculine enough,” which led to different kinds of imperial “penetrations” in the guise of “consensual” economic and political “intercourse.”

With this history as a backdrop, it is little wonder that the contemporary deployment of orientalist tropes of sexual and racial/religious perversion by the U.S. and its allies, to aid the justification of their ‘outlaw’ actions against putative ‘terrorists’ in the global south, generates intense resistance from those parts of the world. Perhaps too, the negative response of states that have themselves been the subject of these metaphorical invectives can be read as an assertion of their own distinctive sexual languages and histories. It is apt to remember that many of the spaces outside the west that give daily sustenance to queer lives, will never be visible in international law if it is only able to ‘see’ what is commensurable with European history. This conundrum presents real challenges for the transnational advocacy of the human rights and freedoms of those people with diverse sexualities and gender

38. Teemu Ruskola, Rapeing Like a State, 57 UCLA L. Rev. 1477 (2010).
39. Id. at 1497.
40. Id. at 1494.
41. Id. at 1493.
identities, as many before me have argued.\textsuperscript{43} One of these challenges is to resist the solidification of a narrative of polarised struggle between homo-friendly and homo-hostile sovereign powers which cannot be done without also dismantling the dualisms that legitimated colonialism. Such simple stories serve both homophobia and Islamophobia and reinforce the west’s claim to superiority. They also blind us to the shifting emancipatory possibilities that arise from the provisional nature of these transnational contestations and their intersection with other regimes of imperial power.

Returning to the Special Rapporteur’s report: while its failure to condemn western efforts to demonise ‘terrorists’ as sexually perverse gives it a bias which limits its usefulness as a queer point of reference in international law, it nevertheless opens many opportunities for queer activism. Scheinin’s definition of gender goes well beyond the boundaries of the ‘domesticated’, white, hetero-normative homosexuality that Puur associates with U.S. homo-nationalism. He manages to bring a chaotic array of ‘perverse’ subjects into legal recognition, including stigmatised Nepalese sex workers (meti), Egyptian men frequenting a purportedly homosexual bar in Cairo, transsexuals seeking asylum from persecution and (non-white) demonised Muslim terrorist suspects interrogated by the U.S. and its private contractors. Further, the concerns he raises about the bartering of the rights of women and sexual minorities are proving to be even more well-founded than one might have thought possible, as the U.S. and members of its coalition rush to develop a political solution to the conflict in Afghanistan.\textsuperscript{44} The Special Rapporteur’s advocacy for the rights of stigmatised, non-normative, ‘queer’ subjects who have suffered further humiliations in the ‘exceptional’ circumstances of countering terror, offers the hope that the ‘vigorous exchanges’ they prompt may provide footholds in international law and institutions for the fostering of transnational homo-assemblages that are much harder to domesticate than their nationalist counterparts.

III. UNSPEAKABLE SUBJECTS

In contrast to the states who were eager to display their gay friendliness, those who expressed hostile reactions to the Special Rapporteur’s report


\textsuperscript{44} Allegra Stratton & Simon Tisdall, \textit{David Miliband attacks US-led Afghan strategy}, \textit{The Guardian}, Apr. 13, 2011.
were very sparing in their use of the terms ‘sexual orientation’ and ‘gender identity’. Beyond a few tight-lipped references, they refused to use any associated terms like gay, lesbian, bisexual, transgender, intersex or homosexual, in an attempt to render these subjects of gendered human rights violations unspeakable and therefore completely disenfranchised. Further, they turned their own refusal to speak into an accusation that the Special Rapporteur had closed down debate. For example, in Malaysia’s view the report had “triggered an environment that did not allow for a full discussion of the mandate.”45 The Arab Group, as explained by Sudan, “categorically refused to be involved in debates on such issues, on which there was no agreement,” and India said that the Special Rapporteur’s redefinition of gender had taken the Third Committee “away from a meaningful debate.”46

Most of the hostile speakers pushed their criticisms further by questioning the personal integrity of the Special Rapporteur by contaminating him with the taint of his unspeakable subjects. Speakers for the African, Arab and Islamic Groups, as well as St. Lucia, all accused him of breaching the Code of Conduct for Special Procedures47 by unilaterally departing from the terms of his mandate and failing to use ‘objective’ and ‘verifiable’ information. The African Group accused the Special Rapporteur of pushing his “personal political opinions,” referring specifically to his reference to the Yogyakarta Principles “of which he was a co-author” which, it claimed, undermined the independence of his position and “breached the trust conferred upon him.”48 St. Lucia also accused him of incorporating his “personal ideas” and described his reference to the Yogyakarta principles as “inappropriate.”49 Taken together with remarks from the Arab and Islamic blocs, these accusations had the feel of an orchestrated campaign to personally discredit the Special Rapporteur, going well beyond disagreement over his interpretation of gender.

