

# What If Feminist Judgments Were Written on Earth 616? A Tale of Feminism and Science Fiction

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## Abstract

For at least three reasons, Marvel’s 2021 TV adaptation of its 1977 *What If?* series of comics seemed all too familiar to feminist legal scholars as a methodological exercise in alternative outcomes. This paper explores these reasons. It uses the specific example of the 1977 comics and the project on *Feminist Judgments in International Law* to argue that a focus on this interrelation could prove to be fruitful from a methodological perspective. Therefore, this paper highlights the intersection between these specific areas of science fiction and (international) feminist legal thought through their concomitant emphasis on contingency, inter-temporality and causality. Based on this, the paper analyses the nature of this correlation or cohesion and suggests that it offers a lens through which feminist legal tools can be viewed and further enhanced.

**Keywords:** Law and science fiction; alternative outcomes; causality; inter-temporality; contingency; feminist judgments; counterfactuals.

## Introduction

*I know all that is, most that has been, and much of what will be. I have also many windows into the strange parallel worlds of what might have been. For, none save a watcher can truly know what could have happened, but for the invisible workings of an incomprehensible fate.*

—The Watcher, ‘What If Spider-Man Joined the Fantastic Four?’<sup>1</sup>

While questions of what is the law—or what should it be, for those working towards *lex ferenda*—are relatively commonplace, legal methodology seems relatively unconcerned with the ‘what could have been’, unlike the Watcher quoted above.<sup>2</sup> The Watcher Uatu (Earth 616)<sup>3</sup> belongs to a species of mystical historians entrusted with the task of observation, and barred from interference, within the Marvel multiverse. But what do Marvel comics have to do with the law or legal methodology, you might ask? Perhaps more than what meets the eye at first glance. This paper aims at analysing and demonstrating a common thread interlacing the spheres of science fiction (through Marvel comics) and feminist (international) legal thought. My reading of these comics provides a lens through which to analyse feminist legal thought, particularly within the domain of international law. For this purpose, I focus on the Marvel multiverse, specifically the *What If?* series, and the prospect of alternative outcomes through my analysis of the representation of the concepts of contingency, inter-temporality and causality. The goal underlining

<sup>1</sup> Thomas, “Spider-Man,” 7.

<sup>2</sup> This is not to say that the question has not been raised by legal scholars and in international legal scholarship in particular. In this regard and on questions such as ‘could international law have been otherwise?’ or ‘what are the past possibilities, if any for a different law?’, see Venzke, *Contingency in International Law*; see also Venzke, “What If?” on ‘counterfactual thinking’ and international law.

<sup>3</sup> See, for example, Lee, *The Fantastic Four*, Vol. 1 #13.



this is to demonstrate how science fiction can be employed as a tool to map and analyse feminist approaches to international law,<sup>4</sup> by focusing on the feminist judgments projects.

Thus, the paper exemplifies how science fiction and feminist legal thought intertwine within these three spheres of contingency, inter-temporality and causality, and how this interrelation can be characterised. With this in view, this paper uses two examples each from the original *What If* comic series by Marvel and *Feminist Judgments in International Law*.<sup>5</sup> It ought to be stated at the outset that while case selection in general is a subjective exercise, and one that is imperfect, the objective in selecting these cases and comics was to use them as examples. However, the idea is that the results of these case studies and the ensuing comparison could and should be applicable to any other comics from the series or other feminist judgments generally.

### The What If...? of the Marvel Multiverse

There have been several references to accountability and the rule of law in Marvel comics<sup>6</sup> and the Marvel Cinematic Universe (MCU).<sup>7</sup> References to the law in the Marvel multiverse have also been cited in legal scholarship.<sup>8</sup> However, as I argue in this paper, the story does not stop there. Marvel comics and the MCU prove to be an interesting reservoir of legal tools. This paper highlights one particular aspect of feminist legal methodology that the Marvel multiverse is replete with, predating its counterpart in feminist legal scholarship by several decades. This is the use of counterfactuals. With this in view, the paper focuses on the original *What If* comic series released by Marvel in 1977,<sup>9</sup> with intermittent references to its TV adaptation by Marvel.<sup>10</sup>

The *What If* series of comics published by Marvel, and narrated by the Watcher cited above, explores the ‘what could have been’ of the Marvel multiverse.<sup>11</sup> These stories follow known characters as they embark on unknown storylines and roads previously not taken in the comic books. As the Watcher explains in the first *What If* series, the Marvel multiverse comprises several alternative universes that exist in parallel to each other.<sup>12</sup> Each of these universes exists with its own set of realities and its own set of storylines. Thus, while in one such universe Steve Rogers was Captain America, as he was declared to be in the first Captain America comic released in 1940,<sup>13</sup> this was not the case in another universe where agent Carter became the first super soldier, Captain Carter.<sup>14</sup> Thus, these comics take prominent storylines from Marvel history and change them slightly, altering the ‘original storyline’ and resulting in a different reality. To fulfil its objective, this paper primarily draws on two examples from Marvel’s *What If* comics. The first of these asks the question, ‘What If Spider-Man Joined the Fantastic Four?’ and the second is ‘What If the Hulk Had Always Had Bruce Banner’s Brain?’

### *What If Spider-Man Joined the Fantastic Four?*

This comic explores what Fantastic Four and Spider-Man fans know as a lost moment in time—an ‘almost’ that never saw the light of day in the original storyline—where Spider-Man asked if he could join forces with the Fantastic Four but was turned away. In this *What If* tale, Spider-Man joins the Fantastic Four—all of this being contingent on a decision that the Fantastic Four were to take. In this parallel universe, where the Fantastic Four now become the Fantastic Five, it was Sue Storm who decided to voice her concerns over rejecting Spider-Man’s request to join the group, asking instead whether allowing this would be in their best interests. This altered decision, unknown to the Invisible Girl herself, changed the course of events as Marvel fans know them and later resulted in Sue Storm leaving the Fantastic Four and moving to Atlantis to join Namor the Sub-Mariner.<sup>15</sup> Other than this slightly unorthodox return to an albeit different Fantastic Four, this storyline demonstrates how the moment Spider-Man is welcomed as the fifth member of the now Fantastic Five marks an onslaught of cascading effects that vary copiously in their impact and severity. For one, as part of the Fantastic Five, Spider-Man almost effortlessly defeats the Vulture.<sup>16</sup> This was certainly not the case in the original comics in which the Vulture, with his magnetically powered wings,

<sup>4</sup> On feminist approaches towards international law see, for example, Otto, “Feminist Approaches to International Law.”

<sup>5</sup> Thomas, “Spider-Man”; Hodson, *Feminist Judgments in International Law*.

<sup>6</sup> On comics as a medium, defined as ‘juxtaposed pictorial and other images in deliberate sequence, intended to convey information and/or to produce an aesthetic response in the viewer’, see McCloud, *Understanding Comics*, 9.

