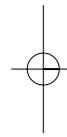
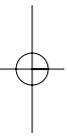
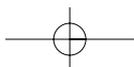
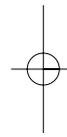
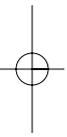


Making Just Rights?





Making Just Rights?

Mainstreaming Women's Human Rights
and a Gender Perspective

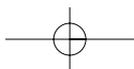
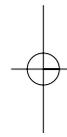
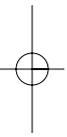
Sari Kouvo

IUSTUS FÖRLAG

© Författaren och Iustus Förlag AB, Uppsala 2004
ISBN 91-7678-559-9
Sättning: Harnäs Text & Grafisk Form
Omslag: Förlaget
Tryck: Elanders Infologistics Väst AB, Mölnlycke 2004
Förlagets adress: Östra Ågatan 9, 753 22 Uppsala
Tfn: 018-69 30 91, fax: 018-69 30 99
Webbadress: www.iustus.se, e-post: kundtjanst@iustus.se

Better never means better for everyone, he says.
It always means worse, for some.

Margaret Atwood, *The Handmaid's Tale*, 1985



Acknowledgements

Many colleagues and friends have encouraged me during my preparation of this thesis. First of all, I would like to thank my supervisor, Docent Eva-Maria Svensson, and my assistant supervisor, Professor Per Cramér, for their support and scholarly comments. I am also grateful to the research community at the Department of Law at the School of Economics and Commercial Law at the Göteborg University (GU). I would also like to thank Professor Hilary Charlesworth for her supervision and for the help and hospitality given to me by her and her colleagues during the semester I spent at the Centre for Public and International Law at Australian National University (ANU). I wish to thank Professor Martin Scheinin and his colleagues for their help and hospitality during the months I spent at the Institute for Human Rights at Åbo Akademi University (ÅA). Further, I am grateful for having been able to participate in the work of the Centre for the Study of Human Rights (GU), the Centre for Global Gender Studies (GU) and the informal network for Nordic feminist legal studies.

I am also very grateful to Docent Gregor Noll of the University of Lund for his excellent reading of and comments to this thesis for the final seminar. I am grateful for the help and comments from a number of scholars at the GU Law Department, especially in conjunction with the final seminar. In alphabetical order: Ina Engelbrektsson, Håkan Gustafsson, Andreas Moberg, Ulf Petrusson and Dennis Töllborg. Further, I would like to thank Monica Burman of Umeå University, Doris Buss of Carleton University, Katarina Frostell (ÅA), Maria Grahn-Farley of Golden Gate University, Karen Jones (ANU), Miko Lempinen (ÅA), Liisa Nieminen of Helsinki University, Zoe Pearson (ANU) and all the other people who, over the years, have read and commented so thoughtfully on my papers and the draft chapters of my LLD dissertation. I also would like to mention the important discussions and cooperation with Carina Listerborn of Stockholm University and the cooperation with Sara Stendahl at the GU Department of Law. A very special thank you goes to Linda Augustine for her excellent English language checking of this

LLD dissertation. I am also grateful to Lars Guditz, Solveig Hendriksen, Jaana von Lichtenstein and Carina Listerborn for proof reading different parts of the dissertation.

I am grateful, as well, for the research funding provided by the Bank of Sweden Tercentenary Foundation, *Ekonomförbundet vid Handelshögskolan vid Göteborgs Universitet*, *Institutet för rättsvetenskaplig forskning*, *Svenska kulturfonden* (Finland), *Hejnes, NorFa*, *Stiftelsen Lars Hiertas Minne* and the Research Board of the GU Department of Law.

Ett stort tack går till Carina, Kerstin, Malin, Lars, Sören och andra vänner! Ni är himla bra! Ett särskilt tack går till Kerstin för all poesi! Et bien sûr, merci Alain! Je n'aurais pas fini ce travail sans toi, ou peut-être que oui, mais cela n'aurait pas été aussi gai! Tack, också till Kajsa och Heimo Kouvo!

Of course, I am solely responsible for the text in its final form.

Göteborg, February 2004

Table of Contents

Main Abbreviations 14

1 Introduction and General Background 15

- 1.1 Introduction 15
 - 1.1.1 Introductory Remarks 15
 - 1.1.2 Background and Objectives 17
 - 1.1.3 Material and Method 20
 - 1.1.4 Outline 22
- 1.2 Introduction to the UN Human Rights Framework 23
 - 1.2.1 The Development of the International Human Rights Regime 23
 - 1.2.2 UN Human Rights Law, Soft Law and Policies 30
 - 1.2.3 The UN Human Rights System 36
- 1.3 Introduction to the UN Equality Strategies Applied within the UN Human Rights Regimes 38
 - 1.3.1 The Principle and Aim of Equality 38
 - 1.3.2 Three Strategies for Equality 44
- 1.4 Summary and Conclusions 47

2 Theoretical and Methodological Reflections 49

- 2.1 Introduction 49
- 2.2 Sexing the International 52
 - 2.2.1 Feminist Perspectives on International Law 52
 - 2.2.2 Feminisms' Analytical Categories 56
- 2.3 Discussing and Unpacking Feminist Perspectives on International Human Rights 61
 - 2.3.1 Feminist Perspectives on Rights 61
 - 2.3.2 Feminist Perspectives on International Human Rights 64
 - 2.3.3 Unpacking Strategies and Concepts 70
- 2.4 Summary and Conclusions 75

- 3 A Historical Overview: Human Rights, Women's Human Rights and Integration 77**
- 3.1 Introduction 77
- 3.2 A Brief History of Human Rights 79
- 3.2.1 From Men's Rights to Human Rights 79
The American and French Revolutions and the Declarations of Rights 79
The Rights of Man and the Question of Women's Rights 81
- 3.2.2 Internationalization of Human Rights 88
International Debates on Human Rights prior to the Second World War 88
International Human Rights in the Post-Second World War Period 90
- 3.3 The UN Human Rights Framework and the Sex-Neutral and Women-Centred Equality Strategies 93
- 3.3.1 The UN Human Rights Framework and the Sex-Neutral Equality Strategy 93
The International Bill of Rights and the Sex-Neutral Equality Strategy 93
Specialized Human Rights Treaties and the Sex-Neutral Equality Strategy 98
A Brief Note on Multi-Dimensional Discrimination 101
- 3.3.2 The UN *Women's* Human Rights Framework or the Woman-centred Equality Strategies 104
- 3.4 The World Conferences on Human Rights and Integration of Women's Human Rights 111
- 3.4.1 From Teheran to Vienna 111
- 3.4.2 The Global Campaign for Women's Human Rights and the Vienna Dual Strategy 115
- 3.4.3 Between Vienna and Beijing: The Conference on Population and Development (Cairo 1994) 122
- 3.5 The World Conferences on Women and Gender Mainstreaming 124
- 3.5.1 From Mexico to Nairobi 124
- 3.5.2 The Fourth World Conference on Women (Beijing 1995) and the Dual Strategy 129
The Beijing Conference 129
The Preparatory Regional Conferences 132

	<i>Advancing Women and Mainstreaming Gender</i>	137
	<i>Women's Human Rights</i>	140
	<i>Follow-up to the Beijing Conference</i>	142
3.5.3	A Short Note on the Integrated and Coordinated Follow-up to UN Conferences	144
3.6	Conclusions	148
4	Mainstreaming a Gender Perspective and Integrating Women's Human Rights	150
4.1	Introduction	150
4.2	Second-Wave Feminist Perspectives on the Sex/Gender Distinction	152
4.2.1	The Development of the Sex/Gender System	152
4.2.2	Sameness/Difference and the Other Woman	156
4.3	Third-Wave Feminist and Male-Centred Perspectives on the Sex/Gender Distinction	161
4.3.1	Post-Feminisms and Sexual Difference	161
4.3.2	Unpacking Patriarchy and Integrating Men	163
4.4	Translations and Travels	165
4.5	An Analysis of Gender Mainstreaming Strategies	171
4.5.1	The Gender Turn and the ECOSOC Agreed Conclusions on Gender Mainstreaming	171
4.5.2	Core Components of the Gender Mainstreaming Strategy	175
	<i>The Mainstreaming Component</i>	175
	<i>The Gender Analysis Component</i>	180
	<i>Targeted Intervention</i>	184
4.6	Mainstreaming Approaches to Women's Human Rights	186
4.6.1	The Vienna Strategy and Beyond	186
4.6.2	Rights-based Approaches	187
4.6.3	Integrating women's Human Rights-based Approaches	193
4.7	Conclusions	197
5	The Institutional Implementation of the Integrative Strategies	200
5.1	Introduction	200
5.2	The Charter-based Intergovernmental Institutions and the Integrative Strategies	202

- 5.2.1 Introduction 202
- 5.2.2 The Security Council 203
- 5.2.3 The General Assembly 208
- 5.2.4 The Economic and Social Council 215
- 5.2.5 Conclusions 222
- 5.3 The Commissions on Human Rights and on the Status of Women and the Integrative Strategies 223
 - 5.3.1 Introduction 223
 - 5.3.2 The Commission on Human Rights and Its Special Procedures 225
 - The Commission on Human Rights* 225
 - The Commission on Human Rights' Special Procedures* 232
 - Introduction* 232
 - The Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions* 235
 - The Special Rapporteur on Violence against Women, Its Causes and Consequences* 239
 - The Special Rapporteur on the Right to Education* 244
 - The Special Rapporteur on the Situation of Human Rights in Afghanistan* 248
 - 5.3.3 The Commission on the Status of Women 251
 - 5.3.4 Conclusions 256
- 5.4 The Human Rights Treaty Bodies and the Integrative Strategies 257
 - 5.4.1 Introduction 257
 - 5.4.2 The Committee on the Elimination of Racial Discrimination 261
 - 5.4.3 The Human Rights Committee 265
 - 5.4.4 The Committee on Economic, Social and Cultural Rights 268
 - 5.4.5 The Committee against Torture 272
 - 5.4.6 The Committee on the Elimination of All Forms of Discrimination against Women 273
 - 5.4.7 The Committee on the Rights of the Child 278
 - 5.4.8 Concluding Comments 282
- 5.5 The Secretariat and the Integrative Strategies 283
 - 5.5.1 Introduction 283
 - 5.5.2 The Office of the High Commissioner for Human Rights 288

- 5.5.3 The Secretariat and the Advancement of Women 293
- 5.5.4 Conclusions 296
- 5.6 Conclusions 297

6 Conclusions 299

- 6.1 Introduction 299
- 6.2 The “Mainstreaming Turn” within the UN Human Rights Framework 304
- 6.3 The “Gender Turn” within the UN Human Rights Framework 310
- 6.4 The Reintegration of Women’s Human Rights 318
- 6.5 Submerged Strategies and Multiple Mainstreaming 325
- 6.6 The Strategies Became the Goal 331

Bibliography 334

Web Pages 361

Interviews 362

Official Documents 363

- Main UN Treaties, Declarations and Platforms of Action 363
- UN Documents 364
 - World Conference and Related Documents 364
 - The Security Council 365
 - The UN General Assembly (UN GA) 366
 - ECOSOC and its Substantial Commissions 371
 - ECOSOC* 371
 - The Commission on Human Rights and Its Special Procedures, Including the Sub-Commission on the Promotion and Protection of Human Rights* 374
 - The Commission on the Status of Women* 378
 - The UN Human Rights Treaty Monitoring Bodies 380

Main Abbreviations

CAT	Convention against Torture, and Other Cruel, Inhuman and Degrading Treatment (1984)
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women (1979)
CERD	Convention on the Elimination of All Forms of Racial Discrimination (1965)
CRC	Convention on the Rights of the Child (1989)
DAWN	Development Alternatives with Women for a New Era
DEDAW	Declaration on the Elimination of Discrimination against Women (1967)
DEVAW	Declaration on the Elimination of Violence against Women (1993)
ECOSOC	Economic and Social Council
HRQ	Human Rights Quarterly
HURIST	Human Rights Strengthening Programme, UNDP
IANWGE	Inter-Agency Network on Women and Gender Equality
ICCPR	International Covenant on Civil and Political Rights (1966)
ICESCR	International Covenant on Economic, Social and Cultural Rights (1966)
INSTRAW	United Nations International Research and Training Institute for the Advancement of Women
NJIL	Nordic Journal of International Law
OHCHR	Office of the High Commissioner for Human Rights
OSAGI	Office of the United Nations Special Adviser to the Secretary General on Gender Issues and Advancement of Women
UN	United Nations
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNDP	United Nations Development Programme
UNIFEM	United Nations Development Fund for Women
WHO	World Health Organization

1 Introduction and General Background

In this first chapter, I will introduce my thesis, focusing on its aims, core areas and theoretical and methodological frameworks. This chapter is divided into three main parts. In the first part, Chapter 1.1, I outline the aims of this thesis, which are to analyze the background, content and implementation of some of the dominant strategies for equality between the sexes applied within the UN human rights framework during the 1990s. In the second part, Chapter 1.2, I provide a background for and a general overview of the UN human rights framework and, in the third part, Chapter 1.3, I introduce the principle of equality and the different strategies for equality applied within the UN human rights framework.