Many states rallied to Scheinin’s defence, welcoming his raising of controversial issues. Australia “supported the vigorous discussion of issues that it afforded,” while Uruguay observed the issue of gender “was no less important for having raised some controversy.”50 Sweden

45. Question Time, supra note 29, ¶ 11.
46. Id. ¶ 13, 29.
48. Question time, supra note 29, ¶ 14, 5.
49. Id. ¶ 19.
50. Id. ¶ 18, 25.
emphasised that states are free to agree or disagree with such reports and that the “purpose of dialogue was to ask for clarification and seek guidance,” but “without criticising the individuals” involved.\textsuperscript{51} Switzerland likewise “did not agree that certain States could attack the Special Rapporteur when they did not agree with his report.”\textsuperscript{52} Argentina expressed its thanks, observing that the report “provided ‘much food for thought’ and brought certain ideas to the attention of the General Assembly,” and the United Kingdom stressed the importance of the Third Committee’s access to reports that reflect genuine human rights problems.\textsuperscript{53} Many of them intimated that the conduct of the hostile states was itself threatening the Special Rapporteur’s independence and autonomy.

Again, it is easy to tell the story of this aspect of the exchange as reflecting a deep divide between the liberalism of those who spearheaded a spirited defence of the importance of controversial views and open debates and the illiberal efforts to instil the unspeakability of the report’s sexually marked subjects and the Special Rapporteur’s own implied personal sexual preferences. Yet in some ways the refusal to name the sexual and gender minorities that the report is in part concerned with may be the ‘queerest’ response because it leaves the space of radical gender and sexual practices and identities outside state power, unlike the domesticating effects of those liberal states keen to incorporate sexual rights into their heteronormative and racialised state orders. The paradox for those who are disenfranchised, as Gayatri Spivak observes, is that the narrow discourse of human emancipation that is offered by liberal rights has material and symbolic effects and is, at the same time, something that we “cannot not want.”\textsuperscript{54} It is the politics of such a paradox that lies at the heart of the project of queering international law which seeks to expand the boundaries of law’s inclusionary gestures while also subjecting it to devastating critique. Keeping in mind the impossibility of full justice in the present, we must, as Wendy Brown suggests, continue the struggle to invest rights with emancipatory grammars that help to articulate a world in which justice is possible beyond the modernist formations that we cannot not want.\textsuperscript{55}

\textsuperscript{51} Id. ¶ 20.
\textsuperscript{52} Id. ¶ 24.
\textsuperscript{53} Id. ¶ 21, 28.
\textsuperscript{54} Gayatri Spivak, Outside in the Teaching Machine 45-46 (1999).
\textsuperscript{55} Brown, supra note 2, at 240.
IV. THE CLAIM THAT ‘WOMEN’ (AND OTHERS) WILL LOSE OUT

At this juncture, it is important to acknowledge that the Special Rapporteur’s report, while attentive to human rights violations suffered by men and sexual and gender minorities, is primarily concerned with the impact of counter-terrorism measures on women’s enjoyment of human rights. Indeed, Scheinin starts by reiterating the threats to women’s rights highlighted in his previous reports, including Israeli checkpoint delays that increase the risks of childbirth for Palestinian women, the disproportionate impact of displacement and eviction on women in Colombia, and threats to women’s economic, social and cultural rights by counter-terrorism measures in Chechnya. The report then goes on to raise further concerns about Algerian women detained as potential terrorists when they reported sexual violence by armed Islamists, women in Iraq subjected to violence by “men with different political agendas but who all want to impose veiling, gender segregation and discrimination” and the disproportionate impact of internal military conflicts on women. It warns that overly broad definitions of terrorism have been used to justify the suppression of social movements seeking gender equality and accuse women’s human rights defenders of being terrorists. Concerns are also raised about the targeting of indigenous women in the Philippines, the burden of anxiety and hardship borne by women when male family members suspected of terrorism are ‘disappeared’, the unlawful detention and ill-treatment of women not suspected of terrorism offences, in order to gain information or force male terrorist suspects to provide it, as in Uganda, the penalisation of women who wear particular forms of religious clothing as in the Maldives and parts of Europe and, as already mentioned, the bartering of women’s rights to appease extremist groups. The report also condemns the use of sexual violence in the interrogation of female terrorist suspects. This coverage can hardly be read as marginalising women’s human rights.