<sup>7</sup> See, for example, Russo, *Captain America: Civil War*; Tadsare, “The Sokovia Accords.”

<sup>8</sup> Mitchell, “Paradoxes and Patriarchy,” 34; Rosen, “The Lawyer as Superhero.”

<sup>9</sup> Thomas, “Spider-Man.”

<sup>10</sup> Andrews, *What If...?*

<sup>11</sup> Thomas, “Spider-Man.”

<sup>12</sup> Thomas, “Spider-Man,” 8.

<sup>13</sup> Simon, “Captain America,” Vol. 1 #1.

<sup>14</sup> Andrews, “Captain Carter.”

<sup>15</sup> First appearance in Jacquet, *Motion Picture Funnies Weekly*.

<sup>16</sup> See, for example, Lee, *The Amazing Spider-Man*, Vol. 1 #2.

was quite the formidable opponent.<sup>17</sup> Perhaps less subtle was the impact this change in circumstances had on Spider-Man's encounter with the Chameleon,<sup>18</sup> another reliable Marvel supervillain, which in the *What If* narration of events never happens. The Chameleon, who was in the midst of a plan that involved impersonating and, thus, incriminating Spider-Man for his own crimes, happened to have landed on the channel that was broadcasting the press conference in which Reed Richards introduces the newly established Fantastic Five. Unable to carry out his plan now that Spider-Man had been publicly endorsed by Reed Richards, the Chameleon was left with no choice but to retire from his career of supervillainy. Thus, no one ever heard from him again, a reality completely divergent from the one we know from the original comic book storylines. These are just to name a few, of course. What follows is a battle with Namor, orchestrated by the equally infamous supervillain in the Marvel world, the Puppet Master. This confrontation ultimately leads to the Invisible Girl parting ways with the rest of the Fantastic Four. Thus, one decision taken differently led to an altogether different reality, with a host of varied consequences.

### ***What If the Hulk Had Always Had Bruce Banner's Brain?***

The second alternative storyline that warrants attention is the 1977 comic that explores the question, 'What If the Hulk Had Always Had Bruce Banner's Brain?' Fans or detractors of the Incredible Hulk alike are well acquainted with how, as fate would have it, Dr Robert Bruce Banner's unfortunate encounter with an experimental bomb and exposure to gamma rays irrevocably altered his *mind* and body.<sup>19</sup> However, this comic ponders where the Incredible Hulk's story could have led us had the unfortunate gamma ray incident only affected Dr Banner physically. Thus, this alternative storyline demonstrates what could have or what would have happened<sup>20</sup> 'if his mind had remained whole—though trapped in a misshapen form'.<sup>21</sup>

What follows in this alternative—or perhaps more accurately, parallel—storyline is that the mishap with the gamma ray bomb only transforms Dr Banner *physically* into the body of the green beast. Therefore, in this *What If* tale Dr Banner acknowledges how his brain remains unscathed and unflinchingly his own, albeit 'imprisoned inside the body of a ... monster' once he transforms into the Hulk. This is the point in the alternative storyline that, according to the Watcher quoting the 'mortal poet Robert Frost', made all the difference.<sup>22</sup> Thus, along this road previously untaken, readers witness a slew of tiered consequences, each brought on by a varied reaction to events by *Dr Banner* as opposed to the Hulk's own responses to these events. As an example, Loki, the God of Evil,<sup>23</sup> is unable to use the Hulk in his elaborate plot to oppose Thor, and the Avengers were, thus, never formed<sup>24</sup>—and neither were the X-Men. Instead, with the brain of Bruce Banner, the Hulk joins forces with Reed Richards and Professor X and helps create an X-Man who battles and ultimately defeats Galactus, without any (oath-breaking) interference by the Watcher. This *What If* tale ends with Ben Grimm (Fantastic Four) turning into The Thing,<sup>25</sup> only this time causing the transition to affect his body *and his brain*.<sup>26</sup>

Essentially, other than the fact that both scenarios result in the ultimate disbanding of the Fantastic Four, what these two stories have in common is that they are both a vivid demonstration of alternative outcomes, an illustration of the 'what could have been', a display of the counterfactual. The latter is what makes them similar, if not identical, as an exercise to the feminist judgment project discussed in the sections below.

<sup>17</sup> Neither was this the case in the movie adaptation of one of Spider-Man's trysts with the Vulture in *Spider-Man: Homecoming* (2017), where the Vulture was rendered powerless as a result of a mechanical failure that caused his magnetic wingsuit to explode. See Watts, *Spider-Man*.

<sup>18</sup> See, for example, Lee, *The Amazing Spider-Man*, Vol. 1 #1.

<sup>19</sup> This is different from the case of Marvel's She-Hulk. See, for example, Gao, *She-Hulk*.

<sup>20</sup> Or what actually did happen in a parallel alternate universe adjacent to our own, given the premise of the *What If* concept and the concept of the Marvel multiverse. Examples from the Marvel Cinematic Universe that have explored this in detail include Jon Watts's *Spider-Man: No Way Home* (2021) and Sam Raimi's *Doctor Strange in the Multiverse of Madness* (2022).

<sup>21</sup> Thomas, "Hulk," 52.

<sup>22</sup> Thomas, "Hulk," 53.

<sup>23</sup> While this comic refers to Loki as the God of Evil, he is frequently referred to as the God of Mischief within the Marvel Cinematic Universe. See Thomas, "Hulk," 64.

<sup>24</sup> For the original storyline where the Avengers were in fact formed, see Lee, *The Avengers*, Vol. 1 #1.

<sup>25</sup> Ben Grimm, also known as The Thing, is a member of the Fantastic Four. See Lee, *The Fantastic Four*, Vol. 1 #1; Byrne, *Thing*.

<sup>26</sup> Similar to the return to the Fantastic Four through the departure of Sue Storm, this tale depicts what the Watcher identifies as some form of cosmic balance. Essentially, this demonstrates how the comics foresee limits to these counterfactuals. See Thomas, "Hulk," 75. Limitations to the use of counterfactuals have also been acknowledged within the realm of international law. See, for example, Venzke, "What If?"

