Queering Gender in International Law
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Abstract
There is an urgent need to resist the tendency for ‘gender identity’ to be treated as a category that applies only to transgendered and intersex people. I argue that feminist and queer human rights advocates need to work together on issues of gender identity, instead of separately, if we are ever to develop a liberatory conception of gender in international law. I start by acknowledging the crucial role that feminists played in challenging the biological determinism that underpinned international law’s historical treatment of women (and men), which led to the admission of the language of ‘gender’ in international legal discourse, opening the way for sex/gender to be understood as the result of social and performative processes. I go on to examine feminist reluctance to fully pursue the opportunities opened by this new understanding of sex/gender and, in particular, discuss their failure to challenge the male/female dualism of gender orthodoxy and their unwillingness to address gendered discrimination suffered by men. In contrast, queer activists and GLBTI human rights advocates were eager to explore the new openings for recognition and inclusion presented by the language of gender. ‘Gender identity’ tentatively emerged as a new ground of prohibited discrimination and, seeking to strengthen this development, the Yogyakarta Principles were adopted in 2007. However, these positive developments are weakened by a lack of feminist analysis. They threaten to re-biologize sex/gender as applied to women and men, uncritically embrace heteronormative family forms, and merely shift the boundaries of ‘acceptable’ gender identities, rather than eradicate them. Feminist and queer human rights advocates must work together in the project of queering gender in international law, in relation to economic and social, as well as civil and political rights. Only then will we realize the potential of human rights law to operate as a fully inclusive language of emancipation and justice.