57. Id. ¶23.
58. Id.
59. Id. ¶25.
60. Id. ¶27.
61. Id. ¶28.
62. Id. ¶30.
63. Id. ¶31.
64. Id. ¶38.
65. Id. ¶36.
66. Id. ¶44.
Not only are women’s issues addressed in every aspect of his analysis but the Special Rapporteur also relies on feminist theory to make a number of more analytical points. For example, he specifically warns against the use of stereotypes of women as ‘victims’ in the context of the social re-integration of former combatants and terrorists. More generally, the Special Rapporteur fears that the heavy reliance on gender stereotypes by militarised approaches to countering terror marginalises those who challenge predetermined gender roles and serves to normalise extreme stereotypes, such as ‘hypermasculinist’ responses that prioritise resort to violence. Approaching gender as a social construction enables him to present a deeper and more complex analysis of the links between gender inequality and the spread of terrorism than would have been possible if he had confined his analysis to violations of women’s human rights. It is my view that more inclusive and nuanced gender analysis can only strengthen work towards the realisation of women’s human rights by working against the protective responses to women that reinforce stereotypes of their vulnerability and dependency and by promoting coalitional strategies that engage diverse gender communities.

Despite his treatment of women as a particularly affected gender group whose continuing structural disadvantage is never brought into doubt, many of the states who were critical of the Special Rapporteur’s understanding of gender accused him of diverting attention away from women. According to the African Group, the Report marginalised “the relevant human rights issues that urgently needed international attention.” More stridently, Saint Lucia charged the Special Rapporteur with “unilaterally attempt[ing] to change the definition of a universally accepted term that had been the vehicle for ensuring the recognition of women’s basic rights,” suggesting that he damaged the means of promoting women’s rights by “equat[ing] women’s rights with the rights of lesbian, gay, bi-sexual, transgender and intersex individuals and gender-based discrimination with homophobia.” As a result, the international community has not been given “important information on the specific harmful effect of [counter-terrorism] measures on women”

67. *Id.* ¶46.
68. *Id.* ¶24.
69. *Id.* ¶45.
71. Question Time, supra note 29, ¶2.
72. *Id.* ¶9, 10.
and thus has been denied "real guidance on the topic of counter-terrorism from a gender perspective."\textsuperscript{73} Further, the Holy See was concerned that presenting gender as a shifting construct "did not serve the cause of anti-terrorism" because it "sowed divisions between men and women by placing them into ever-changing categories."\textsuperscript{74}

It is ironic to see so many states not usually associated with women’s human rights advocacy voicing their concern that the Special Rapporteur’s approach to gender might take attention away from women. Similar concerns have also been expressed by some feminists in other contexts, albeit with very different motivations, worried that the distinctiveness of human rights violations experienced by women will be lost\textsuperscript{75} and that the category of ‘women’ as an organising focus will be threatened if a social conception of gender is adopted.\textsuperscript{76} So while this new positioning of states in support of women’s rights may offer some new leverage for feminist advocacy, it also presents the real risk of co-option into certain nationalist projects of gender and sexual (un)freedom. A more broad-ranging claim, that sexual rights advocacy distracts from other human rights issues, had been aired in the General Assembly a year earlier, in a statement read by Syria on behalf of 57 states.\textsuperscript{77} The statement was in response to the Joint Statement on Human Rights, Sexual Orientation and Gender Identity (SOGI) presented to the General Assembly by Argentina on behalf of 66 states.\textsuperscript{78} Syria, after voicing “serious concern” at the attempt to introduce notions that have “no legal foundation” in international human rights law, said that the sponsors of its statement were even more disturbed at the attempt to focus on certain persons on the grounds of their sexual interests and behaviours, while ignoring that intolerance and discrimination regrettably exist in various parts of the world, be it on the basis of colour, race, gender, or religion to mention only a few.\textsuperscript{79}