## Feminist Legal Thought and Feminist Judgments

Having set the scene with the Marvel multiverse and its realm of infinite possibilities, it seems fitting to add how international legal scholarship has also intermittently toyed with the idea of ‘counterfactual histories’ or of what could have been.<sup>27</sup> With its emphasis on the ‘need to do better’ and on how ‘imagination, hope and activism have a crucial role to play in the study, understanding and application of international law’,<sup>28</sup> feminist international legal scholarship makes a compelling case for such an analysis of an alternative route not taken. With a striking resemblance to Marvel’s *What If* series, the feminist judgments project in international law carries out its own ‘what if’ exercise and demonstrates with concrete examples the ‘what could have been’ of international law. The *Feminist Judgments in International Law* are part of a broader ‘feminist judgments’ project or exercise where renowned scholars are asked to rewrite famous judgments from a feminist perspective. This initiative—or perhaps more aptly, series of initiatives—owes its creation to the 2008 judgments issued by the Women’s Court of Canada.<sup>29</sup> Thus, in the rewriting of well-known judgments from a feminist perspective, by altering the methodology used in deciding these cases, the feminist judges often arrive at a different conclusion to the judges who decided the actual cases, or they arrive at the same conclusion via a different route and/or reasoning. In this manner, the feminist judges light the path for alternative outcomes and alternative realities of their own, mirroring the reservoir of infinite possibilities for which the Marvel multiverse caters.

Following suit, the *Feminist Judgments in International Law* brought together approximately ‘50 international legal scholars and some activists, and asked them to collaborate in the task of (re)writing key international judgments from a feminist perspective’.<sup>30</sup> While introducing the project, the editors of *Feminist Judgments in International Law* describe how, ‘as feminists who have been engaged in international legal scholarship’, they have been ‘constantly driven to think creatively and optimistically of ways that we might do international law differently’.<sup>31</sup> On the need to find creative responses, the authors state categorically how ‘frustrated by the confines of traditional international law, feminists have frequently sought to create alternative spaces in which to express their perspectives’.<sup>32</sup> This idea of invoking alternative spaces, thus, finds itself neatly lodged within the conceptual space created decades earlier within the Marvel multiverse. The goal of the feminist judgments project remains clear: to demonstrate alternative possibilities and potentially alternate avenues to redress ‘structural inequalities of traditional international law’.<sup>33</sup> In this manner, the feminist judges essentially assume the role of the Watcher. This objective underlying the feminist judgments project was a response not only to the underrepresentation of women within the international judiciary,<sup>34</sup> but arguably also the underrepresentation of *feminist* voices, and perspectives more generally.

Similar to its treatment of the *What If* series, this paper focuses on two feminist judgments in detail. The first of these is the feminist judgment written by Christine Chinkin, Gina Heathcote, Emily Jones and Henry Jones concerning the *SS Lotus* case between France and Turkey, or, as the authors rename it, the Bozkurt case.<sup>35</sup> The second is the feminist judgment written by Yassin M. Brunger, Emma Irving and Diana Sankey concerning the case of *The Prosecutor v Thomas Lubanga Dyilo*.<sup>36</sup>

### ***Bozkurt Case, aka the Lotus Case (France v Turkey): Ships That Go Bump in the Night***

The original judgment in the *Lotus* case,<sup>37</sup> rendered by the Permanent Court of International Justice (PCIJ) in 1927, is still denoted as an encapsulation of fundamental principles of international law. The case arose as a result of an incident on 2 August 1926 where the French steamer, the *SS Lotus*, and Turkish collier, *SS Bozkurt*, collided in the high seas. The Turkish *SS Bozkurt* ‘was cut in two’ and sank, resulting in the death of ‘eight Turkish nationals who were on board’.<sup>38</sup> Thus, the case before the Court revolved around a question of jurisdiction.<sup>39</sup> Turkey had instituted joint criminal proceedings against both the officer on watch of the *SS Lotus* and the captain of the *SS Bozkurt*.<sup>40</sup> France objected to this exercise of jurisdiction. The PCIJ

<sup>27</sup> See, for example, Venzke, “What If?”

<sup>28</sup> Hodson, “Introduction,” 3.

<sup>29</sup> See, for example, “Women’s Court of Canada”; see also “Your Honour, We Respectfully Disagree.”

<sup>30</sup> Hodson, “Introduction,” 3–4.

<sup>31</sup> Hodson, “Introduction,” 3.

<sup>32</sup> Hodson, “Introduction,” 6.

<sup>33</sup> Hodson, “Introduction,” 7.

<sup>34</sup> See, for example, Grossman, “Sex-Representative.”

<sup>35</sup> Chinkin, “Bozkurt.”

<sup>36</sup> Brunger, “The Prosecutor.”

<sup>37</sup> *SS ‘Lotus’ Case (France v Turkey)* 1927 PCIJ (ser A) No 10 (September 7).

<sup>38</sup> *SS ‘Lotus’ Case (France v Turkey)* 1927 PCIJ (ser A) No 10 (September 7), 14.

<sup>39</sup> *SS ‘Lotus’ Case (France v Turkey)* 1927 PCIJ (ser A) No 10 (September 7), 5, 10.

<sup>40</sup> *SS ‘Lotus’ Case (France v Turkey)* 1927 PCIJ (ser A) No 10 (September 7), 10, 14.

was asked to decide two questions.<sup>41</sup> The first was whether by instituting joint criminal proceedings pursuant to Turkish law against Mr Demons—the officer of the watch on board the *Lotus*—Turkey had ‘acted in conflict with the principles of international law’, and if it had, what these principles were.<sup>42</sup> The second question, contingent on the first being answered in the affirmative, asked the Court to determine ‘what pecuniary reparation is due to M. Demons, provided, according to the principles of international law, reparation should be made in similar cases’.<sup>43</sup>

Acknowledging that the effects of the alleged offence took place on board the *SS Bozkurt* (i.e., in Turkish territory), and recognising the concurrent jurisdiction of the States over the matter, the Court found no merit in France’s three arguments. The Court decided that Turkey had not violated any principles of international law in prosecuting Mr Demons, pursuant to its domestic law, and that the centrality of State sovereignty and its connotation as per the Court’s reasoning cannot be overstated. This has been referred to as the *Lotus* principle, considered a foundational principle of public international law. Specifically, the Court stated the following:

International law governs relations between independent States. The rules of law binding upon States therefore emanate from their own free will as expressed in conventions or by usages generally accepted as expressing principles of law and established in order to regulate the relations between these co-existing independent communities or with a view to the achievement of common aims. Restrictions upon the independence of States cannot therefore be presumed.<sup>44</sup>

The feminist judgment also ruled in favour of Turkey; however, the route the feminist judges took in reaching this decision differs widely from the decision taken by the PCIJ. In their rewriting of this decision, the authors of the feminist judgment agreed that their legal reasoning in the development of ‘the *Bozkurt* principle’ (as opposed to the ‘*Lotus* principle’ stated above) would revolve around ‘a different model of international relations, one inspired by feminist histories and writing’.<sup>45</sup> The authors of the feminist judgment engaged with two ‘preliminary questions’. The first of these pertained to the facts of the case that, according to the authors, ‘highlighted a range of silences that were of interest to the chamber’.<sup>46</sup> The second revolved around their ‘desire to dislodge the assumption that Western sovereignty constituted the measure of civilisation’.<sup>47</sup>

