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ISIL in Iraq: A Critical Analysis of the UN Security Council's Gendered Personification of (Non)States

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Abstract: Legal feminist theories have troubled dominant conceptions of statehood, revealing the threat of the 'Other' as integral to the hegemonic masculinity of powerful states. In this paper I provide a critical gendered discourse analysis of the UN Security Council's response to the Islamic State of Iraq and Syria (ISIL). I consider the role of personification in constituting legal subjects as states (persons) and excavate this from the Council's resolutions concerning Iraq. In constituting ISIL as a barbaric, hypermasculine terror group in relational opposition to the state of Iraq, the Council draws on gendered normativities ordinarily veiled by seemingly objective legal criteria as to the creation of states. Whilst the state of Iraq is constituted through the hegemonic model of statehood, one premised upon democratic, liberal Westphalian ideals, it is still subject to the paternalism of the Security Council. In this way, the state of Iraq is framed as failing to reach a particular masculine standard of statehood, and is thus subject to the continuation of 'civilising' discourses. Thus, instead of asking whether ISIL is or is not a state under international law, it is revealing to consider how responses to it work to maintain and (re)produce a graded, hierarchical international community of states.

Keywords: UN Security Council; Islamic State of Iraq and Syria (ISIL); Iraq; feminist analysis; international law; statehood; personification



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1. Introduction

"I hated her, not just because she had let Mosul be taken over by ISIS, but because she had let it be taken over by *men*." (Murad and Krajewski 2017, p. 153)

Nadia Murad

In December 2014, the violent state-building of the Islamic State across Iraq and Syria (ISIL)¹ peaked, with the group controlling approximately a third of Syrian territory and forty percent of Iraq (Wilson Center 2019). Ten million people are estimated to have lived within ISIL 'territory' (BBC 2018), subjected to its genocidal restructuring of society along ethno-sectarian, gendered hierarchies (Ahram 2019, p. 181). ISIL's violent take on 'governance' saw the systematic persecution of all peoples who did not adopt its 'religious' dictates or interpretation.² However, ISIL maintained control through more than violence alone. It performed a number of the familiar functions of state, "wield[ing] power through two complementary tools: brutality and bureaucracy" (Callimachi 2018). Notwithstanding its lack of desire for recognition as a sovereign state under international law, ISIL embarked upon state-building through, inter alia, its policies concerning taxation,

¹ Other names include, but are not limited to, *Da'esh*, IS, ISIS, Islamic State in Iraq and the Levant, Islamic State of Iraq and al Sham. To allow for consistency within this paper between my own analysis and the language used by the UN Security Council, throughout I will use the acronym 'ISIL'.

² VG Julie Rajan argues that ISIL attempts to discern 'pure' Muslims as those who submit to its authority. This is important to stress as it has resulted in the persecution of both non-Muslims and Muslim communities, including Sunni Muslims, which refute the group's ideology. She argues that ISIL, in pursuit of a caliphate of 'true believers', committed "takfiri genocide against Muslims it considers heretics throughout Iraq and Syria". This, she argues, receives little attention in the West; (Rajan 2015, p. 71).

marriage, education, policing, security, and trade (Brown 2018, p. 174). For example, Murad details ISIL's institutional, bureaucratic violence in her account of being 'registered' as the sexually enslaved 'property' of an ISIL fighter: "[a] large Islamic State flag decorated the top of the courthouse. The building was crucial to the Islamic State plan for instituting a new order in Mosul, one led not by the laws of the central Iraqi government but by the Islamic State's fundamentalist beliefs" (Murad and Krajewski 2017, p. 149). Thus, controlling the governance structures of Iraq and adorning them with ISIL flags symbolised its emergence as a dystopian form of state.

ISIL's categorisation by some academics as a 'proto-state' (Brown 2018, p. 175; Van Engeland 2017) calls into question the fundamental nature of statehood. Traditionally, international law is neutral on the particular political, economic, legal, social and cultural systems within a state; however, this is troubled by entities, such as ISIL, which may indeed meet the legal criteria of statehood under the Montevideo Convention. The question here is not whether ISIL satisfied the legal requirements of statehood, but is instead concerned with how the Security Council discursively precludes ISIL from statehood and what this reveals about the otherwise hidden normativity of the legal norms on state sovereignty. Ideals such as democracy, compliance with international legal norms, gender equality and human rights are woven into the Council's discourse on ISIL, indicating a particular model of statehood it is willing to endorse: a model discursively constituted in opposition to terrorist violence in general, and ISIL in particular. Of course, denying ISIL the rights of statehood appears uncontroversial in light of the atrocities it has committed. However, it is important to be alert to the hegemonic militarism of the Security Council and the danger of it wielding 'gatekeeper' power. This is particularly so, given its mandate, powers, and permanent members. In analysing how entities are included or excluded, an imagined ideal state comes into view: a model 'Self' to which 'Others' should work towards. Not only does this run counter to the formal equality of states, but it reveals an idealism, or 'high morality', monopolised by the 'West' and underpinned by the threat of the Council's collective militarism, wielded frequently against 'Third World' states (Knox 2013, p. 116).

In this paper, I analyse how the United Nations Security Council's discourse reproduces the masculine ideal state in its country-specific resolutions concerning the situation in Iraq. In particular, I offer a gendered critical discourse analysis of the UN Assistance Mission for Iraq (UNAMI) mandate renewals adopted between 2014 and 2016. I focus on the (mostly) preambular paragraphs to excavate the constitution of ISIL and Iraq.³ This methodology allows for the centring of not strict legal concepts, but rather the constitution of subjects through discourse (Jäger and Maier 2010, p. 34), and the relationship between text and the broader context (van Dijk 2010, pp. 62–66). It situates the Council as being nested within, and producing, inequalities across the international social structure, such as those concerning participation within the international legal system, or the distribution of resources. I use the assumed analogy of the state as a person to argue that the Council excludes ISIL from statehood by reproducing gendered, racialised scripts. The Council positions ISIL as a barbaric, hypermasculine entity, antithetical to Westphalian notions of the liberal, democratic state. In relational opposition to this, the Council constitutes the Iraqi state as a masculine, unified, bounded agent: a civilised facilitator of inclusive democratic governance. However, Iraq is not constituted as an ideal, but as 'in progress'. It is framed as falling short of the hegemonic masculinity of the liberal state. This is indicative of the continuation of colonial relations which, particularly in the context of Iraq, narrativises the transformation of formerly 'rogue' states into democratic, liberal, capitalist ones following international intervention (Anghie [2004] 2007, p. 277).

Whilst ISIL has long lost its territory across Iraq and Syria, it is timely to consider past responses to it. At the time of writing, the behavioural norms of states are being acutely

³ It is worth stressing that I exclude from the discussion the Council's integration of its Women, Peace and Security Agenda within these resolutions. I have selected the country-specific resolutions precisely because feminist analysis of the Council tends to focus on the WPS thematic agenda: a practice which I have discussed elsewhere (Bird 2020).

considered in relation to the Taliban (Tadjdini 2021). The potential international recognition of it as the Government of Afghanistan comes amidst the group's promise to respect women's rights and its commitment to national statehood (Seir et al. 2021; Wintour 2021). The discursive constitution of a more 'moderate' form of the Taliban sits in opposition to the violence of 'IS-K': an Afghanistan-based group sharing the "ISIS ideology that rejects the modern international state system" (Bapat and Best 2021) whilst seeking to establish a caliphate. The analysis provided here of the gendered constitution of (il)legitimate statehood offers a snapshot of broader discursive processes; processes which are likely to outlive the version of ISIL central to this analysis.

I will first map feminist accounts of the masculine state. In so doing, I outline the gendered, racialised discursive processes previously identified as produced and maintained within the international community. I will then outline the main analysis of the Security Council resolutions, demonstrating how such discourses are traceable within the relational co-constitution of the Iraqi State and ISIL. In the final substantive section, I argue that the Council situates the Iraqi state as 'a work in progress', and therefore dependent upon international support.