Such a concern has also been expressed by some queer activists who fear that a singular focus on sexuality has led many LGBTI organisations

\textsuperscript{73} Id. ¶ 10.
\textsuperscript{74} Id. ¶ 17.
\textsuperscript{76} Id.; See also Nalini Persram, Politicizing the Feminine, Globalizing the Feminist, 19 ALTERNATIVES 285, 287 (1994).
\textsuperscript{77} Syria, Response to SOGI Human Rights Statement, UN GENERAL ASSEMBLY, (Dec. 18, 2008).
\textsuperscript{79} Syria (Response), supra note 77, ¶ 4.
to ignore economic, race and gender inequalities.\textsuperscript{80} This has had the effect, as Puar argues, of equating normative gayness with ‘whiteness’. Further, as Scott Long’s meticulous genealogy of some western LGBTI advocacy of sexuality rights in Iran shows, the sole focus on the ‘gayness’ of victims of human rights violations meant that advocates only saw the homophobic crime (whether real or imagined) and were blind to other human rights abuses such as applying the death penalty, applying it when the alleged crimes were committed when the defendants were children, and lack of due process.\textsuperscript{81} Arguably worse, as Puar and Long both point out, some LGBTI organisations have actively promoted Islamophobia in their totalising characterisation of Islam (and thus all Muslims) as inherently homophobic. The overlap between the concern of hostile states and some queer human rights advocates, that attention to sexuality rights may divert attention from other human rights violations, presents both opportunities for coalition and the danger of co-option into sexually repressive nationalist projects. To express concern about the exclusionary effects of single-issue human rights campaigns is not new\textsuperscript{82} but, in this context, it highlights that queer advocacy must take intersectionality seriously and forge a wider social justice politics that is attentive to the continuing effects of the imperial hierarchies of race, nation, religion, ethnicity, indigeneity, ability and so on, as well as those of gender and sexuality. This is where Puar’s notion of ‘assemblage’ is particularly pertinent in suggesting there are other ways of ‘putting things together’ and linking effects of power that are intertwined rather than treating them as discrete. This is perhaps the greatest challenge facing the project of queering international law.

V. CONCLUSIONS

In the contemporary world, national movements for gender and sexual liberation have not only emerged in the west, but also across Latin America and Eastern Europe, and in parts of Africa, Asia, the Caribbean,

\textsuperscript{80} Urvashi Vaid, \textit{What Can Brown Do For You: Race, Sexuality and the Future of LGBT Politics, Kessler Lecture (Centre for Lesbian and Gay Studies, CUNY Graduate Centre, New York, Nov. 18, 2010).}

\textsuperscript{81} Scott Long, \textit{Unbearable Witness: How Western Activists (Mis)recognize Sexuality in Iran, 15 Contemp. Pol. 110 (2009).}

the Pacific, and the Middle East. One result is that queer people have new narratives of pride, human dignity and human rights available to them with which to resist the diverse dehumanising grammars of their many histories that are reflected in international law that maintain a firm grip on many present realities. As I write, newspapers report that many high schools in Thailand have allocated bathrooms for use by those of a “third gender,” and the new Malawi President Joyce Banda announces that her government will decriminalise homosexuality and the Arab Spring makes it possible for a (claimed) Syrian lesbian blogger to be celebrated as a political activist by others in the pro-democracy movement. Yet at the same time, gangs of young men perpetrate ‘corrective rapes’ against lesbians and transgenders in South Africa, another U.S. state legislature (Indiana) votes for constitutional amendment to ban same-sex marriage and the Ugandan government continues to threaten to adopt ‘anti-homosexuality’ legislation that will impose the death penalty in some circumstances of sexual relations between persons of the same sex. The daily terror of those in communities marked by non-normative practices of gender and sexuality continues, yet it completely escapes the attention of mainstream international efforts to counter terrorism, even as those efforts compound this everyday terror.