Adopting a contextual approach<sup>48</sup> and pursuant to an analysis of the historical relations between the two States, describing it in its context as a tryst of empire, inequality and rebuilding, the feminist chamber reconceptualised sovereign equality. It did this by explaining why, for the feminist chamber, the republic of Turkey was ‘well deserving of the status of a sovereign and equal State’.<sup>49</sup> The feminist chamber stated specifically that it ‘held in mind this larger context and history of inequality between the two States appearing before it’ and that ‘this story of inequality through the domination of Empire, and France’s expectations that States in the region capitulate to its demands, mocks the idea of State sovereignty’.<sup>50</sup>

Therefore, the feminist judgment counteracts the masculine interpretation of State sovereignty adopted in the original judgment and portrays how Turkey has been ‘“feminised” by France and other European powers’, whether through capitulations or pressure such as through the institution of proceedings in this case.<sup>51</sup> The feminist chamber ‘notes with concern international law’s history as one which persistently feminises weaker and primitive peoples, that is non-white non-Europeans’.<sup>52</sup> Tying this to the inequality suffered by women, whether political, social or economic, the feminist chamber considered itself obligated to assist newer States such as Turkey in being meted equal treatment. Thus, while the feminist judgment, like the PCIJ in the original judgment, was of the view that Turkey had not acted against the principles of international law in exercising jurisdiction over the incident and in prosecuting Mr Demons, its reasoning for arriving at this conclusion differed vastly from the PCIJ in *Lotus*. In deciding to adopt this contextual approach, one that was sensitive to the history of the States and their relations as

<sup>41</sup> *SS ‘Lotus’ Case (France v Turkey)* 1927 PCIJ (ser A) No 10 (September 7), 5.

<sup>42</sup> *SS ‘Lotus’ Case (France v Turkey)* 1927 PCIJ (ser A) No 10 (September 7), 5.

<sup>43</sup> *SS ‘Lotus’ Case (France v Turkey)* 1927 PCIJ (ser A) No 10 (September 7), 5.

<sup>44</sup> *SS ‘Lotus’ Case (France v Turkey)* 1927 PCIJ (ser A) No 10 (September 7), 18.

<sup>45</sup> Chinkin, “Bozkurt,” 28.

<sup>46</sup> Chinkin, “Bozkurt,” 29.

<sup>47</sup> Chinkin, “Bozkurt,” 29.

<sup>48</sup> For example, right at the outset the feminist judgment states that ‘in order to make a fair and reasonable judgment, it is necessary to consider the broader context in which the events occurred’. See Chinkin, “Bozkurt,” 35.

<sup>49</sup> It does not presuppose ‘the European model of statehood as determinative’, and instead cites examples from developments within the Republic of Turkey since its establishment, to ‘demonstrate the reforms and interests of a sovereign State, concerned for the welfare of all of its citizens, providing protections and rights to all people, women and men, and thus incurring responsibilities as well as privileges’. See Chinkin, “Bozkurt,” 38.

<sup>50</sup> Chinkin, “Bozkurt,” 39.

<sup>51</sup> Chinkin, “Bozkurt,” 41.

<sup>52</sup> Chinkin, “Bozkurt,” 41.

well as to the actual victims of the incident in this case, the feminist judges gave effect to an entirely different reality. They established the Bozkurt principle, which focused on international cooperation. In the short term, the decision to adopt this approach resulted in a declaratory order that asked the States to submit information viz the victims of the incident, including whether their dependents had received any compensation or reparation.<sup>53</sup> In the long run, the feminist judgment arguably could have had a transformative effect on the development of international law.<sup>54</sup> Thus, similar to the two *What If* tales cited above, this altered decision has wide-ranging consequences, allowing for the imagining of different possibilities and realities.

### *The Prosecutor v Thomas Lubanga Dyilo*

The second feminist judgment, which commands this paper's focus, is the feminist rewriting of the International Criminal Court's (ICC) judgment in *The Prosecutor v Thomas Lubanga Dyilo*.<sup>55</sup> The accused in this case was charged with war crimes of conscripting and enlisting 'children under the age of 15 into the armed forces of the [Union des Patriotes Congolais/Force Patriotique pour la Libération du Congo] UPC/FPLC' as well as for using them to 'participate actively in hostilities'.<sup>56</sup>

In the original judgment, where Mr Lubanga was found guilty of these crimes, interpreting what constituted the use of children under the age of fifteen 'to participate actively in hostilities' as a crime under Article 8(2)(e)(vii) of the Rome Statute, the trial chamber acknowledged that active participation in hostilities could include both direct and indirect participation. Indirect participation included participation through roles that support combatants.<sup>57</sup> Nonetheless, the approach of the trial chamber towards delimiting what amounted to an indirect role appeared relatively narrow. The Court stated that:

the decisive factor in deciding whether an indirect role is to be treated as active participation in hostilities is whether the support provided by the child to the combatants exposed him or her to real danger by becoming a potential target.<sup>58</sup>

Thus, this decision immediately excluded harm and danger that was internal.

The Court's approach in the original judgment was met with criticism, particularly in light of the fact that the case failed to address sexual and gender-based crimes, despite evidence of that nature being introduced.<sup>59</sup> The trial chamber expressly acknowledged that girls were used for domestic work within the UPC/FPLC by UPC leaders/commanders.<sup>60</sup> It also specifically acknowledges that 'girl soldiers were subjected to sexual violence and rape'.<sup>61</sup> However, despite this acknowledgment, the trial chamber stated unambiguously that:

in the view of the Majority, sexual violence does not form part of the charges against the accused, and the Chamber has not made any findings of fact on the issue, particularly as to whether responsibility is to be attributed to the accused.<sup>62</sup>

The Court's failure to appropriately address and acknowledge the harm suffered by victims of sexual and gender-based crimes in this case has been highlighted as one of its key shortfalls.

While the Court in its original decision found 'beyond reasonable doubt that children under the age of 15 were conscripted, enlisted and used by the UPC/FPLC to participate actively in hostilities',<sup>63</sup> the Court analysed neither the gendered nature of the different roles and tasks carried out by child soldiers, nor their effects and ensuing harm.<sup>64</sup> Rather, the Court analysed the risks or exposure to risks that child soldiers faced only from the point of view of 'external risks' and not those from within the

<sup>53</sup> Chinkin, "Bozkurt," 46.

<sup>54</sup> Otto, "Feminist Judging in Action," 211–212.

<sup>55</sup> Brunger, "The Prosecutor."

<sup>56</sup> *The Prosecutor v Thomas Lubanga Dyilo, Judgment pursuant to Article 74 of the Statute* [2012] ICC-01/04-01/06-2842, para. 909.