2. Gendered Statehood

International legal feminist and queer theorists, alongside those writing on international relations, have worked to reveal the masculine gender of the personified state (See MacKinnon 1989; Peterson 1992; Charlesworth and Chinkin 2000; Hoffman 2001; Ruskola 2010; O'Donoghue 2018; Otto 2018; Parashar et al. 2018). However, the centrality of the state within international legal feminist writing has waned since its emergence in the 1990s. Indeed, Gina Heathcote notes the more recent "neglect of this aspect of international law from feminist scholars" (Heathcote 2019, p. 107). To avoid repetition of Heathcote's overview of the field,⁴ I will briefly outline just some of the core, relevant tenets of international feminist and queer writing on this topic. I will broadly demarcate said tenets between those premised upon the constitutive features and functionality of statehood on the one hand, and the resulting hierarchies of personified states on the other hand.

2.1. The State as an Individual

That the state is a person is just one of many legal fictions of international law (Ruskola 2010, p. 1478). The notion of legal personality is central here. To be a 'legal person' is to hold particular rights and duties, albeit variable based upon the nature of the personality and the laws in question (Shaw 2014, p. 142). International law now recognises actors such as international inter-governmental organisations, non-governmental organisations, and corporations as being capable of having some degree of international legal personality (Charlesworth and Chinkin 2000, p. 124). However, it is states which act as the key players within international law (Ibid, p. 124; Shaw 2014, p. 143). James Crawford notes that states "remain the gatekeepers and legislators of the international system" (Crawford 2006, p. 29). If states then are to be understood through the analogy of personhood, questions arise as to the *type* of person any one state may be said to be and to the constitutive features which makes them so.

First then, what is it about the modern, liberal state, which makes it, not simply a person, but a masculine person? A key function of the state which gave rise to feminist critique is that of violent force. Hilary Charlesworth, Christine Chinkin and Shelley Wright argue that the state is patriarchal due to the "concentration of power in, and control by, an elite and the domestic legitimation of a monopoly over the use of force to maintain that control" (Charlesworth et al. 1991, p. 622). John Hoffman similarly argues that it is the claim to a monopoly of 'legitimate force', that is territorially focused, which underpins the

⁴ It is worth bearing in mind that in Heathcote's *Feminist Dialogues on International law*, she considers feminist analysis of state *sovereignty*. In this current paper, I consider the concept of the state, whilst recognising that much of the literature oscillates between the concept of the state and the concept of state sovereignty; (Heathcote 2019, pp. 103–17; Knop 1994, p. 14; Hoffman 2001).

liberal state as an inherently patriarchal and masculine structure (Hoffman 2001, pp. 73–90). Whilst claiming this monopoly is not the same as exercising it, he argues, it presupposes the “need to dominate ‘others’—those who either contest, or lie outside, this legitimacy” (Ibid, p. 85). In so doing, the state creates its own justification for existing: protection. Hoffman goes on to argue that “a state which is not challenged by rebels, dissidents, terrorists and law-breakers, is a state without its *raison d’être*” (Ibid, pp. 85–86). Thus, having the ability to use force per se, even widespread military force, does not give rise to statehood. It is a claim to the *legitimate* use of force, as derived from a collective, a unity of people, which is a constitutive feature of the modern, liberal state. From this view, the role of law in legitimating the state’s functionality as a protector (through its monopoly over the legitimate use of force) emerges.

The masculinity of legal discourses sits within a symbiotic relationship with the masculine persona of the state. In conceptualising the maleness of the liberal State, Catherine A. MacKinnon argues that the state seeks to reflect its view of society back to itself. In so doing, it appears objective: the embodiment of collective reason and rationality. She argues that “the State is male in that objectivity is its norm. Objectivity is liberal legalism’s conception of itself” (MacKinnon 1989, p. 162). Applying this to the international ‘society’ of states, the process of recognising state sovereignty, and thereby legitimacy, is a way of declaring supposedly objective inherent values within the status quo. It produces knowledges as to what a state is, how it should act, and therefore the nature of pre-existing states (those doing the recognising). For MacKinnon, inequality and oppression is first constituted prior to law, *and then* the constitution is posited, including formal, legal equality and importantly, the principle of non-interference with the status quo (Ibid, p. 163). MacKinnon argues in relation to the non-interference, or negative freedoms, associated with liberal statehood that “[i]n this hall of mirrors, only in extremis shall any man alter what any other man has wrought” (Ibid, p. 164).

Applying MacKinnon’s critique to the international legal system reveals how formal, legal equality assigned to nation states simply works to obscure and fix prior inequalities. Under Article 2(1) of the UN Charter, state sovereignty connotes that all states are equal in standing;⁵ however, this can be seen as casting a veneer of egalitarianism over historical and continuing colonial hierarchies. More recent work, most notably from the fields of feminist international relations and feminist security studies, have interrogated such hierarchies by revealing states at gendered, racial, ethnic, classed, and religious intersections. In *Gendered States Revisited*, Swati Parashar, J. Ann Tickner and Jacqui True look to the processes of postcolonial nation building, globalisation, and conflict to identify how states are variably gendered. They argue that an idealised imagining of the nation state (that is, a Western universalism) is both entrenched and aspired to within post-colonial states. As part of the process of post-colonialism, the “transfer of power (state machinery) is often a change of bureaucratic control from the colonial rulers to the nationalists” (Parashar et al. 2018, p. 8). The *type* of person any given state *is* can be understood not just in relation to state structures per se, but to the particular intersections of overlapping categories of identity. For example, Swati Parashar demonstrates the relational particularities of the gendered post-colonial state arguing that such states “use gendered emotional language to reject colonial emasculation/feminisation and reclaim masculinity” (Parashar 2018, p. 159). She uses India to demonstrate the complexity of this process, showing how as a post-colonial state it came to embody the revered *Mother India*: a benign and nurturing protector, symbolising maternal sacrifice. However, Parashar illustrates how such protection is withdrawn when the state’s power is challenged, such as by Maoist insurgency: the state “expects the

⁵ United Nations, *Charter of the United Nations* (signed 26 June 1945) 1 UNTS 16 (UN Charter) Article 2(1); see also the statement made by the International Court of Justice that “each state is permitted, by the principle of state sovereignty, to decide freely . . . a political, economic, social and cultural system, and the formulation of foreign policy” in *Case concerning military and paramilitary activities in and against Nicaragua (Nicaragua v United States of America)* (Merits) [1986] ICJ Rep 14, 205.

insurgents to embrace its benign maternal protection or face the wrath of its militarised masculinity” (Ibid, pp. 172–73).

The idea that the legitimacy of the liberal state rests upon the existence of an external threat is central to Caron Gentry’s intersectional account of disordered (terrorist) violence (Gentry 2020). She takes seriously the role of ‘terrorism’ within the international imagination and demonstrates the function labelling groups or acts as terrorist serves within global politics. The process contributes, she argues, to the maintenance of international hierarchies not just between states and non-states, but between Global North and Global South states. It does so by discrediting political violence against the state as *disordered*—that is, irrational, emotional and the actions of the weak (i.e., actors without the capabilities of the state) thereby instilling the primacy of the state (Ibid, p. 69). Gentry notes that this mirrors the justifications for excluding women from international institutions. Drawing on Carole Pateman’s notion of the disorder of women (Pateman 1980), ‘disorder’, Gentry stresses, is that which disrupts civility, reason and rationality (Gentry 2020, pp. 60–61). That women were historically read as weak and overly emotional, rendering them incapable of entering into the social contract of liberal political thought. The discursive practices which allowed for this delegitimisation are replicated in the discursive practices discrediting those deemed terrorists. Thus, such narratives work to *feminise* terrorism. The flip side of this, she argues, is that the counter-terrorism actions of the state are purified in opposition to such disordered, immoral violence. She posits that “some violences [are] seen as ‘good’, ‘acceptable’ and ‘legitimate’ by their relationship with the (Western) state, and some violences [are] always disordered by their relationship with illiberal (non-Western) states.” (Ibid, p. 5). It is not just states and non-states which are hierarchically structured then, but *types* of states. This occurs as certain acts of political violence which do not shore up the narrative of the black/brown non-Western (male) terrorist are ‘forgotten’⁶ in effort to maintain the reification of the counter-terrorist as “a white Western person (male)” (i.e., Global North states) (Ibid, p. 18). The binary category of the ‘Global South’ becomes the site of illegitimate violence—that is *where* violence is supposed to occur—be that by the ‘illiberal, undemocratic despotic rogue state’ or by the terrorist non-state actors (Ibid, p. 18). Thus, the muscular violence taken by the Global North, as the counter-terrorists, is coded as legitimate and moral. This form of Westphalian state violence is therefore protected through the processes of discrediting disordered (terrorist) violence.