In 2009, a conjunction of events led the Third Committee to grapple with Scheinin’s expansive interpretation of the term gender in the context of protecting human rights while countering terror. His report makes an important contribution to the project of queering international law, although it is concerned with only some aspects of the daily terror experienced by sexual and gender minorities. The reception to his report can be read as a single story of an intractable divide between liberal and illiberal states, between civilisation and barbarity and between freedom and tyranny. However, I have argued that the tale can also be read in a number of other ways, which make visible new opportunities for

queering international law as well as their attendant paradoxes. Another reading of the struggle over the meaning of ‘gender’ is made possible by its resonance with the imperial tropes of perversely gendered and sexualised colonial peoples used to legitimate the ‘civilising mission’, which would interpret illiberality alternatively as resistance to western hegemony. A different reading of the refusal of hostile states to use the identity categories of sexual pride and liberation makes visible the spaces left for gender and sexual freedoms beyond the domesticating reaches of the law. It creates another opportunity to undertake the important work of seeing how discursive and performative practices give meaning to gender and sexuality in specific social and cultural contexts and resist the emergence of new paralysing dichotomies between the west and the rest. Finally, I suggest that concern about the negative impact on women’s rights can also be read as anxiety about displacing other dimensions of social justice by focusing on a single issue.

The challenge for queer legal advocacy and activism is to engage with new opportunities to utilise international human rights law to condemn the diverse subjections, humiliations and killings of queer people and have them recognised as lives that matter, while also resisting the propensity of legal interpolation to intensify global regimes of sovereign power and sustaining visions of justice beyond the law. We need to rely more heavily on the queer aptitude to read deeper narratives from surface stories in order to survive and learn how to work with the paradoxes of rights so that the tropes of gender in international human rights law resist reproducing disadvantage and instead work in the service of emancipations of all varieties.

**Endnote**

In the course of researching this article, I emailed the Special Rapporteur to ask whether he had written anything about this encounter with the Third Committee. He replied promptly to let me know that he had not but suggested that I examine a number of WikiLeaks cables concerning Egypt which, as I have indicated, was specifically criticised in his report.⁸⁹ Although I found the cables Scheinin referred me to extremely difficult to decipher,⁹⁰ they helped me to put together another story about the reception of his gender report by the General Assembly’s

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⁹⁰. These cables may be accessed by searching the terms “wikileaks,” “egypt,” “scheinin” on Google Search.
Third Committee, a story that is totally unrelated to the issues of gender and sexuality that appeared to fuel the Third Committee’s heated discussion. This is how it goes: following the election of President Obama in 2008, the U.S. put increased pressure on Egypt to address various human rights issues and lift the state of emergency that had been in place for more than 50 years. One outcome was that Egypt agreed to a visit by the Special Rapporteur in the lead-up to President Obama’s trip to Egypt in June 2009, which was the first time that Egypt had extended an invitation to one of the U.N.’s human rights Special Procedures. The visit took place in April 2009 and Scheinin’s report on the visit was released several days before the Third Committee’s discussion of his gender mainstreaming report on 26 October. The report on Egypt was highly critical of the continuing state of emergency and highlighted many serious human rights violations that resulted from the use of exceptional powers to arrest and detain terrorist suspects which had become normalised as part of the ordinary penal framework. Earlier, President Obama, in his 4 June speech in Cairo, called for a “new beginning” between the U.S. and Muslims around the world, based on shared common principles “of justice and progress; tolerance and the dignity of all human beings.” However, once his visit was over, the Egyptian government declared that no further progress on human rights issues in Egypt was possible. To underline the point, it seems that Egypt rallied opposition to the Special Rapporteur’s gender report, pressuring other African and Islamic states to attack it.

This story supports my argument that even the most vehement positions assumed by states when contesting ‘gender’ rest on shifting regimes of imperial and resistive power. The story is a useful reminder of the importance of queer survival strategies which rely on assemblages of alternative reading practices and subversive modes of expression for life. The project of queering international law, aimed as it is towards a vision of justice beyond the law, reminds us that multiple readings of transnational contestations of gender and sexuality are necessary if we are to queerly empower ourselves as critical legal scholars and activists.

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