1.1 Introduction

1.1.1 Introductory Remarks

The explicit objective of international human rights as developed within the *United Nations* (UN) is to protect the rights of all human beings equally. The *Universal Declaration of Human Rights* (Universal Declaration, 1948) states that “[a]ll human beings are born free and equal in dignity and rights” and that everyone is entitled to the rights set forth in the declaration “... without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”.¹ The *International Covenant on Civil and Political Rights* (ICCPR, 1966) and the *International Covenant on Economic, Social and Cultural Rights* (ICESCR, 1966) both include similar principles of equality and non-discrimination and affirm, with respect to the rights set forth in the Covenants, that “... States Parties to the present Covenant[s] undertake to ensure the equal right of men and women” with respect to the rights in the Covenants.²

¹ Universal Declaration, Arts. 1–2.

² ICCPR Art. 3 and ICESCR Art. 3.

While the UN included both women and men as subjects of international human rights law, the means for inclusion did not address the inequalities and discrimination resulting from the historical exclusion of women and large parts of the world community from the sphere of rights. Hence, in UN human rights history the exclusion of women and the exclusion of the rights crucial for women's well being have been less the results of any kind of explicit law-based exclusion, than the results of politico-legal interpretations and silences.³ In order to ensure equal rights between women and men and a better protection of women's human rights the UN began adopting women's human rights treaties parallel to the International Bill of Rights, which includes the Universal Declaration, the ICCPR and the ICESCR. The early women's human rights treaties, such as the Convention on the Political Rights of Women (1952) and the Convention on the Nationality of Married Women (1953) codified the rights already established in the Universal Declaration but with a focus on women. Later, women's human rights treaties, such as the *Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW, 1979) included attempts to interpret and transform human rights in order to adapt it to women's diverse realities. Women's inequality, however, has not only been addressed as part of the UN human rights agenda, but also as part of the UN social and development agendas.

The adoption of general human rights and women's human rights treaties have been important steps in the standard setting of the UN-based human rights regime. However, the adoption of treaties only means going halfway or less to changing practices in actuality. Within the framework of the world conferences regarding human rights and socioeconomic issues that have been organized by the UN since the 1960s and, especially, during the 1990s, different strategies for the implementation of human rights, generally, and women's human rights, particularly, have been developed. The *World Conference on Human Rights* held in Vienna in 1993 (Vienna conference) stressed the importance of a dual strategy for the promotion of women's human rights and equality between the sexes. In accordance with the *Vienna Declaration and Programme of Action* (Vienna Programme), women's human rights and equality between the sexes should be promoted by strengthening women's human rights regimes *and* by integrating women's human rights into the UN system-wide activity and especially as the strategy has been interpreted, into the UN human rights system. The *Fourth World Conference on Women* held in

³ Early feminist legal scholars emphasized the need to identify law's silences or, as defined by Stang Dahl (1988), a Nordic pioneer of women's law, law-empty spaces (in Swedish *rättstomma rum*). See Nousiainen, Gunnarsson, Lundström and Niemi-Kiesläinen 2001 and Svensson 2001a–b.

Beijing in 1995 (Beijing conference) promoted a somewhat different dual strategy. In accordance with the *Beijing Declaration and Platform for Action* (Beijing Platform), equality between the sexes should be promoted by strengthening the women's advancement regimes already in existence, including the women's human rights regime *and* by integrating a so-called gender perspective into the UN system-wide activities, including into the UN human rights system. In accordance with the Beijing Programme, "... an active and visible policy of mainstreaming a gender perspective into all policies and programmes should be promoted so that before decisions are taken an analysis is made of the effects of women and men respectively".⁴ That is, while both dual strategies emphasize both specialized woman-centred schemes and integrative schemes, they differ vis-à-vis the framework in which they developed and vis-à-vis *what* should be integrated. To a large extent, the focus of this thesis will be on the Vienna strategy's emphasis on the integration of women's human rights and the Beijing strategy's emphasis on the mainstreaming of a gender perspective. It is already worth noting two points. First, that very little is evident about the notions of women's human rights and gender and, secondly, that the aforementioned strategies and concepts are far from being one-dimensional.

1.1.2 Background and Objectives

This thesis is a thesis in international law with a special focus on international human rights and, especially, on the response of the UN human rights framework to women's demands for equality and equal rights. I will provide a general background for the exclusion of women from the rights' sphere and the gradual inclusion of women as human rights subjects beginning in the late 18th century up to contemporary discussions. The focus of the lens of my thesis, in particular, will be held over two areas: over post-Cold War developments and over the different strategies for achieving equality between the sexes adopted within the UN human rights framework during the 1990s. In this thesis the notion of "strategy" is used for dominant trends of currents within equality politics, which give priority to certain law-based and policy-based forms for the promotion of equality. I am especially interested in the development, content and fluctuating meanings of the two divergent dual strategies adopted at the Vienna and Beijing conferences. Their integrative parts especially intrigue me. The first dual strategy adopted at the Vienna conference emphasized the importance of strengthening *and* integrating

⁴ Beijing Platform, Arts. 79, 105, 123, 141, 164 and 229.

women's human rights. The second dual strategy adopted at the Beijing conference emphasized the importance of strengthening the UN schemes for the advancement of women *and* integrating a gender perspective, viz., gender mainstreaming.⁵ The first parts of both the dual strategies consist mainly of reaffirmations of the earlier woman-centred equality strategies and it is the integrative parts that are the 1990s add-ons to the UN equality discourses. I am interested mainly in the add-ons. Questions that have guided the thesis are: Why were the strategies adopted? What conceptual and operative content is given to the strategies? How do the strategies interact? And how have the strategies been interpreted when implemented within the UN human rights system?

My interest in the integrative parts of the dual strategies for women's human rights and equality between the sexes began while doing an internship at the Women's Rights Section at the Division for the Advancement of Women at the Department of Economic and Social Affairs at the UN headquarters in New York in 1998. At the time, there was much talk at the Division about the importance of rights-based approaches to women's advancement and about gender mainstreaming.⁶ The UN staff that I encountered seemed convinced about the necessity of rights-based approaches and fluent in using a language of gender and gender mainstreaming.⁷ The terms, however, lacked any clarity at all for me. Questions that have begun to interest me rather belatedly are: How should the notion of women's human rights be interpreted when they are to be in-

⁵ The subtitle of this thesis is *Mainstreaming Women's Human Rights and a Gender Perspective*. The subtitle refers to the two integrative strategies, i.e., the Vienna strategy that emphasized integration of women's human rights and the Beijing strategy that promoted mainstreaming of a gender perspective. When the Vienna strategy was adopted the language of "integration" was used for what later became "mainstreaming". For example, during later years, as will be noted in Chapters 5 and 6, the UN has increasingly begun to discuss mainstreaming of women's human rights. Depending on what strategy I discuss and with reference to what time frame I use either the term integration or mainstreaming, but I give largely the same meaning to the two terms. Note, however that I in Chapter 4 have chosen a slightly different approach, due to references to other literature, see Chapter 4, footnote 1.

⁶ The 1998 discussions about rights-based approaches, however, were probably less a result of the Vienna strategy for the integration of women's human rights than the UN Secretary-General's policy strategy for mainstreaming human rights launched around 1997 as part of the UN reform programme. See Annan 1997 and Chapter 4.6.2.

⁷ It should be noted that my impressions about the conviction and the fluency of the staff at Division for the Advancement of Women was certainly influenced by the fact that I did not understand the notion of rights-based approaches or how rights-based approaches could be operationalized. At the time, the notion of gender was for me, primarily a contested analytic category (ab)used by feminist theorists. See Chapters 4.2–3. For analysis of operationalization and law, see Gipperth 1999.

egrated into the UN-based human rights system? Does the notion of women's human rights refer mainly to the rights codified in CEDAW or are there other possible interpretations? How should the analytic category of gender be understood in the UN strategy for mainstreaming a gender perspective? How does the largely law-based strategy of integrating women's human rights relate to the policy-based strategy of mainstreaming a gender perspective?

There are three main objectives for this thesis: *the first objective of this thesis is to analyze the integrative parts of the dual strategies against the background of the development of different human and women's human rights regimes.* That is, by providing a general background of the development of human rights, and by analyzing the sex-neutral human rights and woman-centred human rights within the UN human rights framework, this thesis aims at situating and giving a context to the contemporary dual and integrative strategies for equality between the sexes.

The second objective of this thesis is to analyze and unpack the integrative parts of the dual strategies and to bring some clarity to their contents, meanings and intentions. The Vienna conference proposed a dual strategy that aimed at strengthening the existing women's human rights regime and at integrating women's human rights into the core of the human rights system. The Beijing conference proposed a dual strategy that aimed at strengthening woman-centred equality measures and at mainstreaming a gender perspective within the UN system, including within its human rights system. Hence, the conceptual and operative contents of the strategies are fairly different, though the shared developmental and implementation processes of the strategies have led to ambiguities.

The third objective of this thesis is to analyze the integrative strategies by examining how they have been institutionally implemented through key initiatives by a number of the UN human rights institutions. In this thesis, however, I am not interested in the implementation efforts by the UN Member States, but specifically in how different UN human rights institutions have approached the strategies. The integrative parts of the dual strategies are often described as victories of the international women's movement. The women's organizations and networks gathered under the *Women's rights are human rights* slogan at the Vienna conference ensured women's human rights their elevated place in the Vienna Programme. The Beijing conference has ensured that the focus has shifted from *women only* policies at the margins of the UN system to gender policies at the core of UN system-wide activities. As part of the unpacking of the integrative strategies, the current representation of the integrative parts of the dual strategies will be questioned, i.e., from strategies that attempt to promote equality through focusing primarily on women. Feminist

history has shown or, at least, a feminist perspective suggests, and so, perhaps, does common sense, that all too easy victories should be questioned: What has happened really? What was the actual victory? Who won? What price was paid? Where did the possibilities and power go again? That is, this thesis aims at moving in behind the scenes of what some commentators already choose to call the human rights industry and the gender industry: to analyze the content and meaning of these discourses, especially the intended and unintended transformations of the content and meaning of these discourses. The unintended transformations refer to how the strategies have changed when used and implemented by different actors, i.e., the unintended consequences that, at times, are counterproductive to the aim of the strategies.

1.1.3 Material and Method

This thesis is a thesis in international law with a special focus on international human rights. The focus of analysis, however, is not primarily on international human rights law, but rather on the interactions between and among law, politics and policy in the processes of development, transformation and implementation of certain strategies for women's human rights and equality between the sexes within the UN-based human rights regime. Hence, the choices regarding theoretical and methodological approaches and what material to use have been less guided by the disciplinary limitations of international law than by the demands placed on theory, method and material, given the focus on law, on soft law and on certain UN processes under formation.⁸

The main theoretical inspirations for this thesis are feminist international legal studies and feminist theory. Common denominators for feminist international legal studies are the emphasis on the interconnections between law, politics and institution building and the emphasis on international law as inseparable from and entrenched in the, often, contradictory ideas, ideologies and values that govern international politics and the global community. A common denominator for feminist theory is the emphasis that academic knowledge-production should not be perceived of as non-situated and objective, but it is situated (our age, sex, race, sexuality, culture, religion, class and geographic location et cetera affects our research) and it is partial (complex realities cannot be fully explained).⁹ The notion of situated knowledges, however, is not an excuse

⁸ Svensson 1997, p. 21.

⁹ Kennedy, for example, in his article *An Autumn Weekend* (1995) questions his role as an international law professor in producing and reproducing ideas about international

for incomplete research, but, at its best, it implies self-reflective questioning about the researcher's own presumptions and about how these presumptions affect the research.¹⁰

Methodologically, I am inspired by what Hilary Charlesworth and Christine Chinkin have defined as feminist methods in international law and by Carol Bacchi's so-called *What is the problem approach?* developed for feminist policy analysis. Both of these approaches view theory and method as interconnected. They emphasize that the focus of the research or the questions asked should guide the research in greater extent than explicit theories and methods or disciplinary boundaries.

The UN produces a lot of official documentation. Although equality and human rights and the dual strategies remain fairly marginal within and not core issues of the UN agenda, I have encountered no difficulties in finding material and it has been necessary to distinguish, in different ways, important material for the thesis as well as to delimit the material used. Because I use more than just legal material and because I also rely on different kinds of soft law and policy-based material, the process of identifying key documents, following them through or having them play hide and seek with me in the labyrinth-like institutional structure of the UN, has been demanding. I have decided to limit the material to UN official documents produced during the years 1992–2002 on human rights and on women, focusing especially on material implied in the process of developing, promoting or implementing the dual strategies.¹¹ The time frame chosen relates to the time frame during which a language of integration and gender has been promoted within the UN system. I have occasionally included material from 2003 when I considered that a document or equivalent suggests that there has been a shift in focus in how, for example, a specific institution approaches the integrative strategies. With some exceptions, I have also limited myself to material that addresses women's or gender issues or that specifically addresses the integrative strategies. This delimitation seems counterproductive, i.e., how can the integration of women's human rights or the mainstreaming of gender be analyzed if I only focus on material regarding women and/or gender? I have, however, had to realize when going through UN documentation, that the process of integration is still so new and so much

law. Otto (2000) asks similar questions with regard to international law teaching and Buchanan and Pahuja (2002) analyse, self-consciously, the relationship between international legal scholarship and teaching and the joys of belonging to a globetrotting cosmopolitan class.

¹⁰ See Flax 1987, Haraway 1991 and Svensson 1997.