What is more illuminating then is to think of States as ‘kinds of peoples’ (Ruskola 2010, p. 1490), or as ‘graded’ (Tzouvala 2020, p. 205), with a particular normative standard vested in Western, (neo)colonial states. To develop this point further, I will now consider further how gendered statehood (re)constructs the hierarchies *between* states through normativity by thinking of them as a community.

2.2. States as a Community

An important feature of constructing the personified (male) state is situating it within a community. Reading the state as a person imagines the international plane as a collection of peoples, immersed within interpersonal relations. Aoife O’Donoghue shows the embeddedness of this collective personification of states within modern international law by analysing the gendered writings of 19th century legal academics which were influential in shaping the field.⁷ She quotes Robert Phillimore:

⁶ Gentry partially adopts the idea of ‘aphasia’ from Critical Race scholars which captures ‘calculated forgettings within international relations’. Whilst skeptical of the pathologism of this process, she argues that it allows for the appreciation of intentional and purposeful forgettings. Such forgettings tend to arise in relation to the violent history of colonialism, alongside gendered, LGBTQ+, racial histories which trouble dominant discourses. Such forgettings produce a “biased sense of what is normal, right and credible . . . bearing on what violences we see, what victims we recognise and what perpetrators we do (or do not) hold accountable” (Ibid, pp. 8–9).

⁷ For an in-depth analysis of the gendered personification of the state within the writings of Johann Casper Bluntschli, John Westlake, Robert Phillimore and James Lorimer, see (O’Donoghue 2018).

... the individual man should attain to the full development of his faculties through his intercourse with other men ... so it is divinely appointed that each individual society should reach that degree of perfection of which it is capable, through its intercourse with other societies. (Phillimore 1871, p. 3)

O'Donoghue's analysis shows the often-explicit misogyny across a number of such foundational texts, resting on sexist tropes as to the passive weakness of femininity in contrast to the reasoned, proactive masculinity of the state. The idea of a community of states, however, is at times a romanticised one: a place in which the communitarian, interpersonal interactions of individuals is mirrored onto the desired behaviours of the 'international community'. In an idealised account of how states *should* relate, Gerhart Husserl, writing during World War II, asks "but do we not speak of a family of nations ... ?" (Husserl 1942, p. 143). He builds on the idea of the family and considers that "[t]he figure of speech, "family of nations," gives expression to an analogy drawn between the society of nations, on the one hand, and the family relations as they exist between individuals, on the other" (Ibid, p. 143). Thus, Husserl takes seriously the personification of the state and leverages this to prescribe friendlier relations and constraint (even if achieved through the setting of legal norms).

Although the writings of Phillimore and Husserl are far from current, they reveal the extension of the state as person towards the international community of states as people. Husserl's appeal to an international family prescribes the hetero-cisnormative privileging of the family unit as foundational for the creation of a *civilised* society. He then transposes this onto the international plane. Such sentiments are mirrored within the preamble of the Universal Declaration of Human Rights (UDHR), which iterates that the "the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world".⁸ Furthermore, Article 16 (3) states that "[t]he family is the natural and fundamental group unit of society" (UDHR, article 16(3)). This reveals the hegemonic conservatism at the heart of even romanticised, idealised accounts of the state as person analogy.

More frequent though is the invocation of the interpersonal personification of states toward more violent conduct. Gina Heathcote, in critiquing the *jus ad bellum* in general and the right of states to self-defence specifically, argues that it is the emotive masculine personification of the state which foregrounds interpersonal violence between them. She considers the requirements of necessity and proportionality to be premised upon the analogous individual right to self-defence, thus importing "an assumption about the legal subject having the capacity to choose to use force in a rational manner" (Heathcote 2012, p. 88). She goes on to posit that the supposed equality of states undergirds the armed attack/counter-attack understanding of self-defence as a "binary that mimics the 'bar-room brawl' of the interpersonal acts" (Ibid, p. 90). Equal strength is therefore assumed, whilst the inability of former colonies, or those from the Global South, to respond in self-defence is obscured through seemingly objective, 'equally applicable' legal constructions.

Masculinity plays an important role in determining the degree and form of violence dominant states inflict upon 'Othered' states. Teemu Ruskola, in queering states as gendered subjects, reveals the varying degrees and types of masculinities attributed along global hierarchies. He argues that the deviant masculinities of 'uncivilised' and (hyper)masculine African states and the 'hypercivilised' and effete 'Oriental states' rendered them 'rapable' through colonialism. The chivalrous, 'just right' masculinity of European states, Ruskola posits, showed them to be "both manly *and* civilised" (Ruskola 2010, p. 1500). This presents a gendered and sexualised standard of 'civility' upon which (subordinately masculine) states enter the international community: through imperial penetration, creating full sovereign manhood (Ruskola 2010; Otto 2018, p. 243). This analysis grounds the imaginings of the legal 'person' of the state, within *bodies*. Seeing international relations as interpersonal interactions is helpful when the analogy is extended metaphysically. Such a mode of

⁸ Universal Declaration on Human Rights (adopted 10 December 1948) UNGA Res 217 A(II) (UDHR).

theorising is taken up by Ntina Tzouvala regarding the processes of ‘civilising’ states. Tzouvala argues that “Iraq’s rehabilitation as an equal sovereign became conditional upon its externally guided transformation into a model neoliberal State.” (Tzouvala 2020, p. 175). Yet, this ‘standard’, she argues, is unattainable due to the ‘logic of biology’: “the idea that Iraqi society and Iraqis were fundamentally different to their occupiers in ways that were impossible to rectify” (Ibid, p. 183). This embeds an Orientalist, essentialist perspective on the body politic of Iraq, which sees weak democratic governance as the most suitable model.

These critiques reveal how gender, race and colonialism work to create hierarchies of states which render the western, liberal model of governance as an ideal. The legal guarantee of sovereign equality obscures the role of normative signifiers in ordering them. Thus, taking seriously the personification of states allows for an analysis which transcends the limitations of legal discourses.

3. Constituting the Subjects of Iraq and ISIL

My contention is that the Security Council reproduces the gendered personification discourses which I have outlined above. By drawing on concepts which are infused with masculine norms, the Council discursively constructs the masculine, unified and bounded subject of the Iraqi state in opposition to ISIL. Not only is ISIL constituted in opposition to the Iraqi state, but in antithesis to the norms surrounding statehood. Even when supposedly objective legal criteria may be satisfied by ISIL’s effective control over territory, the discourse excludes it from statehood by drawing on gendered, racialised scripts. However, it should not be assumed that the Iraqi state is constituted as the ideal, model (Western) state which undergirds the concept of statehood. Instead, the language of postcolonial, post-conflict development and progress is used to diminish the independence of the state and to position it as subject to the Council’s ongoing paternalism.

The analysis below will speak to the concepts of statehood detailed in the Montevideo Convention on the Rights and Duties of States: “that a state as a person of international law should possess the following qualifications: (a) a permanent population; (b) a defined territory; (c) government, and (d) capacity to enter into relations with other states”.⁹ This is useful for the purpose of organising my arguments, although, as stressed above, this is not a doctrinal analysis but a critical gendered discourse analysis.

3.1. (Dis) Unity and Permanent Populations

The requirement for a permanent population under Article (1) (a) Montevideo Convention rests on assumptions that states are the “aggregates of individuals” (Crawford 2006, p. 52). This composition of persons is conceptualised as static—despite the fluidity of populations due to displacement and refugee movements, alongside, inter alia, state policy on population controls.¹⁰ That the state is imagined as “an ‘entity’, [having] ‘homogeneity’ and ‘sameness’ . . . allows us to identify it as an institution with definable features” (Hoffman 2001, p. 77). My analysis shows the fictional stability of a ‘permanent population’ woven throughout the Security Council discourse. The Iraqi state is constituted as a unifier of peoples, whereas ISIL is constituted as the dominant driver of instability: it is framed as the sole cause of mass displacement, thereby disrupting the permanency required to make claims to statehood.