<sup>57</sup> *The Prosecutor v Thomas Lubanga Dyilo, Judgment pursuant to Article 74 of the Statute* [2012] ICC-01/04-01/06-2842, 363.

<sup>58</sup> *The Prosecutor v Thomas Lubanga Dyilo, Judgment pursuant to Article 74 of the Statute* [2012] ICC-01/04-01/06-2842, para. 820.

<sup>59</sup> For example, Merope states how 'by failing to consider that evidence of sexual slavery could fall within the material fact of using children to actively participate in hostilities, the Court has made an implicit judgment that sexual slavery of child soldiers is an "activity clearly unrelated to hostilities" rather than one which is "combat related" ' and that 'this view both ignores the reality of the modern use of child soldiers and fails to extend the law's protection to the distinctive violence experienced by girl soldiers, constructing a male paradigm of the combatant child soldier that once again obscures violence perpetrated against women from the construction of international criminal law'. See Merope, "Regulation 55," 342.

<sup>60</sup> *The Prosecutor v Thomas Lubanga Dyilo, Judgment pursuant to Article 74 of the Statute* [2012] ICC-01/04-01/06-2842, 398.

<sup>61</sup> *The Prosecutor v Thomas Lubanga Dyilo, Judgment pursuant to Article 74 of the Statute* [2012] ICC-01/04-01/06-2842, para. 913.

<sup>62</sup> *The Prosecutor v Thomas Lubanga Dyilo, Judgment pursuant to Article 74 of the Statute* [2012] ICC-01/04-01/06-2842, para. 913.

<sup>63</sup> *The Prosecutor v Thomas Lubanga Dyilo, Judgment pursuant to Article 74 of the Statute* [2012] ICC-01/04-01/06-2842, para. 916.

<sup>64</sup> See, for example, *The Prosecutor v Thomas Lubanga Dyilo, Judgment pursuant to Article 74 of the Statute* [2012] ICC-01/04-01/06-2842, 385.

armed group itself—something that is addressed extensively in the feminist judgment in this case. Likewise, the Court’s failure to make a finding on the facts vis-à-vis the sexual violence perpetrated against girl child soldiers can also be attributed to its approach towards only considering exposure to external risks while deciding what amounted to the use of children to participate actively in hostilities.

Therefore, the feminist judgment in this case demonstrates how the original judgment in its definition of the crime and the cascading effects that ensued resulted not only in silencing certain kinds or the complexity of certain harms suffered by victims, but also instituted a de facto gradation of harms.<sup>65</sup> The interpretation of what constitutes as using children to ‘participate actively in hostilities’ was, thus, one of the key areas of focus of the feminist judgment. The feminist chamber adopted a gender perspective to interpret this crime.<sup>66</sup> This involved including the experiences and harm suffered by girl child soldiers.<sup>67</sup> The authors of the feminist judgment for *Lubanga* considered ‘[making] visible gendered harms and label[ing] such harms accordingly’ to be ‘[a] critical element of feminist approaches’.<sup>68</sup> Specifically, they noted that:

while the process of formulating sexual and gender-based harms within the confines of litigation can be problematic from feminist perspectives, particularly regarding how harms may be framed and shaped through law, legal recognition is important to contest the silencing of gendered experiences.<sup>69</sup>

Like the original chamber in this case, the feminist chamber found Mr Lubanga guilty of the crimes with which he was charged.<sup>70</sup> However, where it diverges *significantly* from the original trial chamber of the Court in this matter is in the route it chose to arrive at this decision and its approach towards the interpretation of the elements of this crime. The feminist chamber chose to adopt an ‘experience-led’ approach to the interpretation of the ‘use of child soldiers to participate actively in hostilities’.<sup>71</sup> What this involved was an acknowledgment of the multiple roles that children in armed groups undertook or were required to undertake, and the changeability of these roles in addition to their diversity and multiplicity. It also involved an emphasis on the harm those children experienced and the risks they faced both externally as well as *internally*. Concerning the multiple roles that children undertook within the UPC/FPLC, the feminist chamber stated that this included ‘active fighting, guard duty, domestic roles and acting as sexual slaves’.<sup>72</sup> The feminist chamber also noted how ‘the use of child soldiers by the UPC/FPLC was not gender-neutral’.<sup>73</sup> They noted how ‘girl child soldiers routinely fulfilled domestic roles for commanders, such as cooking and cleaning, as well as sexual roles, in addition to acting as bodyguards or fulfilling combat roles’.<sup>74</sup>

Effectively, this analysis allowed the feminist chamber to find that ‘sexual violence can be included within the legal definition of what it means to “participate actively in hostilities” as a manifestation of the internal risks posed to children’.<sup>75</sup> In this manner, the feminist judgment essentially demonstrated an alternative reality by deciding these matters differently. It exposed deficiencies in the original judgment and illustrated the choices available to the judges. In addition to this, the feminist chamber adopted a feminist approach towards the interpretation of consent in the context of the crimes of conscription and enlistment, seeking in particular ‘to reflect the complex interrelationships [between] coercion and consent and ... the [varying] experiences of individual child soldiers’.<sup>76</sup> Therefore, similar to the three previously stated instances listed in this paper,<sup>77</sup> this marks another scenario where a change in circumstances or, as demonstrated here, a different perspective led to an alternative outcome with a slew of ricocheting consequences.

<sup>65</sup> The authors of this feminist judgment state in their authors’ note that ‘not only did the approach of the Majority in the Trial Chamber result in the silencing of the range and complexity of harms predominantly experienced by girls, but it also presented a hierarchy of harms; those that were recognised within the substantive offence, and those that were only deemed relevant for sentencing or reparations stages’. See Brunger, “The Prosecutor,” 415.

<sup>66</sup> Brunger, “The Prosecutor,” 416.

<sup>67</sup> Brunger, “The Prosecutor,” 417.

<sup>68</sup> Brunger, “The Prosecutor,” 439.

<sup>69</sup> Brunger, “The Prosecutor,” 440.

<sup>70</sup> The feminist chamber found that ‘the UPC/FPLC used children under the age of fifteen to participate actively in hostilities between 1 September 2002 and 13 August 2003’. See Brunger, “The Prosecutor,” 437.

<sup>71</sup> Brunger, “The Prosecutor,” 432.

<sup>72</sup> According to the feminist judges, this developed the ‘SCSL jurisprudence drawing from the interpretation note of the ICC draft Statute by the ICC Preparatory Committee’, which sets out that ‘use; does not necessitate that the acts put children’s lives directly at risk during the frontline combat, but also includes labour or support that gives effect to or helps maintain operations in a conflict’. See Brunger, “The Prosecutor,” 432.

<sup>73</sup> Brunger, “The Prosecutor,” 432.

<sup>74</sup> Brunger, “The Prosecutor,” 433.

<sup>75</sup> Brunger, “The Prosecutor,” 433.