¹¹ For an overview of the institutions chosen for the analysis and of how different institutions have implemented the integrative strategies, see Chapter 5.

under development that it has not moved out of the what can be called the woman margins. The UN official documents include:

- Human rights treaties adopted by the UN General Assembly, as well as *travaux préparatoires*, including declarations, resolutions and summary records and interpretive statements, including general comments and, sparingly, concluding observations adopted by the human rights treaty bodies.
- Official documents adopted at UN World Conferences, including material from the preparatory and follow-up processes.
- Resolutions, annual reports, policy documents, manuals and briefing kits adopted by UN human rights and woman-centred institutions.

As a complement to the academic sources and the UN official documentation, I have conducted fourteen qualitative interviews or discussions with persons working on issues relevant for the integration of women's human rights and mainstreaming of a gender perspective within the UN.¹² The interviews were conducted in 2001 and aimed at providing me with background information for this thesis. The interviews were confidential and I do not disclose the names of the persons interviewed. The fact that the interviews are confidential does have an impact on how I use the material from the interviews. That is, I do not rely on the material from the interviews, but I use it in support of other material.

1.1.4 Outline

This thesis is divided into six chapters. After having outlined the main aims and core areas of this thesis in Chapter One, I will further develop the theoretical and methodological approaches of this thesis in Chapter Two, focusing on feminist perspectives on international law and human rights and on Carol Bacchi's social constructivist and discursive method for feminist policy analysis. Thereafter, in Chapter Three, I will provide a historical background to and analyze the development of the integrative strategies. In Chapter Four, I will provide a closer analysis of and unpack the concept of gender and the integrative strategies. In Chapter Five, I will analyze how different UN human rights institutions have approached and implemented the integrative strategies. Chapter Six rounds up and concludes this thesis.

¹² The confidential list of persons interviewed is held by the author of this thesis. The persons interviewed have been chosen using the so-called snowball method, i.e., each contacted person has recommended one or two other persons that they thought could contribute to the thesis.

1.2 Introduction to the UN Human Rights Framework

1.2.1 The Development of the International Human Rights Regime

Although the idea of rights has long-standing roots in philosophical and political thought, it has mainly been since the late 18th century that the notions of human rights and citizens' rights have been part of Western politics and law. The internationalization of human rights began in the late 19th century with the international actions taken to abolish slavery and the slave trade. The process of the internationalization of rights was continued, although moderately and mainly with regard to economic and social rights, after the First World War, by the League of Nations and especially the International Labour Organization.¹³ The efforts to internationalize human rights were intensified after the Second World War, when not only the UN and its human rights framework was established, but also, when the European and Inter-American human rights frameworks were initiated.¹⁴ The international human rights framework and practice, however, have changed considerably during their nearly six-decade long UN-centred history. The UN Charter includes human rights as one of the areas of UN competencies.¹⁵ When the Universal Declaration was adopted in 1948, many UN delegates rejoiced, perceiving both the establishment of the UN and the adoption of a universal declaration on human rights as a second chance for the international community.¹⁶ Others, such as philosopher Hannah Arendt, criticized the newly found

¹³ For further discussion, see Chapter 3.2.2.

¹⁴ For an overview of the international human rights framework, see, for example, Alston and Steiner 2000, Donnelly 1998 or Smith 2003. For an overview to the European human rights system, see, for example, Cameron 2002 and Ovey and White 2002. For an overview of the African human rights system, see, for example, Hellum and Stewart 1999 and Österdahl 2002. For an overview of the Inter-American human rights system, see, for example, Eriksson 1994.

¹⁵ The UN Charter Art. 1(3) states that the purpose of the UN is to promote and encourage respect for human rights. Art. 55(c) underlines the UN's responsibility to promote "... universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion". The UN *Economic and Social Council* (ECOSOC) has been given the mandate to set up commissions in the economic and social fields for the promotion of human rights (Art. 68). For an analysis of the development of the UN system and its human rights framework, see Chapters 3.2.2 and 3.3.

¹⁶ For further discussion, see Morsink 1999 and McDougal, Lasswell and Chen 1980. See also Chapter 3.2.2.

belief in human rights as nothing but a way for idealists in the so-called civilized nations to ease their conscience.¹⁷ The contemporary postcolonial, post-Cold War and the post-September 11 international human rights frameworks and debates reproduce these aforementioned arguments, both pro and con, as well as many in-between kind of arguments. During the 1990s, human rights have moved from the margins of public international law towards its centre. There has been an increased awareness about the inter-linkages between international legal, political and economic concerns and the well being of human beings and peoples.¹⁸ The new interventionism and the changing political climate after the bombings of the Twin Towers in New York on 11 September 2001, however, have shown a downside to the increased focus on human rights as human rights, including women's human rights, have been used to erode the principle of national sovereignty and to enable, albeit implicitly, military attacks, such as the attacks on Afghanistan and Iraq.¹⁹

The partial erosion of the principle of sovereignty through the inclusion of human rights into public international law constituted a radical shift in post-Second World War international law and politics. During the last decades, the scope of state obligation under international human rights law and the questions of whether and how states can be made accountable for actions committed by non-state actors have been highly debated issues. Scholars interested in issues such as male violence against women, including so-called domestic violence, have been interested in making states responsible for their non-action regarding male violence against women and they have attempted to break down the private/public distinction in international law.²⁰

¹⁷ Arendt 1967, p. 279. The Arendtian criticism of human rights has been developed by Agamben 1998 and Douzinas 2000.

¹⁸ The human rights positive climate has empowered different advocacy groups and non-governmental organizations, which increasingly rely on a human rights language for framing their demands for equality, justice and recognition. Human rights scholars, such as de Sousa Santos (1995), have highlighted the increased non-governmental organization activism and the positive impact of it in the human rights field. Others, such as Chinkin (1996) and Otto (1996a–c and 1999), have stressed that, while important, non-governmental organizations are not necessarily democratic and their impacts remain largely dependent on the good will of states. For further analysis, see Gallagher 2000a, Jochnick 1999, Lempinen 1999, Segerlund 2002, Smith, Pagnucco and Lopez 1998 and Stammers 1999. See further the discussion about the UN world conferences on human rights and on women in Chapters 3.4–3.5.

¹⁹ For further discussion see, Orford 1997, 1999 and 2002.

²⁰ For further discussion about the private/public distinction, see Chapter 3.2.1. For a discussion about violence against women as a human rights violation, see, for example, Chapters 5.3.2 and 5.4.6.

Issues that remain a focus of attention within the international debate on human rights are the historical, political and ideological biases of international human rights and in contemporary human rights practice. The biases within the framework and how the increased focus on human rights has overturned simple problem representations within the field of human rights, can all be exemplified by the debates about the generations of rights and about how human rights should be approached in a heterogenous world.²¹

According to Asbjørn Eide and Allan Rosas, the generational approach was put forth by Karel Vasak in 1979.²² The distinctions among three generations of rights, viz., a first generation of civil and political rights, a second generation of economic, social and cultural rights and a third generation of development rights, have traveled well. While criticized, such an approach or conceptualization is reproduced in most human rights textbooks.²³ As many scholars have pointed out, the generational approach does not correspond to the historical development of international human rights law at all, but rather, is a largely Western invention for giving preference to civil and political rights at the cost of economic, social and cultural rights and other alternative frameworks of rights.²⁴ The generational approach that distinguishes among a first generation, blue and negative rights as opposed to a second generation red and positive rights and a third generation green and collective rights however, remains interesting as it discloses the bias for the Western-style liberal democratic state model and for individual rights within the UN human rights system.²⁵ While efforts have been made throughout UN human rights history to emphasize the indivisibility of rights, preference is given to civil and political rights in the Universal Declaration, for example, and the

²¹ For the question of group-specific rights see Chapter 3.3.

²² Eide and Rosas 1995 p. 16. For a discussion about the hierarchy of international human rights' norms, see Hirschl 2000. For attempts to undo the hierarchical approach to human rights and especially attempts to assign a higher value to economic, social and cultural rights, see, for example, Cançado 1998, Chapman 1996, Eide, Krause and Rosas, eds. 2001, Gustafsson 2003 and Leckie 1998. For discussions about and attempts at the revaluation of economic, social and cultural rights, see Apodaca 1998, Gomez 1995 and Otto 2002.

²³ See, for example, Alston and Steiner 2000 and Charlesworth and Chinkin 2000. Occasionally, a fourth generation of rights is distinguished, represented, for example, by indigenous peoples' rights.

²⁴ Charlesworth and Chinkin 2000, Scheinin 1999 and Tomaševski 1998a.

²⁵ See, for example, Alston and Steiner 1996, pp. 258–9, Clark 1999 and Morsink 1999.

state obligation is stronger in the ICCPR than in the ICESCR.²⁶ The Vienna Programme, however, did reaffirm the idea that all human rights are indivisible, interdependent and interrelated and that this characterization not only applies to the rights contained in the International Bill of Rights, but also, for example, to women's, children's, indigenous peoples' and minorities' rights.²⁷ During the post-Cold War period, human rights scholars have increasingly pointed out that the generational approach is counter-productive to the development and implementation of rights. Martin Scheinin, for example, stresses that different rights should not be approached as separate from each other, but that rights should be approached as "multi-party structures" or "bundles of binary relationships".²⁸ Boaventura de Sousa Santos notes that "[t]he often voiced cautionary comment against overloading human rights politics with new, more advanced rights or with different and broader conceptions of human rights, is a latter day manifestation of the reduction of the emancipatory claims of modernity to the low degree of emancipation made possible or tolerated by world capitalism".²⁹ The supporters of overcoming the generational approach to human rights however, as has been argued by Dianne Otto, experienced a backlash, for example, during the Beijing conference at which the economic and social rights relating to women in development agenda took a climb backwards, leaving place for a fairly conservative human rights agenda in its stead.³⁰ That is, while the core of the human rights framework emphasizes indivisibility, the generational approach might be reproducing itself at the margins.

The Universal Declaration promoted the idea that human rights were *universal*, i.e., that human rights were the birthright of every human

²⁶ For references to the indivisibility of rights, see, the Proclamation of Teheran, the preambles to the ICCPR and the ICESCR and the Vienna Programme, part I, para. 5. See also, however, the different state obligations defined in ICCPR and ICESCR Arts. 2. The ICESCR Committee, however, in its General Comment No. 3, made attempts to reinterpret the ICESCR's notion of state obligation.

²⁷ Vienna Programme, part I, para. 5.

²⁸ Scheinin (1999, pp. 2, 8–9) also notes that "[i]t is no coincidence that the economic and social rights became accepted as human rights simultaneously with the process of giving recognition to women as subject of human rights. Much of what is fundamental to economic and social rights is related to gender issues in society, real and fundamental social problems and challenges that are critical in the lives of most women, but which could easily be taken for granted by the small group of free men the 17th and 18th century philosophers had in mind when they discussed rights". See also Charlesworth and Chinkin 2000, p. 206 and Scheinin 1992 and 1998.

²⁹ De Sousa Santos 1995, p. 340.

³⁰ See Otto 1999, see also Chapter 3.5.2.

being, no matter where he or she was born. Whether the rights contained in the Universal Declaration were adapted to everybody's needs everywhere were already discussed during the drafting process. The American Anthropological Association, for example, commented on the cultural bias of the Universal Declaration, arguing that an international declaration for human rights must acknowledge that the personality of the individual can develop only in terms of the culture of his society. Further, the Association commented that what the Western world has defined as the white man's burden, i.e., *his* quest to *civilize* the colonized world, has all too often led to the disintegration of culturally-based human rights.³¹ In the *exchange* between North and South, women of the South, as Gayatri Chakravorty Spivak claims, have become "a particularly privileged signifier".³² "She", argues Spivak, meaning a woman from the South is "... as object and mediator [...] the favored agent-as-instrument of transnational capital's globalizing reach".³³ The popular 1980s and 90s debates about whether human rights were absolute and universal or equally applicable in all states, societies and cultures or, alternatively, whether human rights were contingent or dependent upon and relative to the norms and values of different states, societies and cultures, have also, to a large extent, focused on the so-called other woman as carrier of culture.³⁴ The universalist/relativist debate has been especially heated regarding harmful traditional practices affecting especially girls and women, such as female genital mutilation, widow-burning and the so-called honor crimes, where proponents for universal human rights standards have condemned these practices as violations of women's human rights. Proponents for a relativist position, on the other hand, have argued that human rights is a form of Western imperialism that violates ancient custom, cultural values and religious laws.³⁵ The universalist/relativist debates mediated through questions regarding these harmful cultural practices have placed women,

³¹ For a discussion about contemporary Asian values debate in light of the American Anthropological Associations' comments, see Engle 2000 and Charlesworth 1998.

³² Spivak 1999, p. 200.

³³ Spivak 1999, pp. 9–10.

³⁴ For an introduction to the so-called universalist/relativist debate, see, for example, Alston and Steiner 2000, Chapter 5–6, An-Na'Im, ed. 1992, Perry 1997, Pollis 1996 and Warner, ed. 1997.