First then, I will outline the way in which the Council narrativises disruption, which it closely ties to ISIL (as perpetrator) and the peoples of Iraq (as victims). Across the resolutions the mass displacement of the civilian population and the widespread ‘humanitarian impact’ caused by ISIL is given primacy in centring its destructive force. This discursive

⁹ Montevideo Convention on Rights and Duties of States (entered into force 26 December 1934) 165 LNTS 19, Art 1(a)–(d).

¹⁰ Charlesworth and Chinkin argue that demographic changes through such mechanisms are overwhelmingly gendered, with women and children overrepresented in refugee populations and reproduction policies, exacerbating gender inequalities; (Charlesworth and Chinkin 2000, p. 127).

effect is built by first attributing the movement of refugees and those internally displaced to ISIL. This occurs through the Council creating a simplistic, linear chain of causation between the specific actions of ISIL, and the seemingly collective response of the Iraqi people. In the preamble to resolution 2169 (2014), the Council “[e]xpress[es] grave concern at the *current security situation* in Iraq as a result of a large-scale offensive carried out by terrorist groups, in particular the Islamic State in Iraq and the Levant (ISIL)”.¹¹ This is one of the first substantive segments of the resolution, foregrounding the ISIL ‘incident’ as the overarching context in which the remainder is to be read.¹²

Through invoking the abstract term ‘current security situation’, the Council constitutes a new ‘(in)security situation’ which is tied to the “large-scale offensive” of ISIL. Resolution 2169 (2014) goes on to specify this as the “events in Anbar province in January 2014 and the city of Mosul and other parts of the country in June 2014 by ISIL”.¹³ By grounding the very broad and general descriptor of ‘security situation’ in the very discrete examples of ISIL-led military operations, ISIL is constituted as the sole, if not dominant, causal agent of a multifaceted, complex state of instability and thus can be seen as constituting an ‘event’.¹⁴ This effectively draws a line between prior civil unrest and instability and the new epochal insecurity of the ISIL phenomenon. The effect of this is the decontextualising and dehistorising of ISIL from the far more enduring socio-economic and political drivers of instability within Iraq, which I will return to discuss below.

Having established particular military offences as the source of this new era of insecurity for Iraq, the Council continues with the simplistic narrative through aggregating disparate harms and individuals (as victims) across the state. This discursive process constitutes the peoples of Iraq as the victims of ISIL, and in so doing reproduces the idea that the state, through its ‘permanent population’, is understood as the aggregate of individuals (Crawford 2006, p. 52). This can be seen as the Council describes the victims involved as heavy civilian casualties and displaced civilian Iraqis, as detailed in Table 1:

Table 1. The discursive constitution of victims.

Victims Described by the Security Council	Effect of Discourse
“heavy civilian casualties, including women and children” ¹⁵	Framing ISIL as direct threat to the feminised civilian population of Iraq
“the displacement of more than three million Iraqi civilians” ¹⁶	Indicating the aggregate impact of ISIL as disrupting the permanent population of Iraq

This produces a homogenised collective of persons, seemingly the ‘permanent population’ of the Iraqi state, and positions them in need of protection from the dangers of insecurity (ISIL). Such a collective is feminised within the discourse by explicit reference to “womenandchildren” (Enloe 1990, p. 52): a term coined by Cynthia Enloe to capture the consistent pairing of women and children (as archetypical civilians) in war narratives. Furthermore, the collectivised categories of civilian casualties and the displaced renders them a population in need of *protection*. In so doing, the masculine authority of the nation state, as a protector, is thrown into relief. ISIL here is seen to represent the legitimating *need* for the hegemony of the state.

An even deeper layer of gendered language can be unearthed within the Council’s discourse which relates to the carving out of discrete events, or ‘crises’, within narratives on international peace and stability. Above I discussed the particular events of ISIL military

¹¹ UNSC Res 2169 (2015), para 5.

¹² UNSC Res 2233 (2015), para 5; UNSC Res 2299 (2016), para 5.

¹³ UNSC Res 2169 (2014), para 5.

¹⁴ The drivers of displacement and forced migration are rarely singular but instead multifaceted; see (Adhikari 2012; Richmond 1993).

¹⁵ UNSC Res 2233 (2015), para 5.

¹⁶ Ibid.

advances in 2014 as acting as a peg on which the Council hangs broader instability and mass displacement on. In so doing, the Council constructs a new epoch of violence, thus obscuring continuing cycles of endemic violence. David M Malone and Poorvi Chitalkar note that the period of the US-led occupation up until 2013 saw a tenuous security situation. They argue that:

In the ... security vacuum, the coalition was unable to meet the most basic security needs of Iraq's citizens. Further, the effect of the disenfranchised Sunni community was under-estimated. A decade later, domestic security is still seriously impaired by patterns of sectarian and insurgent violence ... About 5 million Iraqis have been displaced from their homes since 2003. (Malone and Chitalkar 2016, p. 562)

From this vantage point, we can see a much more complex picture than that which is offered by the Council discourse. A slice of time is carved out premised upon ISIL's declaration of a Caliphate, obscuring the context from which the group emerged (and in which permanent members of the Security Council played a crucial role (See Brands and Feaver 2017; Al-Ali and Pratt 2009; Ali 2018, pp. 120–55)). Charlesworth argues that the international legal imagination shapes the field of law through honing on 'incidents' at the expense of the "politics of everyday life" (Charlesworth 2002, p. 389). The devaluing of the latter, she argues, ties into the gendered, liberal thinking which sees the private sphere as a space for limited regulation and inquiry. The management of crisis is "taken as a test of manhood" (Ibid, p. 390), whereas a concern with humanity more generally, and thus the everyday, is coded as feminine. ISIL is seen to be a marker of a contemporary crisis, effectively shunting the focus from broader endemic challenges. The Council here can be said to fall into this thinking by "concentrate[ing] on a single event or series of events and [missing] the larger picture ... cutting crises down to bite-size pieces" (Ibid, p. 384). In so doing, the Council constructs a simplistic problem and in turn produces a simplistic solution.

The Iraqi state is constituted by the Security Council as said solution to the disunity and chaos caused by ISIL. In particular, the Council draws on democratic frames to capture the seemingly entire 'permanent population' of Iraq. The population of Iraq is framed, not on the basis of sectarian, ethnic or regional divides, but on the basis of their *nationality*. The Council regularly states in the resolutions "the need for *all segments of the Iraqi population* to participate in the political process, in inclusive political dialogue, and in the economic and social life of Iraq ...".¹⁷ As citizens of the nation state, individuals are aggregated into an *entity*, thus constructing one governance structure (Iraqi state) over another (ISIL). Of course, that democracy is seen as an assumed, naturalised ideal for state governance reveals a constitutive feature of a 'civilised state', and thus deserving of legal statehood.

The text segment is expanded upon in Resolution 2299 (2016) to incorporate explicit gender inclusion within the nation state: the Council "[u]nderscor[es] the need for all segments of the Iraqi population to participate in the political process, in inclusive political dialogue, *including through the equal participation of women*".¹⁸ Whereas 'women and children' were the noteworthy civilian casualties of ISIL within the Council's discourse, as discussed above, in relation to the state of Iraq, women are seen to be valued members of the population: political agents within the body politic. This discursive commitment to women's political participation works here to legitimise the state. Of course, *prima facie*, this commitment is something to celebrate from a feminist perspective; however, discourses on gender equality play a complex role within international normativities of the state. Whilst it is an ideal rooted within feminisms, it is important to be alive to the cooption and instrumentalisation of such objectives (Bird 2020). Rhetoric concerning gender equality is used to signify modernity and progress, thereby having the potential to act as "mechanism[s] of exclusion and a means to identify civilised states from uncivilised,

¹⁷ UNSC Res 2169 (2014), para 8; UNSC Res 2233 (2015), para 8.