<sup>76</sup> Brunger, “The Prosecutor,” 443.

<sup>77</sup> Those involving the Fantastic Four, the Hulk and the case of the *SS Lotus*.

### *Elements of Cohesion*

Suffice it to say, Marvel's *What If* series, created in 1977, provides several conceptual underpinnings that resemble those embedded in feminist legal tools, such as the feminist judgments project. This paper argues that these similarities involve three specific points of cohesion: contingency, inter-temporality and causality, possibly among others. These three areas are themselves quite interlinked and are analysed in the following sections. It is not my intention to exhaust each of these areas of cohesion through this analysis, but instead to demonstrate these patterns and encourage scholars to lean on them as methodologies for research in international law.

#### *Contingency*

The first aspect that the *What If* comics and the feminist judgments share is that they are both an exercise in exposing contingencies. Each of the two examples, from Marvel's *What If* and the feminist judgments, identifies contingencies in the original storylines and decisions and demonstrates the road not taken.

The indeterminate nature of international law has long been highlighted.<sup>78</sup> Likewise, contingency in international law is neither a novel concept,<sup>79</sup> nor is it new to Marvel or even DC comics for that matter. In fact, particularly when it comes to DC comics (as opposed to Marvel), the oneiric nature of time and the emphasis on particular events—often times a peripeteia of sorts—is rampant in these comics, highlighting how the state of events as we knew them owed their existence to certain events or acts.<sup>80</sup> However, methodologically, both worlds (that of Marvel and feminist legal thought in international law) use the *What If* series and the feminist judgments as tools to demonstrate and expose these contingencies. The manner in which both projects have been utilised demonstrate unambiguously how 'any given decision or disposition can always be otherwise'.<sup>81</sup> Serra recognises this by stating that the 'speculative operation' in *What If*:

is especially meaningful, because describing the 'alternative paths' of history and pin-pointing the most crucial divergence points is a way of highlighting the importance of certain events for the present. For this reason, the *What if...?* series is, among other things, a way of ... clarifying which past events are relevant *now* and for what reason. In other words, it is a way of reinforcing the (historical) cohesion of this fictional world.<sup>82</sup>

Likewise, the feminist judgments project vividly describes the contingency underlining the process of decision-making including in the international domain. The authors of the *Feminist Judgments in International Law* acknowledge this at the outset.<sup>83</sup> The feminist judgment in *Lubanga*, for example, identifies the point at which the trial chamber interprets the use of children to actively participate in hostilities as a centrifugal point in the original decision from where it (the feminist judgment) diverges. Accordingly, as a result of this alternate approach, the feminist judgment reached an entirely different conclusion leading to the inclusion of sexual violence within the range of harm of which the child soldiers were victims. Similarly, in the *What If* storyline viz the Hulk, the Watcher pinpoints the moment in time that the gamma ray bomb 'turned the mind and body of a peaceful physicist into a gargantuan, nearly-brainless brute'.<sup>84</sup> He then goes on to narrate how this plays out in an alternate time continuum, where the gamma rays only affect Dr Bruce Banner physically, and according to the Watcher, that made all the difference.<sup>85</sup>

#### *Inter-temporality*

While the issue of contingency manifests itself palpably as a similarity between the *What If* series and feminist judgments, another concept that might be overlooked initially (saying nothing of its relevance) is the issue of inter-temporality. Inter-temporality as a theme runs compositely through both of these worlds. Inter-temporality reveals itself in different ways throughout both the *What If* series and the feminist judgments project. Starting with Marvel and the *What If* series, inter-temporality is less cached. This is because time works differently in the Marvel multiverse. While addressed obliquely in recent initiatives within the MCU through Loki, Spider-Man, Doctor Strange and the Infinity Saga, among others, Marvel comics are

<sup>78</sup> Koskenniemi, *From Apology to Utopia*.

<sup>79</sup> For example, Gordon considers contingency as being 'a key element in the operation of international law as a mode of power', and relying on international law being indeterminate states that 'in an indeterminate field, contingency is part of the basic construction'. See Gordon, "Contingency," 162.

<sup>80</sup> On the difference between temporality within Marvel and DC comics, including a focus in the latter on the origin story instead of all past events, see Serra, "Mythical Time."

<sup>81</sup> Gordon, "Contingency," 162.

<sup>82</sup> Serra, "Mythical Time," 654.

<sup>83</sup> Hodson, "Introduction," 14.

<sup>84</sup> Thomas, "Hulk," 52.

<sup>85</sup> Thomas, "Hulk," 52–53.

set in a multiverse with parallel universes that exist concurrently.<sup>86</sup> Further, Marvel comics have repeatedly demonstrated interaction among elements from parallel universes as well as interaction between elements from different timelines.<sup>87</sup> The existence of the Watcher alone, who can see all that was, is and will be, as well as what could have been in most instances, depicts this element of inter-temporality rampant through Marvel comics more generally.<sup>88</sup>

In ‘What If the Hulk Had Always Had the Brain of Bruce Banner’, the Watcher asks that we ‘go back a few seconds and also sideways to a time continuum which exists alongside our own, separated from it by the merest, thinnest reality’.<sup>89</sup> With this the story goes back (and sideways) to the point where Bruce Banner transforms into the Hulk for the first time.<sup>90</sup> Likewise, this interaction between temporal elements finds itself situated securely in the feminist judgments project. While the authors of the feminist judgment expressed a desire to ensure its temporal relevance, both for the present and the past,<sup>91</sup> this is not (contrary to the fate of Steve Rogers and his alliance with the Winter Soldier)<sup>92</sup> the end of the line for the issue of temporality.

### *Future perspective on the application of past law*

As an example, the authors of the feminist judgment in *Bozkurt* recognised the ‘gendered assumptions underlying the international legal order of the 1920s and the Court’s approach’.<sup>93</sup> Though they did this by exclusively applying law applicable at the time, they did this right here, from the future, in 2019. On this basis, they raised a set of questions. These included questioning how these States had been personified, not only as sovereign subjects, ‘but also as gendered subjects’; the context in which this case found itself; what ‘feminist voices [were] available within the international arena at the time relating to these issues’; and whether there were any issues that ought to be considered pertaining to women and minorities.<sup>94</sup> Would the feminist chamber have raised each of these questions had it congregated in 1927 instead of 2019? Given that the feminist chamber took it upon itself to consider an outcome on the basis of this reasoning or these questions, it is difficult to determine that the feminist chamber would have arrived at the exact same decision if it sat on the other side of this judicial timeline.