³⁵ The female genital mutilation debate has been used to shed light on, but also to create and reproduce the dichotomy between Third World and Western feminists, see, for example, Gunning 1991–2, Lewis 1995 and Obiora 1997. For an overview of the related so-called honour crimes debate, see the *Honour Crimes* project's bibliography at www.soas.ac.uk/honourcrimes/ (23-09-2003) and for discussions about other harmful cultural practices, see, for example, Hassan 2000 and Sikkink 2001.

viz., agent-as-instrument, at the very heart of the debate.³⁶ The contemporary debate both among human rights scholars and within the UN human rights framework is less dichotomized and promotes what I have chosen to call *universal rights in quotes*. That is, it is recognized that human rights are a historical construct and that they are, to some extent, biased, but also changeable or mutable. Hence, cultural difference is welcomed, but culture is not accepted as an excuse for human rights violations.³⁷ Gunning notes for example:

[o]ne is not stuck between choosing ‘universal standards’ and ‘everything is relative’. It is not that there are ‘universals’ out there waiting to be discovered. But through dialogue, shared values can become universal and be safeguarded. The process by which these universal standards are created is important. A dialogue, with a tone that respects cultural diversity, is essential. From a dialogue, *sensus* may be reached, understanding that as people and cultures interact they do change and learn from each other.³⁸

De Sousa Santos argues that both relativism and universalism are wrong and that “[a]gainst universalism, we must propose cross-cultural dialogues on isomorphic concerns. Against relativism, we must develop cross-cultural procedural criteria to distinguish progressive politics from regressive politics, empowerment from disempowerment, emancipation from regulation”.³⁹ According to de Sousa Santos, a “... cross-cultural, *mestiza* conception of human rights is called for, implying that all cultures are problematic vis-à-vis human rights”.⁴⁰ In their analyses of representations of women, for example, in the Beijing Platform and in the UN Security Council’s discussions about women and war, Otto and Anne Orford argue, however, that the UN institutions and instruments have, still, forced women into traditionalist roles.⁴¹

³⁶ Higgins (1996) notes that “[c]ultural relativists have targeted feminism itself as a form of Western imperialism. Ironically, cultural relativists have accused feminist human rights activists of imposing Western standards on non-Western cultures on much the same way that feminists have criticized states for imposing male-defined norms on women”. For further discussion, see, for example, Afkhami 2000, Bayefski 2001, Brems 1997, Mayer 1995, Hernández-Truyol 1996, Howe 1994, Orford 2002, Pollis 1996, Preis 1996 and Rao 1995. For discussions from regional perspectives see Ali 2000, Coomaraswamy 1994, Hildson, MacIntyre, Mackie and Stivens, eds. 2000, Oloka-Onyango and Tamala 2000 and Samuels 1999.

³⁷ The contemporary debate will be further addressed in Chapters 3.4 and 5.3.2.

³⁸ Gunning 1991–2, p. 238.

³⁹ De Sousa Santos 1995, p. 339.

⁴⁰ De Sousa Santos 1995, p. 340. For further discussion, see, for example, Gustafsson 2003, Chapter 6.3.

⁴¹ Otto 1999 and Orford 2002, see also Chapters 2.2, 2.3.2, 3.5.2 and 5.2.2.

The developments described above through the unpacking of the generational approach and the increased cultural sensitivity of the international human rights framework, which is also very much implied in feminist approaches to international human rights, can be seen as steps towards promoting human rights as a cosmopolitan politics. There is, however, a downside to the positive developments. For example, Costas Douzinas, criticizes the developments of the last decades and notes that “[a]s human rights start veering away from their initial revolutionary and dissident purposes, as their end becomes obscured in ever more declarations, treaties, and diplomatic lunches, we may be entering the epoch of the end of human rights and the triumph of monolithic humanity”. Further, he proclaims that “[t]he end of human rights come when they lose their utopian end”.⁴² Douzinas might have exaggerated the potential of a revolutionary and utopian rights’ discourse, but he does point to one of the paradoxes found especially in the international human rights framework. These rights, as a legacy of Western modernity, were created to protect the individual from violations by the nation-state, but they seem to triumph at a time when both liberal individualism and the nation-state are under siege and, as it seems, are losing the battle. Similarly, scholars have begun to question whose game are human rights playing in an era of economic globalization and, to what extent, if any, hidden agendas are promoted through human rights.⁴³ Feminists have also begun to question the dominant strategic positivist approach often used in the human rights field, which demands loyalty towards the system.⁴⁴ There is an ongoing struggle between, on the one hand, how to analyze human rights and the international human rights system critically and, on the other hand, how to attempt to save the international human rights project, which is the only human-centred part of international law, by patching it up where needed and, at times, turning a blind eye to shortcomings. This struggle is at the heart of much human rights scholarship, but, in this thesis, will be discussed mostly with respect to feminist international human rights scholarship.⁴⁵

⁴² Douzinas 2000, p. 380.

⁴³ See, for example, Bob 2002, Falk 2002, Milner 2002, Orford 2002 and Twining 2000.

⁴⁴ For a discussion, see Chapters 2 and 6.

⁴⁵ See Chapter 2.

1.2.2 UN Human Rights Law, Soft Law and Policies

During the post-Second World War era, the character of the international legal system shifted from being a system of coexistence, governed by the principle of national sovereignty to being a system of cooperation, governed by an increased interdependence among states.⁴⁶ This shift towards an increasingly global political and legal order and the growing importance of non-state actors in the new global community are two factors which have created multiple and often conflicting levels of governance and have led to the need for a renegotiation of the increasingly non-transparent and interdependent relationship between politics and law.⁴⁷ According to Inger-Johanne Sand, the relationship between politics and law can no longer be described hierarchically and one-dimensionally: when politics and law take place on several levels and engage several actors at the same time, the two functions become dependent upon each other in new, diverse and, at times, unintended ways.⁴⁸ Sand argues that because the decision-making process no longer legitimizes law and because the distinction between politics and law has become blurred, new conceptualizations of decision- and law-making processes are needed. Sand proposes that the legislative processes in the era of globalization be approached as “... crucial meeting places and crossroads for the corresponding and functionally different institutional actors – political authorities, experts as well as private organizations and corporations”.⁴⁹ Approaching law-making processes as crossroads and meeting places means moving from viewing only the end product, i.e., the adopted or enacted law, as important, to viewing the on-going discussion between the different agents and “... the discursive, information-gathering and argumentative functions preceding the decisions” as important as the end product.⁵⁰ De Sousa Santos argues that the shift within the international human rights framework has changed international human rights from a Western localism to a cosmopolitan politics.⁵¹ International human rights were universalized as a “globalized Western localism”, but because human rights are *out there*, they have changed and “[a] counterhegemonic human

⁴⁶ Cramér 1998, pp. 39–44. For discussions about changes in international law, see Koskenniemi 1989 and 2001.

⁴⁷ Sand 2001, p. 17.

⁴⁸ Sand 2001, p. 5.

⁴⁹ Sand 2001, p. 5.

⁵⁰ Sand 2001, p. 5.

⁵¹ De Sousa Santos 1995, p. 339. For an interpretation of de Sousa Santos approach, see also Twining 2000, Chapter 8.

rights discourse and practice of human rights conceived as a cosmopolitan politics has been developing”⁵².

The process-oriented approach to international human rights law emphasizes the importance of not only law, but also the law-making and different political and institutional processes. This approach has become common in contemporary human rights scholarship. In part, the shift is due to changes in international politics and, in part, to a shift of focus within the UN and international human rights frameworks from codification to implementation via not only legal, but also soft law and policy-based methods. Within the human rights sphere and, especially within its women’s human rights margins, the shift can be exemplified by a focus, not only on treaty-based international human rights, but an equal focus on the world conference processes and preferences for soft law and policy-based instruments. Hence, when approaching the different law- and policy-based strategies developed within the UN-based human rights regime to promote women’s human rights and equality between the sexes, the representations of international law as a crossroads and a meeting place for transforming a universalized western localism into a cosmopolitan politics are useful.

The core of the UN human rights *law* project consists of the seven human rights treaties to which supervisory mechanisms are tied, i.e., ICCPR and ICESCR are grouped together with CERD (1965), CEDAW (1979), *Convention against Torture* (CAT, 1984), *Convention for the Rights of the Child* (CRC, 1989) and the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (1990).⁵³ The forerunner to the human rights treaties, the Universal Declaration is *only* a soft law document, but some of the rights contained in the Declaration are promoted as part of customary law or as having *ius cogens* status.⁵⁴

The world conferences organized by the UN since the 1960s have contributed to the growing knowledge and international dialogue about human rights for the UN system because of the relatively inclusive world conference processes that include national and regional preparatory con-

⁵² De Sousa Santos 1995, p. 339.

⁵³ For a comprehensive overview of the UN treaty body system, see Alston and Crawford, eds. 2000. See also the UN treaty body database www.unhchr.ch/tbs/doc.nsf (23-09-2003). For an overview of existing human rights treaties, declarations and other important documents, see Brownlie and Goodwin-Gill 2002.

⁵⁴ Cassese 2001, pp. 119–22.

ferences and extensive non-governmental participation.⁵⁵ The outcome documents from the conferences are not legally binding, but they can have a considerable impact on the development of international, regional and national law and politics as political platforms or soft law.

Feminist international legal scholars have contributed to the increased focus on both hard and soft law or, as stressed by Charlesworth and Chinkin citing Harold Koh, on international law as a “... complex blend of customary, positive, declarative and soft law”.⁵⁶ The feminist focus on different politico-legal actors, different decision-making structures and potential alternative sources of law has been necessitated by the lack of hard law solutions regarding issues falling within feminist spheres of interest, such as women’s reproductive rights, violence against women, harmful traditional practices, et cetera⁵⁷ That is, while the UN has adopted women’s human rights treaties, these treaties have not necessarily been transformative. Hence, soft law solutions have been added to the codified women’s rights framework.

At times the process-oriented and integrated approaches to law, soft law and policy seem to lead to tendencies to forget that law, soft law and policy create different state obligations. It is often forgotten as well that whether soft law and policy obligations are upheld is largely dependent on the engagement of governmental and non-governmental organizations and on the good will of states.⁵⁸ With regards to the Beijing conference, feminist legal scholars, such as Chinkin and Otto, however, have pointed out that states rejected efforts to make the conference a “conference of commitment” and that there was a preference for using a language of women’s rights instead of women’s human rights, i.e., efforts were made to downplay any illusions about a legal status of the Beijing Platform.⁵⁹ Feminists have also noted the difficulties with maintaining the outcomes of the world conference and of ensuring that a progressive outcome is not

⁵⁵ For an overview of UN world conferences, see www.unhcr.ch/html/confs.htm (23-09-2003). World conferences on human rights were organized in Teheran in 1968 and in Vienna in 1993. World Conferences on women were organized in Mexico in 1975, in Copenhagen in 1980, in Nairobi in 1985 and in Beijing in 1995. See also Chapters 3.4–3.5.

⁵⁶ Charlesworth and Chinkin 2000, p. 67.

⁵⁷ Charlesworth and Chinkin 2000, p. 67. The ambiguities and difficulties with upholding the disciplinary boundaries between international law and politics in international law scholarship and practice I have been extensively analyzed, for example, by Kennedy 2000 and Koskenniemi 1989 and 2000.

⁵⁸ Kennedy (2000, p. 354) distinguishes between legislation, i.e., treaty and custom and administration, i.e., civil service and civil society as two contemporary strategies in building international law.

⁵⁹ See Chinkin 1996 and Otto 1996c and 1999.

eroded at a later conference. Hence, while law, soft law and policy have become increasingly interdependent, they are not indistinguishable from each other.

The main sources of international law are considered to be international treaty or customary law.⁶⁰ Treaties become legally binding for Member States after having been signed and ratified. In accordance with the 1969 Vienna Convention on the Law of the Treaties Arts. 19–23, states can make reservations when ratifying or acceding to a treaty in case reservations are not expressly prohibited by the treaty or incompatible with the object of the treaty.⁶¹ The question of reservations to the UN human rights treaties is a much debated problem. Considerable tension exists between, on the one hand, the interest of having as many states as possible participate in the UN human rights project and, on the other hand, refraining from undermining the project with reservations contrary to the purpose of the human rights treaties. Reservations have especially been discussed in the context of CEDAW. CEDAW Art. 28 addresses the issue of reservations emphasizing the aforementioned principle that “[a] reservation incompatible with the object and purpose of the present Convention shall not be permitted”. However, while the CEDAW Committee has repeatedly requested states not to submit reservations or to withdraw their reservations, the problem of reservations persists. Many authors have stressed that many of the reservations to the CEDAW are contrary to the object and purpose of CEDAW and undermine the work of the CEDAW Committee, the implementation of CEDAW in Member States and the status of CEDAW within the UN treaty body system.⁶²

According to the International Court of Justice Statute Art. 38(1b), customary law is defined as the “... evidence of a general practice accepted as law”. The two elements of customary law are considered to be *usus* or state practice and *opinio juris* or a state’s conviction that the practice amounts to international law. Since the Second World War treaty law

⁶⁰ The International Court of Justice Statute Art. 38 (1) includes what is considered to be the most authoritative list of sources of international law. The list includes “(a) international conventions, whether general or particular, establishing rules expressly recognised by the contesting states; (b) international custom, as evidence of a general practice accepted as law; (c) the general principles of law recognised by civilised nations; (d) subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law”.

⁶¹ Cassese 2001, pp. 350–1.