¹⁸ UNSC Res 2299 (2016), para 8.

rogue, or failing states.” (Heathcote 2019, p. 106). Pertinent to the analysis here are the dominant, essentialist discourses on ‘saving’ Iraqi women which featured within the ‘war talk’ leading up to the US-led invasion of Iraq in 2003 (Al-Ali and Pratt 2009, p. 69). Nadje Al-Ali and Nicola Pratt argue that commitment to this objective waned; women’s rights were compromised in the ethnic and sectarian negotiations of state (re)building (Ibid, p. 87). Yet ‘women’s empowerment’ served a powerful rhetorical purpose in narrativizing the US ‘civilising’ mission. Therefore, taking a long view of the hegemonic state’s engagement with gender equality within Iraq may indicate the degree of sincerity of such discourses.

What is indicative of the Council’s shallow commitment to feminist ideals is its reproduction of heteronormative gender roles in centring women within Iraq’s ‘permanent population’. The Council “reaffirm[s] the key role women can play in re-establishing the fabric of society” and stress[es] the need for their full political participation, including in “... the development of national strategies ...”.¹⁹ This not only speaks to the ‘adding’ (and stirring) of women to the masculine structures of the nation state, i.e., the public sphere,²⁰ but the reference to the ‘fabric of society’ calls to mind the pivotal role of women within the family unit, i.e., the private sphere. Whereas the public realm is the assumed site of the material reproduction of society—through its institutions, waged-labour, and goods—the private sphere is taken as the site of the symbolic reproduction of society through childrearing, cultural practices and customs (often considered ‘unpaid-labour’).²¹ This discourse reproduces the normativity of the liberal state by framing the family as the building blocks of society: if the state is the aggregate of individuals, then women as individuals are firstly positioned within familial units “valued primarily for their contribution as reproducers and caregivers” (Nussbaum 1999, p. 63). This is an assumption mirrored within Article 16(3) UDHR and Article 23(1) of the International Covenant on Civil and Political Rights (ICCPR), both of which posit that “the family is the natural and fundamental group unit of society and is entitled to protection by society and the State”.²²

Thus, the ideal woman, which the Iraqi state is mandated to protect, is constituted as a lynchpin of societal cohesion, making a home out of the nation through care, nurturing and peacebuilding. Such a framing obscures the complexity of lived experiences and privileges conservative cis-heteronormative accounts of gender roles. As is clear from the UDHR and the ICCPR, the feminine unit of the family is grounded within the state “protection racket” (Agius 2018, p. 72). Laura Sjoberg and Jessica L. Peet argue that this form of gendered nationalism “relies on the image of women, mothers, and the homes they live in as beautiful, pure and in need of protection” (Sjoberg and Peet 2011, p. 175). They argue that this *need* renders them, what Clausewitz calls, the nation’s ‘centre of gravity’ within war narratives. Thus, “[s]tates fight for “their women” as their centres of gravity, and attack their opponent’s women, hoping to dislodge their ... fabric of their society” (Ibid, p. 176). Notably though, in the Council’s discourse, ISIL is constituted as lacking a ‘permanent population’. The Council obscures the women and children living under ISIL, despite the fact that it has “drawn in people from abroad and has trapped in the local populations, effectively ruling over a population” (Van Engeland 2017, p. 80). Ideologies around the family and patrilineal descent were integral to ISIL state-building: ISIL used ideas of ‘marriage’, and practices of sexual violence to build sexual, ethno-sectarian hierarchies

¹⁹ UNSC Res 2233 (2015), para 14; variations of this appear in UNSC Res 2169 (2014), para 14; UNSC Res 2299 (2016), para 17.

²⁰ The “add women and stir” adage construes the idea that increasing representation does not, in and of itself, change the normative structures of a state. Charlesworth, Chinkin and Wright argue that states are masculine at a normative level. Increasing representation is not guaranteed to alter structures, especially if those *invited* to participate need to perform the masculine norms of the public sphere; (Charlesworth et al. 1991, pp. 625–27).

²¹ The between material and symbolic reproduction is one Nancy Fraser extrapolates from Jürgen Habermas’ *The Theory of Communicative Action*. She critiques this distinction by considering “dual activities” which trouble this binary distinction. In using the dichotomy here, I am alluding to the gendered assumptions which centre care, childrearing and other forms of non-waged labour as being a ‘feminine’ contribution to society. This assumption sits in relation to the ‘masculine’ world of law, politics and governance. It is not my intention to reconstitute the binary absent of a critical gendered lens; (Fraser 2013, pp. 21–23).

²² Art 16(3) UDHR; Art 23(1) ICCPR.

(Ahram 2019, p. 188). Arranged and forced polygamous marriages created umbrellas of protection, social hierarchies, an allure for recruitment, and helped to augment its “demographic base” (Ibid, p. 188). However, the ‘population’ of ISIL is concealed within the Council discourse, as it focuses on its ‘displacing’ effect.

The Council’s constitution of both ISIL and the Iraqi state therefore juggles the question of permanent population through the simplistic formulation of problem and solution. This binary maps onto the Self of the state (as a person) and its shadowy, illegitimate Other, and works to exclude an aggregation of individuals which challenge the pre-existing status quo of the international order. Indeed, the population governed under ISIL are excluded as the Council prescribes an “inclusive Iraqi-led political process to support dialogue *for all those who renounce violence*, have no links to international terrorist organizations including ISIL, and respect the constitution”.²³ Thus, the Council engages in circular logic to naturalise the Iraqi state: the permanent population it recognises already coalesces around Iraqi nationality and the Iraqi constitution.

3.2. The State and Its Body

Territory plays an essential role in crafting the nation state, fulfilling the *personification* of sovereignty as attached to the physical world. There are two aspects to the analogy that the state is imagined as a bounded, unified individual: “the state’s territory as the physical body of an individual and as the individual’s private property” (Knop 1994, p. 15). Thus, territory is conceptualised as both the *body* of and the *property* owned by the state. However, ISIL troubles the Iraqi state’s effective control over ‘its territory’.²⁴ In controlling vast territory across Iraq and Syria²⁵ ISIL transgressed pre-existing, colonial state boundaries. However, ISIL’s relationship with this territory is not clear cut; Aniceé van Engeland posits that “it is uncertain whether ISI[L] has a defined territory but it still occupies one” (Van Engeland 2017, p. 80). The Council discourse, I argue, wields the ideas of personification and property rights to shore up the body of Iraq through foreclosing the possibility of ISIL controlling territory.²⁶ In this way, ISIL cannot be a Self. Instead, ISIL is constructed as the trespassing Other.

Both territory as body and as property can be seen within the Council’s discourse. The Council has stressed that “... the presence of ISIL *on* Iraq’s sovereign territory is a major threat to Iraq’s future ...”.²⁷ This statement speaks to the legal coincidence of the concepts of sovereignty, governance and territory. Crawford observes that statehood depends upon “the exercise of full governmental powers with respect to some area of territory” (Crawford 2006, p. 46). Effective control is seen to extend to the limits of this defined area (Henderson 2018, p. 355), fixing the autonomy and agency of the state (notably in the above utterance in relation to the future) within set, coherent bounds. Charlesworth and Chinkin argue that the concern with coherence and territorial integrity “presents the state as a bounded, unified entity” (Charlesworth and Chinkin 2000, p. 128), and thus is coded as male, in contrast to the bodies of females which are construed as having “permeable, negotiable, penetrable, vulnerable boundaries” (Ibid, p. 130). In framing ISIL as a presence *on* Iraq’s sovereign body, the Council constructs Iraq as the legitimate ‘owner’ of territory by pointing to the excluded Others. ISIL is conceptualised as effectively cuckooing on property ‘owned’ by Iraq as the territorial sovereign. Indeed, legitimate ownership *depends* upon the right to exclude, and therefore the ‘excluded’. John G Sprankling has observed that “[o]wnership is often analogised to sovereignty. In this sense, the owner’s right to exclude is the private law counterpart of the state’s power to control its territory” (Sprankling 2014, p. 305). Recalling

²³ UNSC Res 2299 (2016), para 8.

²⁴ A legal analysis of succession and ‘governments in exile’ is beyond the scope of the paper.

²⁵ ‘Timeline: The Rise, Spread, and Fall of the Islamic State’ (n 3).

²⁶ This is not to say ISIL *do* have a legitimate claim to the territory it controls, but rather invites reconsideration of the legal criteria of effective governance *over* territory. This is especially so given ISIL occupying land with clear governance structures, in tandem with the Council’s obscuring discourse.