The authors of this particular feminist judgment stated that:

the chamber determined that there was space to revisit the facts with a view to identifying the gaps and/or silences, engaging a feminist methodology centred on the politics of the everyday, the role of narratives in excluding women’s and feminist voices/versions and the use of States (or ships) as abstract legal subjects that can dislodge the concerns of individuals.<sup>95</sup>

While in doing this the law of that period may have been applied, it is difficult to argue that the feminist judges did not import their contemporary understanding of that law or their understanding of gender perspectives per se—informed through years succeeding those of the case—to the identification of these silences and gaps.

### *Two schools of temporal thought*

An attempt at chronicling the role and treatment of inter-temporality in both the comics and feminist judgments project reveals two schools of thought vis-à-vis the interpretation of temporality and the notion of time in both worlds. These patterns appear similar if not identical in each of these realms. Temporality in Marvel as opposed to that in DC comics has been characterised as being historical and one that ‘organizes events relating to our past into a causative series. Events of the past are consecutively viewed then as the result of some other, earlier events.’<sup>96</sup> According to Serra, as per the temporality in Marvel—which is historical rather than the mythical approach to temporality employed in DC comics—‘the importance of present events depends on their future projection, on their possible effects and consequences’.<sup>97</sup>

A similar categorisation of historical and mythical temporal thought can be found in scholarship on international law. This is evident in Steven Wheatley’s A-series and B-series conceptions of time, which he applies to his analysis of the International

<sup>86</sup> Waldron, *Loki*; Watts, *Spider-Man*; Raimi, *Doctor Strange*; Russo, *Avengers: Endgame*.

<sup>87</sup> See, for example, Waldron, *Loki*.

<sup>88</sup> See Lee, *The Fantastic Four*, Vol. 1 #13.

<sup>89</sup> Thomas, ‘Hulk,’ 52.

<sup>90</sup> Thomas, ‘Hulk,’ 52.

<sup>91</sup> Chinkin, ‘Bozkurt,’ 30.

<sup>92</sup> Andrews, ‘Zombies.’

<sup>93</sup> Chinkin, ‘Bozkurt,’ 28.

<sup>94</sup> Chinkin, ‘Bozkurt,’ 29.

<sup>95</sup> Chinkin, ‘Bozkurt,’ 29.

<sup>96</sup> Boris Uspenskij, quoted in Serra, ‘Mythical Time,’ 648.

<sup>97</sup> Serra, ‘Mythical Time,’ 648.

Court of Justice's Advisory Opinion in *Chagos*.<sup>98</sup> The former refers to the concept of time as moving from the future to the past, while the latter focuses 'instead on the timeline of events, which can be described in terms of being "later than", "earlier than" or "simultaneous with" each other'.<sup>99</sup> The A-series category, similar to Serra's depiction of historical temporality in Marvel comics, follows a serial continuity.<sup>100</sup> Similarly, the B-series described by Wheatley focuses on particular events that result in conclusions that do not change over time, in the same manner that Serra's description of mythical temporality in DC comics emphasises particular events that remain similarly static.<sup>101</sup> Accordingly, the A-series is used to describe the UK's position in *Chagos*, while the B-series has been used to describe the Court's approach in the Opinion.<sup>102</sup> Thus, in addition to the specific temporal elements that the *What If* series and the feminist judgments project invoke, patterns of similar treatment of temporal issues are evident throughout international legal scholarship and science fiction (e.g., through the example of Marvel and DC comics). In light of several cohesive elements found in both realms, further analysis into this interrelation could prove advantageous, as argued below.

### Causality

The third area of cohesion running through both projects is that of causality. The feminist judgments project is not just an unblemished example of how causes and effects play out in the process of judicial decision-making, demonstrating how different approaches or subtle deviations can result in altered decisions or reasoning underlying decisions. It also emphasises contextual interpretations and relies on an understanding of causal relationships based on the objective to approach decisions from a 'gender perspective'. This is done by deliberately adopting a feminist perspective towards decision-making, which allows the authors of the feminist judgments to lean on intersectionality as a feminist methodological tool. For example, in the Bozkurt feminist judgment the authors recount how 'intersectionality is a key feminist method' and how as a chamber they 'tried at least to understand and incorporate within the judgment analyses of race and colonialism as well as gender'.<sup>103</sup> This is visible throughout the feminist judgment in this case, not least by affirmations such as that the chamber:

relies on an understanding of sovereignty as built on the spirit of co-operation, community and pacific settlement of disputes; one that resists inequalities in power relations between those recognised as States and thereby also challenges nineteenth century and positivist conceptions of free will, which assume a formal equality without considering the substantive inequalities between States.<sup>104</sup>

Thus, with this clear emphasis on the context<sup>105</sup> and use of intersectionality as a methodological tool, the feminist chamber ended up on a route that differed greatly from the original decision and re-crafted the concept and emphasis on State sovereignty advanced by the original judgment. The feminist judgment in *Lubanga* also adopts an equivalent emphasis on both context and intersectional elements within the case. It does this, among other avenues, by noting 'the lived and real experience of the victims and their families'.<sup>106</sup> Once again, this approach is noticeable throughout the feminist judgment including with references to the chamber being mindful of the significant coercive and exploitative factors operating in children's lives during the conflict. The authors sought to reflect the complex interrelationships between consent and coercion and the varying experiences of child soldiers.<sup>107</sup>

The *What If* series similarly reflects this emphasis on causes and effects, and this facet is manifested through an equal emphasis on intersectionality throughout the *What If* storylines. This is clear from how these alternative tales draw on the rich contextual

<sup>98</sup> Wheatley, "Doctrine." On the doctrine of inter-temporal law and international law see, for example, Kotzur, "Intertemporal Law."

<sup>99</sup> Wheatley, "Doctrine," 485.

<sup>100</sup> Wheatley states, for example, that 'for followers of the A-series, ... the passage of time is real, and everything is observed from the privileged position of "now"—the moment which decides whether something is past, present or future'. See Wheatley, "Doctrine," 485. On the historical approach towards temporality in Marvel comics see Serra, "Mythical Time," 651–652.

<sup>101</sup> According to Wheatley, 'the static logic of the B-series' implies that conclusions pertaining to the law, such as in the pleadings before the International Court of Justice by the UK in the *Chagos* opinion, '[do] not change over time'. This reference was to the UK's position that given 'there is no consensus on the existence of a right of peoples to self-determination in the 1960s, there is no violation of international law when Mauritius becomes independent without the Chagos Archipelago'. See Wheatley, "Doctrine," 485.

<sup>102</sup> Wheatley, "Doctrine," 495.

<sup>103</sup> Chinkin, "Bozkurt," 32.

<sup>104</sup> Chinkin, "Bozkurt," 41.

<sup>105</sup> For example, right at the outset the feminist judgment states that 'in order to make a fair and reasonable judgment, it is necessary to consider the broader context in which the events occurred'. See Chinkin, "Bozkurt," 35.

<sup>106</sup> Chinkin, "Bozkurt," 35.