⁶² See, for example, Charlesworth and Chinkin 2000, pp. 102–13, Eriksson 2000, Chapter 3.3.2 and Tomaševski 1998b.

has become increasingly important and customary law has lost importance, to some extent, largely because treaty law is more useful for creating distinct legal obligations than customary law.⁶³ An exception has been created through the construction of *ius cogens* or peremptory norms.⁶⁴ A *ius cogens* norm is defined in the 1969 Vienna Convention on the Law of Treaties Art. 53 as "... a norm accepted and recognised by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character".

According to Antonio Cassese, soft law includes "... a body of standards, commitments, joint statements, or declarations of policy or intention [...], resolutions adopted by the UN GA [General Assembly] or other multilateral bodies, etc".⁶⁵ As noted, Cassese does not distinguish between soft law and policy, but includes at least some policy documents in his definition of soft law. The documents listed by Cassese have three things in common:

[f]irst, they are indicative of the modern trends emerging in the world community, where international organizations or other bodies have the task of promoting action on matters of general concern. Second, they deal with matters that reflect new concerns of the international community, to which previously this community was not sensitive or not sufficiently alert. Third, for political, economic, or other reasons, it is, however, hard for States to reach full convergence of views and standards on these matters so as to agree upon legally binding commitments. As a consequence, the standards, statements, and other instruments at issue do not impose legally binding obligations.⁶⁶

How much like law proper, to use Cassese's term, soft law is allowed to become and how *legal* soft law obligations are held to be depend, according to Cassese, on the intentions of the authors of the specific docu-

⁶³ Charlesworth 1991, Charlesworth and Chinkin 2000, Cassese 2001, Chapter 6.2 and Gunning 1991.

⁶⁴ *Ius cogens* was introduced into international law by socialist and developing states as a safeguard against colonialism and for peaceful coexistence between states. Norms that are considered to have *ius cogens* status are, for example, the right to self-determination of peoples, the prohibitions of aggression, genocide, slavery and racial discrimination and respect for basic human rights, see Cassese 2001, p. 139 and Eriksson 2000, pp. 137–8.

⁶⁵ Cassese 2001, p. 160. See also Hillgenberg 1999. The distinction between hard and soft law is sexed or gendered, as has been noted by, for example, Charlesworth (1996a) and Eriksson. The *softening* of international law has largely occurred in areas such as human rights and environmental law. The currently used term soft law can be seen as a variation of the earlier common term gentlemen's agreements.

⁶⁶ Cassese 2001, pp. 160–1.

ment.⁶⁷ Soft law documents can “... lay the ground, or constitute the building blocks, for the gradual formation of customary rules or treaty provisions” and they can gradually turn into law proper.⁶⁸ Among the reasons for choosing a soft law form Hartmut Hillgenberg highlights: the need to build confidence, the need to stimulate on-going processes, the need for a flexible regime, the need for an impetus for a coordinated national legislation, the need to relieve international law of the burden of hard law obligations and the need for simpler procedures.⁶⁹ David Kennedy argues that attempts to uphold a distinction between hard and soft law has already imploded.⁷⁰ He further notes a distinction between formal law and anti-formal law. On the one hand, there is formal law, which is distinguished by sharp distinctions between law and politics and different levels of governance, i.e., national and international. On the other hand, there is anti-formal law, distinguished by soft distinctions between law and politics and different levels of governance. The distinction between these two kinds of law has shifted to a distinction where the formal side contains rules, including custom and treaty and it also contains norms, including rules and hard and soft principles. The anti-formal side includes policy. According to Kennedy, this shift has come about because some international lawyers have become drawn to a less formal international law focused more on matters of policy, asking what arrangements fulfilled a desired political or institutional function best, rather than what arrangements were normatively persuasive.⁷¹ Within the framework of international human rights law, and especially women’s human rights law and other relatively marginalized spheres of international human rights law, the shifting and imploding boundaries between law/politics, hard law/soft law, legislation/administration, national/international, et cetera might also be due to the fact that working within these areas is not solely the prerogative of lawyers, but also the prerogative of political scientists and social scientists in general.

⁶⁷ Cassese 2001, p. 161.

⁶⁸ Cassese 2001, p. 161. Within the UN human rights framework declarations are often used as a step on the way to drafting a treaty, the Universal Declaration predated, for example, the ICCPR and the ICESCR, the *Declaration on the Elimination of Discrimination against Women* (DEDAW), predated CEDAW.

⁶⁹ Hillgenberg 1999, p. 501.

⁷⁰ Kennedy 2000, pp. 365–8.

⁷¹ Kennedy 2000, pp. 365–8.

1.2.3 The UN Human Rights System

The UN human rights system has grown considerably since its inception and the legal, political and policy-based developments have affected the UN's institutional structure for human rights. In the 1950s and 60s, UN activities in the area of human rights were mostly promoted by the ECOSOC which is the UN's main intergovernmental organization in the economic and social fields, and its functional commissions, such as the Commission on Human Rights, and the Commission on the Status of Women. Since the 1960s the UN treaty body system, i.e., the system of committees established through the human rights treaties for monitoring Member States compliance with the treaties, has had a growing importance. During the last few decades, different extraordinary human rights institutions, such as the Commission on Human Rights special procedures, have been added to the UN human rights framework. Today, especially since the adoption of the strategy for the mainstreaming of human rights as part of the Secretary-General's UN reform programme, human rights have been integrated into the mandates of most UN institutions.

John Quinn has defined the UN system as a labyrinth.⁷² Alston notes that the development of the UN human rights system and institutional structure has not been accidental, rather the overlapping and poorly delineated institutional mandates is the "... inevitable result of a variety of actors seeking to achieve diverse, and perhaps sometimes even irreconcilable, objectives within the same overall institutional structure".⁷³ Within the UN human rights system there are according to Alston, tendencies to create new policy agendas and new institutional structures, each time an agenda or structure shows itself to be incompetent or is hampered by political intransigence.⁷⁴ The UN human rights system has been criticized for its inability to respond quickly to human rights violations, for its inability to respond at all to human rights violations committed by certain states and for its slow processes. Some authors, however, have noted that the UN is only as strong as its Member States want it to be and that a system that is constantly strained by lack of financial and human resources cannot be expected to act adequately in any crisis,

⁷² Quinn 1996, p. 55.

⁷³ Alston 1996a, p. 2.

⁷⁴ Alston 1996a, p. 2. For overviews and discussions about the UN system, including its human rights system, see Alston, ed. 1996, Alston and Steiner, eds. 2000, Cohen 1996, Müller, ed. 2001, Taylor and Groom, eds. 2000, Pace 1998 and Roberts and Kingsbury, eds. 1994. See also Chapter 5.

or carrying an ever-increasing workload. The UN reform programme initiated in 1997 has made some attempts to streamline UN activities and to minimize the doubling of its work.⁷⁵

Since its establishment the UN was intended to be an international or global institution and its membership has grown from 51 in 1945 to 191 in 2002.⁷⁶ In order to ensure an equitable representation of the different regions of the world among its staff and in its intergovernmental institutions, the UN has promoted a principle of equitable geographical distribution.⁷⁷ Although other interests of representation have emerged, the principle of equitable geographical distribution remains a dominant principle when employing staff and dividing chairs within the UN. Any comparable principle has not been included with regard to the equal or equitable representation of the sexes. The need for an increased representation of women has been a continuing topic of discussion.⁷⁸ Such increased representation is not only needed at the lowest levels of UN administration but also within the UN human rights inter-governmental, expert and judicial institutions and even within the Member State permanent delegations to the UN.

The issue of an equal or equitable representation between women and men has been a debated issue in political and social sciences. While it is not evident that a woman will represent women's interests, especially not all women's interests, studies have shown that a critical mass of an under-represented group is necessary to change priorities made within an admin-

⁷⁵ For overviews of the UN reform programme, see www.un.org/reform/ (12-01-2004). For further information see for example the UN Dag Hammarskjöld Library's UN Reform Bibliography, at www.un.org/Depts/dhl/reform.htm (13-01-2004). The reform programme is with respect to the UN treaty bodies discussed in Niemi and Scheinin 2002.

⁷⁶ www.un.org/Overview/growth.htm (23-09-2003).

⁷⁷ The principle is codified in the UN Charter Art 101(3). What an equitable geographical distribution means and how the principle should be applied are issues of debate, i.e., should, for example, equitable geographical distribution be defined on the grounds of regional representation or on the grounds of individual state representation. To what extent do small UN Secretariat institutions have to comply with this rule. See, for example, Bouayad-Agha and Hernández 1996, Charlesworth 1994b and Hernández-Truyol 1996.

⁷⁸ Women's representation within the UN Secretariat has been an issue on the Commission on the Status of Women agenda since the establishment of the UN. Women's participation in UN intergovernmental bodies and in Member State delegations has been discussed since the adoption of the UN Convention on the Political Rights of Women (1952), and women's participation and representation constitute one issue that has been discussed as one of the 12 Strategic Objectives of the Beijing Platform. See Charlesworth 1994b, Eriksson 2000, Gallagher 1997 and Pentikäinen 1999.

istrative, political or equivalent organizational structure. Maja Eriksson notes that:

[w]omen's issues have simply been "at the periphery of international human rights", and international treaty bodies have ignored and "continue to ignore" the fact that human rights violations often have a gender dimension, by and large because women have been and are still underrepresented at the governmental and intergovernmental level, in international human rights law-making and in supervisory mechanisms.⁷⁹

When articulating recommendations for the integration of a gender perspective into the UN human rights system, Anne Gallagher underlines that "[a]n increase in the number of women from all parts of the world (particularly at strategic/managerial levels within the Secretariat, on treaty bodies, and in investigative roles) is a crucial step in the process of implementing a genuine gender perspective".⁸⁰ As will be shown, the "gender turn" in equality politics, i.e., the 1990s shift from using a language of women and sex to using a language of gender in the context of equality politics, to some extent, has contributed to the downplaying of the question of representation. Further, the gender turn has promoted the idea that everyone can and should do gender equality work and that equality issues are uncontroversial.⁸¹ Promoting equality should certainly be everyone's concern, but it would be deluding oneself to think that everyone cares about equality politics and that no one feels threatened by it.

1.3 Introduction to the Equality Strategies Applied within the UN Human Rights Regimes

1.3.1 The Principle and Aim of Equality

The principle of equality, including equality between the sexes, is considered a core principle in international human rights law.⁸² However, the status, the aims and the necessary strategies for implementing the principle of equality have been and continue to be debated. While the status

⁷⁹ Eriksson 2000, p. 3.

⁸⁰ Gallagher 1997, p. 331. See also Pentikäinen 1999.

⁸¹ For further discussions, see Chapters 4.5.2 and 6.3.

⁸² The contemporary principle of equality in international law is not exclusively focused on equality between women and men. However, this chapter will focus exclusively on the principle of equality between the sexes within the UN human rights framework and the different strategies adopted to implement the principle. While this focus reproduces a distinction between equality as a general principle and equality between the sexes as a specific principle, it nonetheless will allow me to limit the material used. For substantial

and the aims of the principle of equality are important, with respect to the questions asked in this thesis, they are less important than acknowledging that the notion of equality within the international human rights framework is under constant renegotiation as new knowledge emerges and as new claims for equality are being advanced by previously excluded groups. However, I will begin by briefly addressing the issues of the status and the aims of the principle of equality.

With regard to the *status* of the principle of equality between the sexes, the debates have concerned whether or not the principle is a *ius cogens* norm, a fundamental principle of customary law, an independent right in treaty-based international human rights law, or an interpretive rule in treaty-based international human rights law.⁸³ During recent years, the question of the legal status of the principle of equality has been overshadowed by questions regarding the aim of the principle. The shift in focus from status to aim is presumably due, in part, to a growing feminist unease with the so-called strategic positivist approach chosen for international human rights law scholarship. While it certainly can be strategically useful to claim that the *ius cogens* doctrine is biased and to attempt to advance an argumentation that not only racial discrimination, but also sex discrimination has *ius cogens* status, this argumentation can also backfire.⁸⁴ That is, the question of legal recognition can come to overshadow issues of substantial change.

discussions about the legal notions of equality. See for example, Eriksson 2000, Chapter 2.2, McCrudden, ed. 1991, McKean 1983, Lerwall 2001, Chapter 3, Nousiainen and Pylkkänen 2001 and Svensson 2001.

⁸³ While the principle of equality has been approached as a fundamental principle of international law, the principle of equality between the sexes has not until recently been interpreted as an independent right. See, for example, European Convention on Human Rights Art. 14 and Protocol 12 and ICCPR Art. 26 and Human Rights Committee General Comment No. 20.

⁸⁴ Charlesworth and Chinkin 2000 have argued that the *ius cogens* doctrine is biased and that issues, which are important for women and for women's enjoyment of basic human rights, have been excluded from the doctrine. According to Eriksson (2000, p. 160), the principle of non-discrimination between the sexes "... constitutes a principle of general international law and [...] there are some indications or a growing support for the emergence of a peremptory prohibition of discrimination on the grounds of sex in international law". Eriksson (2000, p. 162) favours giving non-discrimination between the sexes *ius cogens* status because it discusses the principle of non-discrimination between the sexes as a candidate for *ius cogens* status, as the upgrading of the principle of non-discrimination between the sexes in the hierarchy of international law norms would have both important practical implications and be of symbolic significance.