²⁷ UNSC Res 2169 (2014), para 6; UNCS Res 2233 (2015), para 6; UNSC Res 2299 (2016), para 6.

Hoffman's argument discussed above, ISIL is the terrorist Other which provides the state with its *raison d'être* (Hoffman 2001, pp. 85–86).

This idea enables the distinction between the 'harbouring' of terrorist entities and being a victim of their trespass. The Council urges for international support and cooperation in supporting the Iraqi state in its efforts to "prevent terrorist groups . . . in particular ISIL, from using the territories of Iraq and neighbouring States to carry out violence".²⁸ ISIL can be seen here as an alien entity not of the territory. Thus, the Iraqi state falls within the category of victim state, as opposed to a 'rogue' state harbouring terrorism. This distinction draws upon similar discursive themes used within the international sphere. Whilst the 'War on Terror' rhetorically ceased (See Heathcote 2010), the ideology, discourses and actions conducted under the banner of such a 'war' have formed complex and resilient webs of meaning, hints of which are traceable within the Council's discourse on Iraq. The marking of certain groups as terrorist parasites on sovereign territory reveals the personification of the state through bodily and medical analogy (Bush 2002a, 2002b). States become either an unwilling victim to their presence, or an active agent in their activities: harbouring, concealing, and facilitating them. Previously, this distinction was marked by the concept of 'rogue states', a discursive signifier which was used, most infamously by the United States, to mark the supposed "Axis of Evil" (North Korea, Iran and Iraq).²⁹ In the contemporary context of this discourse, Iraq is not harbouring terrorists as a 'rogue state', but is instead reformed: a victim to trespass requiring healing from a parasitic illness. Thus, the Council forecloses the possibility of ISIL having a body, instead privileging the status quo, despite the Government of Iraq lacking effective control.

3.3. (In)Effective Governance

The governance of a permanent population residing within a given territory is required for the establishment of statehood as per Article 1(c) of the Montevideo Convention. Ostensibly, international law has little to say on the type of governance structure any given state *should* adopt. The principle of non-interference, alongside the concept of state sovereignty, appears to support this position.³⁰ However, the analysis here shows that the de facto governance of ISIL is not recognised as such by the Council. The framing of ISIL as an uncivilised terrorist group speaks to an implied standard of governance centred on hegemonic norms of democracy, liberalism and human rights. These norms form a part of the Council's discursive constitution of the federal Government of Iraq, despite its lack of control of the territory at the time the resolutions were adopted. The Council, then, is seen to construct the Government of Iraq based upon dominant ideals vested in the liberal personified state: it is a work in process premised upon the promise of international law and 'civility' as opposed to the institutional structures (ISIL) controlling and shaping the material, social, economic and cultural reality at the time.

Across the resolutions, the Government of Iraq is framed as central to the process of building the model, idealised state. The following segments reveal its constitution as a civilising force, invoking masculine ideals of protection, independence, stability and of social unity:

- [R]eiterating its support for the people and the Government of Iraq in their efforts to *build a secure, stable, federal, united and democratic nation*, based on the rule of law and respect for human rights³¹
- Urging the Government of Iraq to continue to *promote and protect human rights*³²
- [S]trongly emphasizing the need for the Government of Iraq to *conduct, in an independent manner, full, prompt, impartial and effective investigations* and hold to account those

²⁸ UNSC Res 2169 (2014), para 11; UNSC Res 2233 (2015), para 11; UNSC Res 2299 (2016), para 10.

²⁹ See 'Full Text: State of the Union Address' (Bush 2002b); (Rogers 2010, p. 152; Anghie [2004] 2007, p. 277).

³⁰ *Nicaragua v United States of America*, 205.

³¹ UNSC Res 2169 (2014), para 10; UNSC Res 2233 (2015), para 9; UNSC Res 2299 (2016), para 9.

³² UNSC Res 2169 (2014), para 13; UNSC Res 2233 (2015), para 16; UNSC Res 2299 (2016), para 17.

responsible for violations or abuses of human rights and violations of international humanitarian law³³

- Welcoming the efforts of the Government of Iraq . . . to counter ISIL (Da'esh), hold it accountable for its abuses, and *return stability throughout the country*³⁴

Within these often-repeated utterances, the Council invests in the Government of Iraq sovereign legitimacy and authority through the high-level encouragement of its 'strengthening governance'. The discourse indicates how this is to be achieved, and therefore prescribes a standard which speak to the following values:

- Stability, peace, and security
- Unity and democracy
- Respect for the rule of law and principles of justice (through accountability mechanisms)
- Promotion and protection of human rights

These values are simplified ideals which work to demarcate good governance from bad governance. Whilst these are not, *prima facie*, problematic principles, it should be acknowledged that they can play a role as discourses which can serve to reinscribe power as vested in particular states (i.e., the 'West'). The concept of 'good governance' is one which, whilst contested, captures various norms of international law, as Antony Anghie argues. Good governance, he posits, involves "the creation of a government which is, among other things, democratic, open, accountable and transparent, and which respects and fosters human rights and the rule of law." (Anghie [2004] 2007, p. 248). Similarly, Susan Marks problematises the tendency for international law to embrace a 'low intensity' model of democracy, i.e., a nation state-centric version premised upon periodic competitive elections, civil rights, and a particular constitutional framework. Supporting this model, she warns, may render irrelevant more fundamental accounts of democracy which aim to promote 'self-government' instead of just "legitimizing government by others" (Marks 2000, p. 2). Furthermore, she cautions against a rush to support an emergent 'democratic governance norm' not because of the liberal ideals *per se*,³⁵ but due to the function such a norm may play for maintaining power relations (Ibid, p. 2). However, whilst seemingly neutral, these concepts are contestable, and as a rhetorical practice merely replicate prior patterns justifying imperialist ventures into the 'Third World' (Anghie 2006, p. 749).

The promotion and encouragement of the federal Government of Iraq in developing political and legal institutions akin to those understood as European or Westphalian reveals the civilisational tropes underpinning sovereignty. The values wielded by the Council in doing so are discursively enmeshed within the ideological underpinnings of 'the West'. Stuart Hall maps out discursive systems which demarcate the ideological distinction between the "West and the Rest" (Hall 1992). Hall observes how the West as a concept came to signify values of modernity, advancement and the enlightenment (Ibid, pp. 185–9, 205–6, 221–24). The West became the Self, whilst 'the Rest' came to signify, under Said's Orientalism, the Other: uncivilised, barbaric, and undesirable (Ibid). Anghie argues that the values of good governance "are directed at reproducing in the Third World a set of principles and institutions which are seen as having been perfected in the West, and which the non-European world must adopt if it is to make progress and achieve stability." (Anghie [2004] 2007, p. 249). Whilst the framing of the Iraqi government takes on the role of reflecting back what the 'civilised' international community seeks to see in itself, this begs the question of what role gender plays in the Council's constitution of Iraqi governance.

³³ UNSC Res 2299 (2016), para 9.

³⁴ UNSC Res 2299 (2016), para 11.

³⁵ For example, Marks suggests revising the ideal of democracy and thus posits a 'principle of democratic inclusion'. Under this principle, participation in decision making (specifically in relation to matters which affect particular individuals) operates not just at the national level, but at the transnational levels. Barriers to such participation should be acknowledged and removed; (Marks 2000, p. 119).

As briefly discussed above, political participation, particularly if it extends to women, can be seen in the Council's discourse as a defining attribute of *good governance*. The Council discourse links together the Government of Iraq, women, and ISIL through re-enacting the gendered scripts: that of innocent (feminine) souls, (masculine) heroes, and barbarians from which these souls need to be saved (Sjoberg and Peet 2011, pp. 171–73). The most frequently repeated coincidence of the Government of Iraq, gender-based utterances and ISIL directly positions the government as the saviour of women and girls specifically from ISIL: “encouraging the Government of Iraq [in] . . . *improving the situation of women and girls, especially those impacted by ISIL*, improving security and public order, combating terrorism and sectarian violence . . . ”.³⁶ This utterance most clearly demonstrates the relational construction of ‘civility’ and ‘barbarian’, with the former signified through an ostensible concern with gender-sensitive reform, and the latter signified through the detriment of women and girls.