<sup>107</sup> Brunger, "The Prosecutor," 443.

history of characters built through the historical temporality adopted in Marvel. In the Marvel multiverse, events are usually presented as causes for future effects.<sup>108</sup> From the point of intersectionality, it has also been argued viz the Watcher that:

in theory, Uatu is free from the complex bundle of passions and interests that envelop the present; he can observe these old events as ‘facts’ and old comics as historical sources, which can be used as a starting point to imagine different historical possibilities.<sup>109</sup>

This is because Uatu has been compared to a historian who observes ‘events from a distance, from a remote point of view which makes the account of all the events possible, that is, enabling the establishment of causal relationships and the construction of interpretation patterns’.<sup>110</sup> The continuity in Marvel comics facilitates the development of a context and an arc in these characters’ histories and personalities that seem to make the alternative realities possible.<sup>111</sup> For example, the fact that the Hulk was not manipulated by Loki (thus, never leading to the creation of the Avengers) because he still had Bruce Banner’s brain draws substantially on the characteristics that have been attributed to Bruce Banner throughout the history of these comics, as well as his personal circumstances<sup>112</sup>—or, for that instance, the fact that the Fantastic Four recognised that something was awry based on Sub-Mariner’s comportment and altered stance towards Sue Storm, which was unlike his behaviour and personality built through the historical narrative on Namor McKenzie.<sup>113</sup> Thus, causality arches through both worlds (that of *What If* and the *Feminist Judgments in International Law*) and manifests itself in the form of intersectionality.

### Conclusion: An Overlap, Intertwinement or the Missing Key?

The motivation underlining this analysis was to highlight how the spheres of science fiction and feminist legal thought were significantly interrelated using the examples of Marvel’s *What If* comics and the *Feminist Judgments in International Law*. Each of these leans on the use of counterfactuals. The interrelation between *What If* and the feminist judgments is, thus, demonstrated through issues of contingency, inter-temporality and causality, all of which both the comics and feminist judgments are replete. However, how would this interrelation be characterised? Could this be an intertwining with three focal points or an intersection along these three coordinates, or perhaps an overlap, possibly divided into these three areas of correlation?

Based on the examples detailed above, each of the three models could be pleaded. For example, the two projects (*What If* and the *Feminist Judgments in International Law*) could be said to have these three areas of contingency, causality and inter-temporality in common, or they could be said to intersect at these three points of cohesion. Alternatively, this interrelation could be categorised as an overlap along these three themes. However, what might be the most useful in terms of analogy is to view this interrelation as a key of sorts, to be used to map feminist approaches to international law (and arguably other related areas).

Using the *What If* series and acknowledging the similarities it shares with the feminist judgments project could, for example, assist in an enhanced understanding of its objectives and impact. Through this reading of the *What If* comics, it is clear that the idea behind the series is to demonstrate an alternative reality, or an alternative world, orchestrated sometimes from the minutest change in route or vision or decision-making. By demonstrating a different reality, the comic series has the effect of encouraging you to question the original result or reality. Applying the same logic, or using the *What If* lens, the feminist judgments project arguably has the same effect, among others. For example, the feminist judgment in *Lubanga* uses a gender perspective and interprets the use of children to ‘participate actively in hostilities’ in light of this. Based on this, the authors of the judgment reach an entirely different decision on the scope and kinds of harm suffered by victims in this case, with further proliferating ramifications. What immediately comes to the fore using the *What If* lens is that the original judgment did not use a gender lens or a gender perspective. Thus, immediately, this exercise provided a medium of methodical critique through an alternative route that led to an alternative reality. Years after the original judgment in *Lubanga* and after the feminist judgment in the same case, the ICC itself adopted a much more gender-sensitive approach towards crimes within its jurisdiction, highlighting the gendered

<sup>108</sup> As per Serra, for example, ‘for the historical consciousness, the importance of present events depends on their future projection, on their possible effects and consequences’. See Serra, “Mythical Time,” 648.

<sup>109</sup> Serra, “Mythical Time,” 653–654.

<sup>110</sup> Serra, “Mythical Time,” 653.

<sup>111</sup> This is unlike DC’s Elseworlds, which, it has been argued, were ‘not based on the idea of a point of divergence, but transfers the myths to other environments, reaffirming its universality and atemporality’. See Serra, “Mythical Time,” 654; On Elseworlds, see, for example, Brennert, *Batman: Holy Terror*.

<sup>112</sup> Lee, *The Avengers*, Vol. 1 #1.

<sup>113</sup> For example, see the ‘Captives of the Deadly Duo’, in which Namor refuses to harm Sue Storm while agreeing to collaborate with Doctor Doom; Lee, *The Fantastic Four*, Vol. 1 #6.

nature of these crimes.<sup>114</sup> Further, the Court now publicly acknowledges the value of gender perspectives to all aspects of its work.<sup>115</sup> While empirically it is hard to determine to what extent the feminist judgment in *Lubanga* played directly in the changing approach of the Court, it is nonetheless apparent that by presenting an alternative, feminist judgments allow for a critical assessment of the alternative result,<sup>116</sup> which could either assist in validating this result or the original judgment itself. This also avows, for example, the assertion that science fiction ‘enables not only a recognition but also a questioning of some of the fundamental characteristics and assumptions of international law’.<sup>117</sup>

Thus, as a methodological tool that mirrors the likewise contingency-based Marvel project from the 1970s, the use and study of feminist legal tools such as the feminist judgments project could benefit from an open engagement with similar and, as in this case, pre-existing methodological tools within science fiction. This is made all the more relevant with other countless similarities that interlace science fiction and feminist legal thought more generally. Thus, perhaps it might even be fruitful to view feminist judgment writing as an exercise in science fiction itself, to more holistically appreciate and use it as a methodological legal tool. Perhaps, then, it is in our best interest after all to follow the Watcher.

*Time. Space. Reality. It's more than a linear path. It's a prism of endless possibility, where a single choice can branch out into infinite realities, creating alternate worlds from the ones you know. I am the Watcher. I am your guide through these vast new realities. Follow me and ponder the question, 'What if?'*

—The Watcher, What If...?<sup>118</sup>

<sup>114</sup> On feminist and gender-sensitive judging at the International Criminal Court, see Grey, “International Criminal Court.”

<sup>115</sup> See “ICC Marks International Women’s Day”; see also The Office of the Prosecutor, Policy Paper.

<sup>116</sup> On how ‘counterfactuals have an important tradition in critical thinking, especially in feminist writings’, see Venzke, “What If?” 409, 417. According to Venzke, ‘provocative counterfactuals with analytical purchase can shock, and they can inspire. That might be precisely the point, to free the mind from the constraints of reality.’

<sup>117</sup> Kang-Riou, “Science Fiction,” 155.

<sup>118</sup> Andrews, What If...?

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