The debates concerning the aim of the principle have related to whether the principle should aim at formal equality, substantial equality or gender equality or whether the objective of equality between the sexes can break out of its comparative framework and allow for an alternative interpretation of equality between the sexes.

The aim of *formal equality*, which is the main aim of equality within the liberal legal framework, means that everyone should be treated equally and that law should not differentiate between people. Feminists and women's advocates argued for formal equality when law was used as a means for direct discrimination against women. The aim of formal equality remains a fundamental building block of international human rights law, but it has been criticized by feminists and others representing the interests of disadvantaged groups for being a "... very blunt tool when dealing with cases of long-term, structural disadvantage and inequality ...".⁸⁵ However, as Carol Smart has noted, the principle of formal equality is a necessary principle, because it sets a minimum standard.⁸⁶

The aim of *substantive equality* has been added to the aim of formal equality in order to enable different forms of positive or affirmative action for different groups that have suffered from long-term structural disadvantages and inequalities. Next to the aim of formal equality, the aim of substantive equality today is the dominant aim of equality in different equal treatment laws. Although the term "affirmative action" seems banned, the aim of substantive equality has also been accepted as the aim of UN human rights law. Both the aims of formal and substantive equality, however, are closely linked to the principle of non-discrimination and, while the linkage between equality and discrimination might even be useful with respect to formal equality, it becomes difficult with respect to substantial equality, as real life references in debates about equality tend to defy comparisons.⁸⁷

⁸⁵ Charlesworth and Chinkin 2000, p. 32. Compare Eriksson 2000, p. 30 and Niemi- nen 1990, p. 309. Feminist legal scholars and other critical legal scholars have argued that while law might seem equal and while statements such as the statement included in the Universal Declaration Art. 1 that "[a]ll human beings are born free and equal in dig- nity and rights" promote the idea that law is objective and neutral, law is not value-free, but it is transgressed by the same hierarchical and power-laden principles as society in general. This reality is also hinted at in the Universal Declaration as the last sentence of Art. 1 states that human beings should treat each other in a "spirit of brotherhood". For feminist discussions about formal equality and the so-called male bias in law, see Ker- ruish 1990, MacKinnon 1989, Nousiainen and Pykkänen 2001 and Svensson 1997. See also Chapter 3.3.

⁸⁶ Smart 1989, see also Chapter 2.3.1.

⁸⁷ For an analysis of different forms of discrimination, see, for example, Bader Ginsburg and Merritt 1999, Eriksson 2000, Fransson 2000, Hannikainen and Nykänen, eds.

Within the liberal tradition, the principles of equality and discrimination have become so closely linked to each other that they are represented as the opposites of each other. The presumption that where there is equality, there is no discrimination has added the comparative element in the conceptions of both the aims of formal and substantial equality. The idea that equality and discrimination are each other's opposites and that both equality and discrimination may be measured in symmetrical terms are ideas which have created problems in national equality legislation. Difficulties have emerged: when, for example, groups cannot be compared or when no evident group to compare with exists, i.e., in wage discrimination; when a lack of equality is evident, but when it is difficult to phrase that lack of equality in terms of discrimination, i.e., violence against women; or when it is difficult to define the reason for inequality in one-dimensional terms, i.e., multi-dimensional discrimination.⁸⁸

To some extent, the aim of *gender equality* has developed as a result of the relative failure of the notions of formal and substantial equalities, especially when viewed as the opposites of discrimination and as a means to frame a more complex approach to equality. Gender equality does not presuppose, nor should it, that equality and discrimination can be measured in terms of symmetry and asymmetry, at least not in the same extent as the other equalities do. The notion of gender equality, however, is seldom used in legal frameworks, but it has become the dominant aim of equality strategies within contemporary policy-based equality discourses.⁸⁹ Gender equality has been defined by the UN *Office of the Special Advisor to the Secretary-General on Gender Issues* (OSAGI) as referring to the "... the equal rights, responsibilities and opportunities of women and men and girls and boys":

Gender equality implies that the interests, needs and priorities of both women and men are taken into consideration – recognizing the diversity of

1995, Koukoulis-Spiliotopoulos 1999, Lerwall 2001, Lundström 1999 and Numhauser-Henning, ed. 2000.

⁸⁸ For a discussion about the comparative element in conjunction with wage discrimination, see Fransson 2000. For an analysis of so-called multi-dimensional discrimination, see Makkonen 2002 and Chapters 3.3.1 and 5.4.2.

⁸⁹ The goal of the 1990s integrative strategies and especially of the strategy of mainstreaming a gender perspective, has been *gender equality*. In many gender mainstreaming manuals, the goal of the gender mainstreaming strategy, i.e., gender equality, remains undefined. See, for example, the ECOSOC Agreed Conclusions 1997/2 on gender mainstreaming, Chinkin 2002b and Lorentzi 2001. The lack of definition might be due partly to the fact that with the inclusion of difference and diversity perspectives and the right to a subjective voice in conceptions about equality, perspectives that are supposed to be intrinsic to the idea of gender equality, the very idea of a definition has become counter-productive. The term gender is problematized in Chapters 4.2–5 and 6.3.

different groups of women and men. Gender equality is not a 'women's issue' but should concern and fully engage men as well as women.⁹⁰

That is, aiming at gender equality should not only serve as a means to overcome the comparative element, but it can also be used to overcome some of the shortcomings of other notions of equality with regard to dealing with difference. However, while the principle of gender equality is an attempt to introduce non-symmetric and, in some cases, difference-oriented and diversity-sensitive thinking into the equality framework, as shall be shown, it is not an easy aim or concept to use.⁹¹

I have found Judge Tanaka's opinion on the principle of equality, Drucilla Cornell's argumentation for justice as a post-equality ideal, Eide's and Torkel Opsahl's definition of freedom and Etienne Balibar's concept of *egaliberté* interesting for thinking beyond the distinctions between and among formal, substantive and gender equality. However, I also use these approaches to point out that while definitions are important, especially for legal scholars, the process of working towards and renegotiating definitions are just as important when working for equality.

According to Judge Tanaka "[e]quality being a principle and different treatment an exception, those who refer to the different treatment must prove its *raison d'être* and its reasonableness".⁹² This definition provides for the primacy of the principle of equality, i.e., those persons, advocates who want to derogate from the principle need to explain why such derogation is necessary.⁹³ Judge Tanaka, however, acknowledges that derogation from the formal principle of equality is necessary and that the necessary derogations cannot necessarily be made within the language of substantial equality, but can be wielded beyond a comparative perspective.

[A]ll human beings are equal before the law and have equal opportunities without regard to religion, race, language, sex, social, groups, etc. [...] On the other hand, human beings being endowed with individuality, living in different surroundings and circumstances are not all alike, and they need in some aspects politically, legally and socially different treatment. Hence

⁹⁰ OSAGI, *Fact Sheet 1*, 2001.

⁹¹ See Chapters 4.5 and 6.3.

⁹² Eriksson 2000, p. 29. Judge Tanaka's standpoint is expressed as a dissenting voice in the *South West Africa* cases (Second Phase), see International Court of Justice, Reports and Judgements, Advisory Opinions and Orders. Judgement of 18 July 1966, p. 464, see Brownlie and Goodwin-Gill, eds. 2002, p. 782.

⁹³ With reference to the principle of equality, Eriksson (2000, p. 29) argues that "[i]t is presumed that equality in the sense of uniformity, regularity, similarity and symmetry needs no reasons, whereas difference and unsystematic behaviour need as a rule justification".

[...] [e]qual treatment is a principle but its mechanical application ignoring all concrete factors engenders injustice.⁹⁴

In her criticism of the notion of equality, Cornell argues that to endorse a “white-knuckling” feminism that insists that because we “asked for equality we must live with its consequences seems a cruel response”.⁹⁵ That is, what equality is and what the principle of equality entails will and must be allowed to change during the struggles for equality, which are ongoing in different contexts and at different levels. However, Cornell recognizes the difficulties with this struggle and asks:

[b]ut then what standards should a post-egalitarian feminism employ to address the justices they take so seriously? Could we not replace formal equality with substantive equality and so take into account the inequality found in family life? Maybe, but we would still be taking an idealized representation of men as our measure of comparison. Clearly, the gender comparisons inherent in formal equality confine us to traditions inseparable from the view that women are unequal to men, while excluding innumerable forms of sexual difference from the reach of justice.⁹⁶

Cornell suggests that feminists instead of aspiring toward equality, which, then always falls back on a comparison between women and men, should aspire toward justice. Moving from equality to justice can also be a means to approach the challenge of difference. Feminist analysis of the content of the principle and the goal of equality between the sexes have, especially during the last decades, been complicated by a growing acknowledgement of difference amongst women and of how, not the least, global scale inequalities and injustices interact with the principle and goal of equality between the sexes. However, because most models of equality treat difference as derogation from the main rule, the equality and equal rights discourses have construed difference as the despised other.

Eriksson uses Eide’s and Opsahl’s definition of freedom, noting that the three components of freedom are central for the understanding of genuine (*de facto*) equality.⁹⁷ Eide and Opsahl argue that freedom for the individual includes: (1) to have available an equally wide range of significant opportunities as others; (2) to be equally independent of others in deciding on the use of the options; and (3) to be equally free to determine her/his own values and priorities. I find the idea of defining equality through a notion of freedom interesting, but the forementioned version is dependent on a comparative framework.

⁹⁴ Brownlie and Goodwin-Gill, eds. 2002, p. 802.

⁹⁵ Cornell 1998, p. 5.

⁹⁶ Cornell 1998, p. 6.

⁹⁷ Eriksson 2000, p. 48.

Renata Salecl does a similar attempt drawing on Balibar's concept of *egaliberté*.⁹⁸ According to Salecl, sexual difference, which is intrinsic to conceptions of human rights, has contributed to the creation of a difference between equality and freedom within the human rights framework. According to Salecl, freedom and equality, as rights, are distinguished from each other through three sets of contrasts, viz.,

[f]irst, while equality concerns primarily the social and economic domain, freedom belongs to the domain of law and politics. Second, the realization of equality demands the intervention of the state (as long as equality concerns some kind of redistribution of goods), but the preservation of freedom demands the limitation of state intervention. Finally, equality concerns society as a whole, viewed as a collective entity, whereas freedom is primarily a right pertaining to individuals.⁹⁹

Salecl argues, however, that equality and freedom have become interconnected and should be interconnected, that it is possible to speak as Balibar does about *egaliberté*. What Salecl wishes to highlight with the notion of *egaliberté* is both the impact and the expected impact of the ideas of the interdependence and indivisibility between economic, social and cultural rights, on the one hand, and civil and political rights, on the other hand. The notion can also be viewed as a means for making interconnections between the growing gender-sensitivity of the human rights discourse and the promotion of what I have called universal rights in quotes.

1.3.2 Three Strategies for Equality

In order to implement the principle and aim of equality, different strategies have been developed. Within the international human rights framework, the debates about what strategies to use have concerned whether to use sex-neutral, woman-centred or different dual and integrative or mainstreaming strategies. The strategies, however, are not mutually exclusive, but rather exist, in a parallel manner to each other, both in human rights instruments and institutions.¹⁰⁰ In accordance with the deficit that it is easier to come up with new ideas than to get rid of old ones, the strategies

⁹⁸ Salecl 1994, p. 128.

⁹⁹ Salecl 1994, p. 128, see also Balibar 1992.

¹⁰⁰ Bacchi 1999. For different approaches to women's human rights, see the large number of mainly edited volumes addressing the issue, published during the last decade, Askin and Koenig, eds. 1999, 2000 and 2001, Byrnes, Connors and Bik, eds. 1997, Charlesworth and Chinkin 2000, Cook, ed. 1994, Dallmeyer, ed. 1993, Pentikäinen, ed. 2000, Peters and Wolper, eds. 1995, Tomaševski 1993, Walter, ed. 2000 and Wood Wetzell 1993.

tend to be blended with each other and, at times, even watered down or diluted by each other. It is primarily when a *new* strategy is adopted that it is explained through its difference from the *previous* strategy; the adoption of a new strategy is legitimized by the failure of the previous strategy and the new strategy is supposed to bridge the gaps left by the shortcomings and eliminate the blind spots of the old strategy. The new strategy might also come to overturn some of the advances made with the previous strategy as well as might even create a number of new shortcomings. While the failure of a strategy tends to be explained by conceptual or methodological problems inherent to the strategy, it could just as often be explained by a number of other factors, viz., the lack of political will and high level support for the implementation of the strategy and insufficient financial and humanitarian resources for implementing the strategy throughout the UN human rights system. There is an approach that I call the *blame the strategy* approach. The application of this approach to a failure to implement the principle of equality successfully might actually hide other, more persistent reasons for perpetuating the inequality.

Sex-neutral equality strategies were designed to implement the principle of mainly formal equality, but also, to some extent, to implement the principle of substantial equality. Sex-neutral equality strategies are used, for example, in the International Bill of Rights and they include the use of *inclusive legal language* and general or specific non-discrimination and equal rights clauses. That is, concepts such as all, everyone, and every human being are used to communicate the idea that human rights are the birth-right of every human being. The terms all, everyone and every human being are also used as means to avoid using the term “man” and to avoid implicitly excluding women. The inclusive language is used together with *general non-discrimination clauses*. These types of clauses forbid discrimination, as do, for example, ICCPR and ICESCR Arts. 2, which bans discrimination on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property birth or other status. Then, there are *sex-specific equal rights clauses*, such as those in ICCPR and ICESCR Arts. 3, which ensure men’s and women’s equal rights to human rights.