Such gender-sensitive reform is seen as fundamental to the governance structures of the Iraqi state. Resolution 2299 (2016) stresses “inclusive political dialogue, including *through the equal participation of women* and in the economic and social life of Iraq”.³⁷ Such an ideal, the Council stresses, is to be achieved through “strengthen[ing] national unity, including through cooperation between the Government of Iraq and the Kurdistan Regional Government”.³⁸ Thus, plurality and national unity is seen to be fostered through the mutual project of the state. Through embedding gender equality within the normative foundations of the nation state (at least discursively), the Council implicitly reinforces this principle as a standard requirement for varied groups to participate in national governance structures. Gender equality, as a marker of civility and modernity, works here to demarcate the normative limits of plurality within the constitution of the ideal state. Smoothing over difference, division and inequality serves to legitimate the machinery of the state, particularly in opposition to ISIL, which signifies the threat of instability, inequality, and violence against women.

3.4. *Mirroring the International Community*

The final criterion of statehood detailed within the Montevideo Convention is that of the capacity to enter into relations with other states.³⁹ Whilst this capacity is not unique to states, Malcom N. Shaw argues that it is mostly understood as state independence; the state is not subject to another sovereign authority (Shaw 2014, p. 147). Charlesworth and Chinkin posit that “sovereignty is a doubled-sided principle: externally, it signifies equality of power, and internally, it signifies pre-eminence of power” (Charlesworth and Chinkin 2000, pp. 133–34). Thus, entering into relations with other states requires voluntary restraint to allow for the mutual enjoyment of non-interference and sovereign equality (Ibid, p. 134).

First, then, I will show the interstate relations within which the Iraqi state is nested. Throughout the resolutions the Council situates the Iraqi State within the international community by highlighting it as a key partner in the international ‘fight’ against terrorism. The Council seeks to “promote international and regional cooperation aimed at supporting . . . [Iraq] in *its fight* against ISIL (Da’esh)”.⁴⁰ That it is ‘its fight’ clearly constitutes the Iraqi state as the primary agent within the conflict. However, whilst the Council shores up the Iraqi state’s domestic jurisdiction over the ISIL situation, the invocation of broader international and regional support reveals an assumed dependency: a paternalist framing which works to undermine the autonomous, masculine agency of the state. Of course, seeing states within interdependent co-existence with each other may be a more desirable version of personification. However, given the historical (and ongoing) colonial configu-

³⁶ UNSC 2299 (2016), para 8.

³⁷ UNSC 2299 (2016), para 8.

³⁸ UNSC 2299 (2016), para 8.

³⁹ Montevideo Convention, art 1(d).

⁴⁰ UNSC Res 2299 (2016), para 10.

ration of the international community, the distinction between independent, dependent, and interdependent can easily be obscured through discourses of ‘support’. This is a point which I return to below.

The discourse further implies the Iraqi state as being capable of restraint in opposition to ISIL’s apparent inability to do so. Exercising restraint in its conduct of hostilities undergirds the discursive constitution of the Iraqi state as a reasonable, civilised member of the international community. The Council emphasises ISIL’s consistent violations of the international legal standards agreed upon by ‘civilised’ states, in particular international humanitarian law (IHL). Resolution 2233 states:

... [f]urther expressing grave concern that the violent extremism and terrorism perpetrated by *ISIL in Iraq has frequently targeted women and girls*, and that ISIL has committed serious human rights abuses, and *violations of international humanitarian law against women and children*⁴¹

Here, the Council discursively establishes links between ISIL, terrorism and violent extremism on the one hand, and ‘women and girls’ on the other hand through the nexus of legal violations and abuses. Not only is ISIL’s inability to exercise self-restraint outlined in its violations of the laws and norms governing the conduct of hostilities, but in the particularly gendered mode of said violations. The Council goes on to iterate the particular abuses as a combination of gender-based and ostensibly ‘gender-neutral’ harms including murder, kidnapping, hostage taking, suicide bombing, enslavement, forced marriage, human trafficking, rape, sexual slavery, sexual violence, and the recruitment and use of children. In so doing, the Council constitutes ISIL as hypermasculine, and therefore too barbaric to restrain from seemingly superfluous forms of violence unnecessary to ‘legitimate’ modes of military engagement. Thus, ‘women and girls’ are produced in the discourse as vulnerable and in need of protection: a gendered script deeply entrenched within IHL (Stern 2019, pp 103–104).

In contrast, the military forces of the Government of Iraq are not linked with any form of violation of international legal norms. The Council attributes the actions and military successes of the federal Government of Iraq to the ongoing international efforts put into defeating ISIL. The Council:

*welcome[s] the Government of Iraq’s successes in liberation from ISIL (Da’esh) of Sinjar, Bayji, Ramadi, Hit, and most recently Fallujah, marking a major step in the continuing international effort to defeat ISIL (Da’esh).*⁴²

Most apparent here is the language of the ‘state as protectorate’; however, a deeper meaning can be traced within such utterances. In coining the military successes as ‘liberation’ from ISIL, the Council implies a peace won through the constrained conduct of warfare. Liberation speaks to a form of emancipatory politics; a predominantly negative form of freedom won from an oppressive regime. It indicates the correct amount of military involvement to unshackle a civilian population, without in turn opposing a new form of occupation or oppression through ‘(re)gaining’ military control. Such utterances arise with a noticeable absence of explicit consideration of violations of IHL committed by the Iraqi state forces. This obscures reports that Iraqi State forces and associated groups attacked civilian towns, killing residents and starting fires destroying homes, livestock and crops (Human Rights Watch 2015). Human Rights Watch have documented the use of women in detention being “beaten, kicked, slapped, hung upside-down and beaten on their feet (*falaqa*), given electric shocks, and raped or threatened with sexual assault by security forces” (Human Rights Watch 2014). Further, the UN Human Rights Committee noted its concern that at the allegations of human rights violations committed by “Iraqi Security Forces and affiliated armed groups against civilians in their efforts to defeat ISIL, including

⁴¹ UNSC Res 2233 (2015), para 13.

⁴² UNSC Res 2299 (2016), para 11.

extrajudicial killings, torture and indiscriminate attacks”.⁴³ However, the Council’s silence on this is complete, signifying what Gentry calls a ‘forgetting’ of forms of violence which troubles simplistic narratives of terrorism (Gentry 2020, pp. 8–9). Thus, the Government forces are seen here not as “collapsing into its imagined ‘others’—hypermasculinity and effeminacy” (Mégret 2018, p. 212) through armed conflict, but instead as embodying a form of hegemonic masculinity: the restrained and virile masculinity of the nation state.

Through acting within the limitations of the laws agreed upon by nations, the state of Iraq is seen to reflect the idealised accounts of warfare in having a civilised army capable of engaging in symmetrical conduct of hostilities. The ‘barbarian’ (ISIL) fails to reach this standard and thus exists outside the boundaries of the international community. This narrative trope is both gendered and rooted in European Western ideals of chivalry and civility. Frédéric Mégret argues that:

Within the European world, the laws of war already marked a remarkable social emancipation of ideas about masculinity from chivalry, to middle class gentlemen, to an ethos meant to characterise the ordinary foot soldier in ‘proper’ armies. However, they were also undeniably a vehicle for the civilisational expansion of a particular model of war, and therefore of the concept of masculinity that went with it. (Ibid, p. 214)

Thus, the masculinity constituted within the Government of Iraq by the Council’s discourse is one steeped in the historical normativities of European models of warfare and statehood. Not only then is the state of Iraq constituted as a subject able to participate and perform the standards of civility crystalised within IHL, but it reflects a particular type of masculine agent back onto the international community. In this way, the Council uses legal frameworks in political, diplomatic forums to constitute subjects as either barbaric, hypermasculine agents, unable to restrain themselves in accordance with international legal standards, or as upstanding, chivalrous agents participating in just war for the purposes of liberation and protection.