Since the adoption of the Universal Declaration, sex-neutral equality strategies have become the dominant law-based equality strategy that other strategies relate to. It can be suggested that the sex-neutral equality strategies have become so commonplace in international human rights instruments that they do not even seem to be strategies at all, but rather as fundamental preconditions for international human rights texts. When the Universal Declaration was adopted, however, the sex-neutral equality strategies were viewed as an example of the UN’s and the inter-

national community's sensitivity to the so-called woman question because they provide a necessary foundation for treating everyone equally, including women and men and because they ensure that law is not used for discriminatory purposes. Sex-neutral equality strategies, however, have later been criticized for presuming that law is neutral and objective and for excluding acknowledgment of the historical and societal structures that have made sex a marker of difference. That is, sex-neutral strategies promote the idea of equality as *déjà fait*.

The main alternative to sex-neutral equality strategies has been *woman-centred equality strategies*. Over the years, the UN has developed different types of woman-centred equality strategies.¹⁰¹ The early women's human rights resolutions, declarations and treaties were mainly attempts to emphasize that women *really* are entitled to the same rights as men, i.e., the early women's human rights instruments were mainly a restatement, with an emphasis on women as rights holders, of the rights included, for example, in the Universal Declaration. Later, women's human rights resolutions, declarations and treaties have made some attempts to re-interpret human rights and to integrate new issues onto the human rights agenda, i.e., to highlight that *women's rights are human rights*. However, it has only been after the adoption of CEDAW and mainly in soft law instruments that attempts have been made to introduce new issues and new points of focus onto the human rights agenda. These new issues includes violence against women, and these new points of focuses include the focus on the private sphere.

The woman-centred strategies are still viewed as a necessary strategy for bringing and keeping the focus on women and for enabling targeted intervention for women. Nonetheless, the woman-centred strategies have also been criticized for adding to the marginalization of women's human rights and women within the overall human rights system and for promoting stereotypical images of women. During the 1990s, the UN came to promote different, largely soft law and policy-based *dual strategies* for achieving equality between the sexes. The dual strategies aim at consolidating and developing the woman-centred equality strategies at the same time as also being aimed at integrating women's human rights or at mainstreaming a gender perspective into the overall human rights framework. Hence, the dual strategies are constituted by the woman-centred strategies together with the 1990s add-ons, i.e., the strategies for integrating women's human rights or mainstreaming a gender perspective. It is the add-ons that are analyzed in this thesis.

¹⁰¹ The distinction between human rights and women's human rights will be discussed at a later point in this thesis vis-à-vis the notion of the paradox of feminism, see Chapters 3.2.1, 3.3 and 6.4.

1.4 Summary and Conclusions

The purpose of this introductory chapter has been to provide a background for and to introduce the core areas addressed in the thesis. This thesis focuses on the post-Cold War renaissance of international human rights and on the attempts to promote a more just human rights framework through dual strategies for equality between the sexes. Against the background of the development of human rights and of the UN-based human rights framework, which includes the women's human rights framework, the specific aim of this thesis is to analyze the content and implementation of the integrative strategies within the UN human rights framework.

The title chosen for this thesis is *Making Just Rights*. The title should communicate both a sense of the finiteness of rights – rights can be useful and empowering, but they are not always useful and empowering – and a sense that the processes of making just rights and of adapting and readapting rights to the needs of different people and different contexts are on-going ones. Rights have been used because the notion of rights is empowering. Excessive use tends to lead to abuse. As Paul Hunt has pointed out, there is no need anymore for rights sloganism.¹⁰² Instead, there is an urgent need to provide substance to and operationalize rights-based approaches. There is a need to ensure that excessive and halfhearted use of rights does not turn into abuse, but that rights are given substance. I disagree with the claim by Douzinas that the *Déclaration des droits de l'homme et le citoyen* (1789) corresponds to the contemporary international human rights framework, just as a Jane Austen novel corresponds to its period costume adaption for television.¹⁰³ It is a question about different contexts, different audiences and different media. However, just as the French declaration, which will be addressed in Chapter Three, was adapted to the needs of different strata, sections of French society, including its colonies, through additional legislation, so is the contemporary international human rights framework adapted to the needs of the contemporary world through additional treaties, non-treaty agreements and policies. This project is a tricky one and there are constant dangers of counter-effects and hidden agendas.

I am hoping that this thesis might contribute to the research on international human rights and to the research on the possibilities and chal-

¹⁰² Paul Hunt referred to rights sloganism in his statement during the launching seminar *Global Challenges to Human Rights* for the Centre for the Study of Human Rights at the University of Göteborg on September 26th 2003.

¹⁰³ Douzinas 2000, p. 116.

lenges of adopting and attempting to implement human rights-based strategies within the international community. I also hope to add to the largely feminist research agenda about the woman-, gender- and sex-centred aspects of human rights and about the possibilities and challenges of adopting and attempting to implement women's human rights- and gender-based strategies within the international community. However, I am also hoping that the questions asked in this thesis contribute to an increasingly critical research agenda, especially a feminist one, with regard to international human rights and the productive space of rights. While I do not think that the international human rights framework has played out its role on the international, national or local scenes, I am convinced that it is necessary to ask questions about what all this women's advancement is *really* about and to analyze the strategies that are used to attain "gender equality" in a critical manner.

2 Theoretical and Methodological Reflections

The second chapter outlines the theoretical and methodological framework of this thesis. After a brief introduction, Chapter 2.1, I will discuss in Chapter 2.2 feminist approaches to internationalism, focusing on the rise in the early 1990s of feminist internationalism and on the criticism mounting over the last years towards international solutions. Thereafter, in Chapter 2.3, I discuss feminist perspectives on rights, especially vis-à-vis international human rights, and suggest that Carol Bacchi's so-called What is the problem? approach might serve as a tool for unpacking the bundled up and long taken-for-granted knowledge about international human rights. Theoretical and methodological reflections, to a very great extent, are interlinked in this thesis, and they are addressed side by side throughout this chapter.

2.1 Introduction

In Chapter One, I defined three main objectives for this thesis, each objective contributing to a contextualization for and an elucidation of the integrative parts of the dual strategies, i.e., the strategies of integrating women's human rights and mainstreaming a gender perspective.¹ I am interested in situating the UN international human rights and women's advancement and gender equality agendas in(to) historical contexts. I am also interested in analyzing why and how the integrative strategies have developed, what their contents are and how they have metamorphosed during the process of implementing the strategies within the UN human rights institutions.

In Chapter One, I also began outlining the theoretical and methodological approaches of this thesis.² The aim of this chapter is to provide

¹ See Chapter 1.1.2.

² See Chapter 1.1.3.

deeper insights into the theoretical and methodological approaches chosen for this thesis. The main theoretical and methodological sources of inspiration for this thesis are feminist international law scholarship, feminist theory and gender studies.³ This thesis has also been inspired by social constructivist and discursive methods.⁴ In this chapter, I will focus mainly on the aforementioned main sources. It is evident, however, that the list of theoretical and methodological sources of inspirations is non-exhaustive. However, focusing on mainly feminist and social constructivist and discursive methods provides sufficient insights into the theoretical and methodological concerns explored and the decisions made regarding this thesis. My choices of sources of inspiration as well as my theoretical and methodological decisions have been guided less by discipline than by the demands imposed by the objectives defined and the questions asked in different parts of this thesis.

The early feminist international legal studies scholarship, to a large extent, built upon the theoretical and methodological framework developed within Western feminist legal studies scholarship. Feminist scholars applied both these theories and methods in the international framework, thereby excluding, to a certain extent, both non-Western women's experiences and the specific complexities of international law.⁵ Feminist perspectives

³ Feminist international legal studies are a latecomer to the feminist studies family, as well as in the critical legal studies family. It has only been since the late 1980s that feminist perspectives on international law have developed. While feminist perspectives have abounded with respect to specific areas of international law, such as human rights and humanitarian law, the area of study still remains a fairly under-theorized one. Feminist international legal scholars avail themselves of the theories and methods developed within other feminist and critical disciplines. For example, Charlesworth and Chinkin (2000) highlight feminist legal scholars' use of methods developed by poststructurally-inspired feminist theorists. Otto and Orford rely on postcolonial and poststructural theories and methods in their research. For overviews of feminist theory, see Kemp and Squires, eds. 1997, Segal 1999 and Weedon 1999. For overviews of gender studies, see Glover and Kaplan 2000 and Gould, ed. 1997, for overviews of third world and post-colonial feminist perspectives, see Alexander and Mohanty, eds. 1997, Bulbeck 1998, Jabri and O'Gorman, eds. 1999 and Moghadan, ed. 1994, for overviews of critical race feminism, see Wing, ed. 1997 and 2000 and for overviews of queer and lesbian feminisms, see Rosenberg 2002.

⁴ For an introduction to social constructivist approaches, see Barlebo Wenneberg 2001 and Hacking 2000. For an introduction to discourse theory and discursive methods, see Bacchi 1996 and 1999.

⁵ For early feminist analysis of international law, see Charlesworth, Chinkin and Wright 1991, Engle 1992a–b Fraser 1987 and Hevener 1983. See also, Chapters 2.2.1 and 2.3.2.

within most fields seem to develop on the trajectory of first adding women to areas where, earlier, their stories had been silenced. After that initial thrust, the throwing of these new perspectives into the cauldron, feminist scholars then stirred the pot, noticing that, while the addition of women does create new knowledge about women's lives, there is no explanation as to why or with what consequences women's stories have been left out from the mix in the first place. There is no explanation for this lacuna. Having added and stirred, feminist scholars then tended to realize that they have added representations of women that are too unitary or too uniform or that they really did not stir the pot enough. Charlesworth and Chinkin, for example, note that "[s]imply 'adding and mixing' is, in and of itself, inadequate because the international legal system is, in itself, gendered. Its rules have developed as a response to the experiences of the male elite. Feminist analysis, thus, must explore the unspoken commitments of the apparently neutral principles of international law and the way male perspectives are institutionalized within it".⁶ Contemporary feminist international legal scholarship seems to be at that post-adding and post-stirring phase, observing uncomfortably that women from many parts of the world and some core issues, still, remain absent from the analysis brew.⁷ However, the exclusions produced by the failure of feminist international legal scholarship to include different women's experiences, different sexed relations and different issues do not signify, as some scholars claim, the end of feminism. On the contrary, it is a recognition of the continuing importance of asking critical questions, of being self-reflective and of being prepared, when necessary, to alter and adapt theories, methods and what we think we know.

⁶ Charlesworth and Chinkin 2000, p. 50. Charlesworth's and Chinkin's analysis of what is beyond adding and mixing, however, has been challenged by Howe (1994), for example, who argues that their perspective is a white, Western feminist perspective and, as such, excludes the perspective of most the world's women. See also Nesiiah 1993 and Stark 1996 and 2000a.

⁷ The feminist international legal scholarship, however, has developed considerably not in the least by questioning its own shortcomings. For overviews of contemporary feminist international legal studies, see Charlesworth and Chinkin 2000 and Orford 2002. For overviews of contemporary feminist international human rights law, scholarship see Agosin, ed. 2001 and Askin and Koenig, eds. 1999, 2000 and 2001, Cook, ed. 1994. See also, for example, Ashworth 2000, Binion 1995, Bunch 1995a, Charlesworth 1996, Dolgopool 1995, Holt 1991, Poe, Wendel-Blunt and Ho 1997, Stark 2000b and Sullivan 1997 and 1999.

2.2 Sexing the International⁸

2.2.1 Feminist Perspectives on International Law

Sex matters. Feminism is the acknowledgment of this claim, at least that is one way feminism is being defined for the purposes of this thesis. Whether we may be a woman or a man is a factor which, together with an array of other often intertwined aspects, tends to matter to the opportunities we, as individuals, enjoy and the constraints we have to tackle in our everyday lives as well as in our local, national and global communities. Power, in all its varied analytical, symbolic, material and institutional forms, is integral to most feminist understandings of sex, as is engagement in fighting, the discriminatory or unjust effects of sex. However, there are ongoing discussions about what sex is, how sex matters, how sex interacts with other social categories and what should be done about the social consequences of sex. Charlesworth, Chinkin and Shelley Wright have defined feminism as "... a mode of analysis, a method of approaching life and politics, a way of asking questions and searching for answers, rather than a set of political conclusions about the oppression of women".⁹ Feminist method has been defined by Charlesworth, Chinkin and Wright as "... taking women seriously, believing that what we say about ourselves and our experience is important and valid, even when (and maybe especially when) it has little or no relationship to what has been or is being said *about us*".¹⁰

While feminist legal scholarship has lost much of its initial enthusiasm about the possibilities of promoting equality between the sexes by legal means, feminists, engaged in international law and, maybe especially in international human rights law, have come to reproduce that lost enthusiasm.¹¹ The feminist project within international law has been defined

⁸ The title of this section is a paraphrase of the volume edited by Naffine and Owens, *Sexing the Subject of Law* (1997). According to Naffine and Owens (1997, p. 8), the sexing project, recognizing how sexual difference is reflected in and mediated through law, should not be understood in essentialist terms, as connoting ideas about men's and women's natural characteristics. The postmodern and poststructural feminist criticism of the sex/gender distinction has undone the distinction between sex as "biological raw material" and gender as a product of culture. See Chapters 4.2 and 4.3.