4. The Security Council as Trustee

The discursive patterns I have outlined above demonstrate the Security Council’s efforts to single out the entity which it recognises as legitimate (the central, national government of Iraq), whilst juggling this entity’s lack of effective control over the territory. As is shown, this process entailed the reproduction of normative, gendered personification which position the Iraqi state as a member of the international community. However, having constituted the state as such, the Council’s discourse works to fix Iraq within a graded international hierarchy. The formal equality of statehood within international law is bracketed off, as the Council constitutes Iraq as lacking the idealised, pre-eminence of internal power and control over its territory.⁴⁴ Through using paternalist frames of support, progress and improvement, the Council simultaneously constitutes the state of Iraq as lacking capacity for full sovereignty, thereby framing itself as the ‘trustee’ of the Iraqi population.

Throughout the analysis above, I have shown how the Council puts to one side the neutrality it is supposed to show in relation to the economic, political, social and cultural infrastructure of any given sovereign state. The discourse sees the Council advancing particular ‘improvements’ for the Iraqi state:

... to continue strengthening governance, *pursuing more substantive reforms, particularly economic and institutional reforms* ... including by countering corruption

⁴³ UNCHR ‘Concluding observations on the fifth periodic report of Iraq on Implementation of the ICCPR’ (3 December 2015) UN Doc CCPR/C/IRQ/CO/5, 4.

⁴⁴ Above I discussed Charlesworth and Chinkin’s analysis of sovereignty as double-sided; (Charlesworth and Chinkin 2000, (n 19), pp. 133–34).

... improving the situation of *women and girls*, especially those impacted by ISIL (Da'esh), improving security ... through ... combating terrorism⁴⁵

The use of the verb 'continue' alongside the adverb 'strengthening' here reflects the Council's recognition of the Government of Iraq's ongoing efforts to gain control through 'strong governance'. In *becoming* a fixed legal subject (state), Iraq must undergo particular governance reforms prescribed by the Council. The utterance above goes on to detail the Council's support for "the people and the Government of Iraq in their efforts to build a secure, stable, federal, united and democratic nation".⁴⁶ Statehood as a concept is most clearly construed here in normative, liberal terms, as the Council's discourse shapes the governance of Iraq with a particular economic and political model in mind.

Gendered scripts are traceable within this standard which the Iraqi state is to work toward. Whilst 'strong governance' speaks to the virility of the masculine state, strength alone is not sufficient. In the above utterance, the Council reveals voluntary restraint, along legal boundaries, as typifying hegemonic, masculine civility. As Mégret argues, emboldened power comes to be seen as a form of virtue when it is supposedly restrained (Mégret 2018, p. 205). Law, entered into voluntarily through the notion of 'state consent', plays a role in demarcating the bounds of such restraint. The Council indicates in the above passage particular legal concepts which ostensibly embody the virtues of strong 'good governance'. A lack of respect for the rule of law and human rights, alongside the corruption of governmental officials, all feature as indicators of fragility within the Fragile States Index (The Fund for Peace 2017). Thus, eradicating corruption, whilst centring the rule of law and human rights within state building, demonstrates a standard of state 'strength', beneficial to the population. Building on this, the Council iterates the need for the state to exercise control over its people. Indeed, the Council embeds security and combating terrorism as constitutive features of internal state control, albeit tempered through the legal bounds of human rights and the rule of law. 'Strong governance', then, is not necessarily using brute military or policing power to achieve coercive internal control, but is instead having such force latent and legitimised through self-binding.

This demonstrates the persistence of the masculine, unified, bounded subject as the imagined *person* at the heart of international legal personality. However, that the Iraqi state should be constituted by the Council as 'in progress' sees it as falling short of this normative standard. Indeed, the Council constructs a continuum between Iraq as culpable of international aggression and harbouring terrorism (terms such as failing or rogue state comes to mind), and Iraq as a state with full 'international standing'. Iraq (within the time frame of analysis) falls in-between these two poles, with a trajectory towards an idealised type of statehood. The Council:

Recognis[es] that the situation that now exists in Iraq is significantly different from ... the time of the adoption of resolution 661 (1990), and further recognizing the *importance of Iraq achieving international standing* equal to that which it held prior to the adoption of resolution 661 (1990)⁴⁷

Demarcating the ISIL situation as distinct from the conditions which gave rise to Resolution 661 (1990) demonstrates the Council's efforts to unequivocally break from past patterns of international interventions *against* Iraq's sovereignty (which were argued by some as finding legal justification within Security Council resolutions).⁴⁸ Instead, Iraq is constituted as aligned with the virtues and values of the Council in its fight against terror, with the discourse underscoring the necessity of the Council's support and oversight.

⁴⁵ UNSC Res 2299 (2016), para 9.

⁴⁶ Ibid.

⁴⁷ UNSC Res 2299 (2016), para 23.

⁴⁸ I am referring rather ambiguously to the Council's invocation of a series of resolutions, including 661 (1991) and in particular 687 (1991), within its later resolution 1441 (2002) for the purposes of providing supposed justification military intervention within the territory of Iraq. Note, though, that the legal basis of this justification is contested, with permanent members of the Council denying authorisation for the use force. For more sustained treatments of this complex issue, see (Byers 2004; Akande and Milanovic 2015).

Of course, given that the country-specific resolutions subject to analysis are the mandate renewals for the UNAMI, it may not be surprising that Iraq is framed as in need of assistance. The Council grounds its calls for funds and support within humanitarian registers,⁴⁹ whilst situating the UN as central in such provisions by: “stressing the importance of the United Nations, in particular UNAMI, in advising, supporting and assisting the Iraqi people, including civil society, and the Government of Iraq to strengthen democratic institutions”.⁵⁰ Taking into account the imagined ‘end state’ for the nation state of Iraq discussed above, it is clear that the Council sees its role as being integral to bringing this prescribed political, economic and social infrastructure into being. This discourse can be described as a continuation of the transformation of previously considered “rogue” states into democratic ones (Anghie [2004] 2007, p. 277). This process is conceptualised by Anghie as akin to that of trusteeship. In the context of the US-led invasion of Iraq, he argues that the US framed itself as a trustee, whilst sovereignty was seen to reside within the Iraqi people (Anghie [2004] 2007, p. 280). Democracy as the end state, then, appears fundamental to capturing this ‘legitimate’, social contractual reading of sovereignty. Tzouvala’s analysis of the international argumentation surrounding the 2003 invasion and occupation of Iraq similarly challenges the assumptions underpinning the (re)building of Iraqi sovereignty. She goes further and argues that it is democracy supported by neoliberalism that is constitutive of the ‘standard of civilisation’. She states that “Iraq’s rehabilitation as an equal sovereign became conditional upon its externally guided transformation into a model neoliberal state” (Tzouvala 2020, p. 175), an external guidance, I would add, which is continued through the Security Council’s self-constitution as Trustee.

5. Conclusions

Whether a state is considered to de jure exist often turns on the application of the legal criteria detailed within the Montevideo Convention. Whilst this may go some way in understanding the material world, it is limited by the black and white categories it produces. Instead of asking whether ISIL is a state under international law, its existence allows for the scrutinising of the prima facie impartiality of concepts fundamental to the international legal system. The analysis here drew on feminist legal theory to unearth the processes of personification in abstracting legal subjects. The Council, by conceptualising ISIL and the Iraqi state at this theoretical level, smooths away much of the complexities of the conflict. The role that the international community, and the Security Council in particular, played in co-producing cycles of violence can be obscured as a simplistic narrative is built. ISIL and the Iraqi state instead are constituted as persons within the international imagination: and as such are marked as particular *types* of persons. However, the masculine person of the international community is an elusive ideal: eons from ‘ISIL the barbarian’, and as yet unattainable for the Iraqi ‘in progress’ state. In excavating the implicit ordering of types of entities, the normative values of hegemonic states, or in this instance the Security Council, can be seen to be driven by continuing racial, gendered and colonial scripts. Whilst ISIL may quickly be rendered beyond the pale, recent developments in Afghanistan show that being included on the Council’s terrorist sanctions list does not necessarily foreclose sitting at the future negotiating table (Tadjdini 2021). It is more helpful then to ask what legal and political gendered and racialised discourses are wielded in the processes of exclusion and inclusion to the international community of state persons. This can allow for a deeper and more explicit engagement with the normativities of international law, alive to the potential co-option of social justice values.

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⁴⁹ UNSC Res 2299 (2016), para 15.

⁵⁰ UNSC Res 2299 (2016), para 25.

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