⁹ Charlesworth, Chinkin and Wright 1991. pp. 614.

¹⁰ Charlesworth, Chinkin and Wright 1991, p. 634. Compare with Flax's emphasis on the importance of self-reflection in Chapter 2.2.2 and Bacchi's emphasis on the importance of questioning the evident and neglected truths, i.e., truths taken for granted, including the evident and taken-for-granted truths about ourselves and our social group in Chapter 2.3.3.

¹¹ For overviews of feminist legal studies, see Barnett 1998, Bartlett and Kennedy, eds. 1991, Chammallas 1999, MacKinnon, 1989, Naffine, 1990, Naffine and Owens, eds.

by Charlesworth and Chinkin as a two-stage project: first, feminists need to deconstruct¹² the explicit and implicit values of the international legal system, challenging their claims to objectivity and revealing the blind spots of international law and its exclusions as concerns women and women's experiences. Secondly, feminists need to reconstruct an international law that does not support men's oppression of women.¹³ This project can also be framed in terms of the dual commitment of feminist scholarship, i.e., on the one hand, a commitment to a theoretical aim, the production of academic knowledge and, on the other hand, a commitment to a practical aim, the promotion of equality between the sexes.¹⁴ Charlesworth and Chinkin calls this fine balancing act strategic deconstruction. They note that the two goals of feminism co-exist uneasily. Karen Engle and Orford, a decade apart, have captured the feminist dilemma within the international legal field.¹⁵ According to Engle:

[w]e [feminist international legal scholars] sense that our work at the periphery can only succeed if we can save the core and so, for the most part, we defend it. Sometimes, we defend it by pretending that we are actually a part of it and just have not been noticed yet. Other times we clearly and proudly situate ourselves outside the core and talk about what it would have to do to make us a part of it. We tell the core that as long as we are on the periphery, the core is disingenuous; it needs the periphery to be complete. No matter how hard we push on the core, though, we never attack its essence. We are afraid that if we push too hard, it might dissolve and become useless to us. We do not look too closely at the core, for the fear that we might realize that we are not on the periphery at all or that the chasm between us cannot be filled.¹⁶

1997, Lacey 1998 and Smart 1989 and 1995. Alternative feminist legal schools have developed, for example, within the Nordic context through the work of Tove Stang Dahl (1988) and the Nordic feminist legal studies network, see, for example, Nordborg, ed. 1995 and Nousiainen, Gunnarsson, Lundström and Niemi-Kiesläinen, eds. 2001. Feminist perspectives on international law, however have largely been developed within and remains dominated by, an English language framework.

¹² The term, deconstruction, is not used with reference to Derridean or poststructural notions of deconstruction, but with reference to a more popular understanding of deconstruction as merely seeing beyond the evident and detecting the underlying values.

¹³ Charlesworth and Chinkin 2000, p. 61.

¹⁴ This dual commitment has become increasingly difficult to uphold during the last ten to fifteen years through the input from poststructural theories and identity-based analysis, see Gunning 1991-92, Howe 1994 and Spivak 1999.

¹⁵ Compare with discussion about the paradox of feminism in Chapters 3.2.1, 6.1 and 6.4.

¹⁶ Engle 1992a, p. 605.

A decade later, Orford expressed similar concerns about the feminist mission in international law, noting that “I see the invitation to participate in the humanitarian mission of international law as one that carries with it old dangers”.¹⁷ The old dangers, feared by Orford, include a new feminist imperialism. Orford draws a parallel between how “[t]he constitution of the native women in the texts of imperial feminism served to found the individuality of European women, and to make possible their participation in the larger project of soul-making through civilizing missions” and how “[i]n the texts of international law, the feminist individualist is again able to constitute herself in shifting relationship to what is at stake over the bodies of her sisters who function as material evidence”.¹⁸ Further, she notes that

... feminist theory threatens merely to facilitate and enable neo-colonialism if it stages the key struggle in this globalized world in terms of the ‘mesmerising model’ of ‘male and female sparring partners of generalizable and universalizable sexuality’. Paying attention only to the protagonists in this drama blinds us to the way in which the Third World is staged as a backdrop, with a cast of nameless extras imagined as playing a part that they have not written. A feminist analysis of international law that focuses on gender alone, without analysing the exploitation of women in the economic ‘South’, would operate to reinforce the depoliticised notions of ‘difference’ that founds the privileged position of the imperial feminist.¹⁹

The citations exemplify the feminist dilemmas concerning international law as regards both the relationship between what is perceived as the feminist periphery and the core of international law and the relationship between the dominant feminisms and the exclusion of the Other woman, i.e. the exclusion of the women who do not fit or who are described as not fitting into the dominant woman model. The two citations also exemplify the shifting focus of feminist international legal scholarship between 1992 and 2002. In 1992, feminist international legal scholarship focused on two conundra: showing that women and women’s experiences had been excluded from the at first glance sex-neutral international legal framework and analyzing how feminists could make women visible in international law and promote women’s emancipation through inter-

¹⁷ Orford, 2002, p. 283.

¹⁸ Orford 2002, p. 284.

¹⁹ Orford 2002, p. 285, references to Spivak 1999. While eloquently outlining how feminist international legal scholarship serves the projects of militarized economic globalization and while outlining how feminist international legal scholarship, with the help of postcolonial theory, should avoid the imperialist and sexist traps of woman-saving, Orford omits to mention that sex matters.

national law. A decade later, feminist international legal scholarship is focused now on two main problems, the first, the exclusion of Other women from both the by now occasionally sex-sensitive international legal framework and from feminist international legal scholarship and, the second, an analysis of whether the feminist international law project is even worthwhile.

According to Rosi Braidotti “[i]t is urgent [...] before feminists let themselves go to joyful celebrations of our ‘International’ outlook to pay attention to some crucial questions: is Internationalism not a convenient pre-text, masking our inability to come to terms with national politics and local realities? Are women sufficiently present as citizens in our respective countries to start thinking seriously in an international perspective? Does the overemphasis on International or ‘cross-cultural’ perspectives not come to fill the lack of internal national dynamics that marks many women’s movements [...] today?”²⁰ Braidotti uses the configurations, viz., the exile, the nomad and the migrant to capture the feminist dilemmas and shifting focuses of feminist internationalism. The three configurations show how seductive the international realm can be, or how useful or mortal, depending on how the subject is situated. The *exile* has been a feminist configuration and a metaphor for the woman subject. Women as exiles configure women as non-citizen and as not belonging. The exile is an outsider who does not yet master the dominant cultural codes of the country in which she resides, which makes her an awkward non-citizen. The exile, however is also the privileged foreigner, who, through her not belonging, is in a position to analyze, criticize and re-interpret the dominant cultural codes of the country in which she resides without, at the same time, being responsible for upholding certain ideas, values or structures. The *nomad* has been a well-used metaphor, especially for the intellectual subject. It is for Braidotti a configuration of the intellectual woman.²¹ According to Braidotti, “... the point of being a nomad is the crossing over boundaries, the act of going, independently of a given destination. Transitions without a final goal”.²² The nomad could pos-

²⁰ Braidotti 1992, p. 7. See also Klabbers 2001. For further discussions about international feminist scholarship, see Ashworth 1995, Charlesworth 1993b, Enloe 1990, Mendoza 2002, Pettman 1996 and Rai, ed. 2000.

²¹ Gustafsson (2002, p. 449) suggests, for example, with references to Carnera Ljungström 2000-01, p. 76, that the nomad might be a useful image for the future lawyer or at least, for future legal studies and education.

²² Braidotti 1992, p. 8. It is worth noting that, while Braidotti criticizes the feminist configuration of the exile as being the privileged feminist subject, as the exile, at least in our imagination, has chosen hers or his exile, she views *her* feminist intellectual nomad’s not belonging not as an privilege, but as an asset.

sibly be described as the postmodern exile, i.e., while the configuration of the exile was used by early feminists, such as Virginia Woolf and Juliet Mitchell and in the writings of Luce Irigaray and Hélène Cixous, the nomad is the configuration favored by Braidotti. The contemporary privileged subject does not reside in a place, but she is cosmopolitan. The *migrant* is a configuration of the other woman or the subaltern woman. The migrant, then, is the configuration of the unprivileged woman. The migrant did not choose to leave. She is often not heard from and not given the space to speak in her new home. All hues and good intentions notwithstanding, the migrant is the woman subject whose capacities, experiences, knowledge and individual subjectivity still remain marginalized.

The feminist international law project, defined by Charlesworth and Chinkin as a sort of a strategic deconstructive project, is not pitfall-free. Feminist international law scholarship or feminist internationalism, still moves within the rather inconvenient space limited by having to explain to much of what Engle calls the “core” that law is not neutral and that “women” do not necessarily fit into or want to fit into the roles that international law has designed for them. At the same time as our emancipatory project, as Orford and Braidotti have noted, runs the risk of reproducing the distinction between the nomad or the postmodern, cosmopolitan, intellectual female subject and the migrant, a female configuration of many names, viz., third world woman, the rural poor woman, the urban poor woman, the extremely poor woman, the woman victim of armed conflict, the woman victim of military violence, the woman victim of trafficking, the woman victim of harmful cultural practices, the woman victim of domestic violence, et cetera.²³

2.2.2 Feminisms’ Analytical Categories

As was noted above, feminist scholarship did, in its early forms, focus mainly on the relationship between women and men, on how femininity and masculinity were construed and on what effects the power-impregnated, hierarchical and structural construction of femininity and masculinity had on women’s lives and on society.²⁴ The sex/gender distinction, as a distinction between biological sex and socially construed gender, served both as the object of study and as the analytical tool kit for post-1970s feminist scholarship. In 1987, Jane Flax defined the goal of

²³ See Chapter 1.2.1 for references to Arendt’s and Agemben’s analysis of inclusion/exclusion in the sphere of human rights. See Chapter 6.1 for an analysis of feminists international legal scholarship and its critiques.

²⁴ See also Chapters 4.2 and 4.3.

feminist theory as "... to analyze gender relations: How gender relations are constituted and experienced and how we think or, equally important, do not think about them. The study of gender relations includes but is not limited to what are often considered to be distinctively feminist issues: the situation of women and the analysis of male domination".²⁵ Gender relations, as analytic categories, are meant to capture a complex set of social relations that refer to a changing set of historically variable, gender- and power-impregnated social processes.²⁶ The study of gender relations should result in "... a critical distance on existing gender arrangements. This critical distance can help clear a space in which re-evaluating and altering our existing gender arrangements may become more possible".²⁷ Flax notes that it is by no means self-evident that feminist thinking about gender relations results in a cleared or critical space for the reevaluation of existing gender structures:

In order for gender relations to be useful as a category of social analysis we must be as socially and self-critical as possible about the meanings usually attributed to those relations and the ways we think about them. Otherwise, we run the risk of replicating the very social relations that we are attempting to understand. We have to be able to investigate both the social and philosophical barriers to our comprehension of gender relations.²⁸

Sally Haslanger has analyzed the different meanings of the concept of gender in feminist scholarship, focusing especially on the different meanings given by feminist and gender studies' scholars to the claim that gender is socially construed.²⁹ Haslanger has identified five types of social construction, viz., generic construction, causal construction, constitutive construction, discursive construction and pragmatic construction. She argues that gender, as an analytical category and as an object of study, has been understood in all five different ways. *Generic construction* refers to the definition of all intended or unintended products of social practices as social constructs. Claiming that gender is a *causal construct* implies claiming that "... insofar as women are feminine and men are masculine this is due (at least in part) to social causes and is not biologically determined".³⁰ Claiming that gender is a *constitutive construction* implies claiming that "[g]ender should be understood as a social category whose defi-

²⁵ Flax 1987, p. 622. The importance of focusing on gender relations or the *genus* relation has also been emphasized by Svensson 1997.

²⁶ Flax 1987, p. 628.

²⁷ Flax 1987, pp. 622–3.

²⁸ Flax 1987, p. 634.

²⁹ Haslanger 1995.

³⁰ Haslanger 1995, p. 98.

inition makes reference to a broad network of social relations, and it is not simply a matter of anatomical differences”.³¹ Hence, causal construction refers to *what* we wish to explain, while constitutive construction refers to *with what* we want to explain it. In other words, causal construction implies objective knowledge production that tells *truths* while constitutive construction implies an interaction between knowledge production and the subjective realities it attempts to explain. Gender, as a causal construction, is what we wish to explain, while gender, as a constitutive construction, is the analytic category or tool with which we wish to explain a social phenomenon. The feedback loop between causal and constitutive construction is defined by Haslanger as *discursive construction*. Haslanger notes that “... our classificatory schemes, at least in social contexts may do more than just map preexisting groups of individuals; rather our attributions have the power to both establish and reinforce groupings which may eventually come to *fit* the classifications”.³² According to Haslanger, something is discursively constructed when it is or becomes the way it is owing to how it is defined and what attributes are assigned to it. A discursive construction is defined by Haslanger as a *pragmatic construction* if social factors determine, at least in part, how a classificatory apparatus, conceptual distinction or descriptive term is socially construed. Haslanger distinguishes between weak and strong pragmatic constructions depending on whether a classification or distinction is partly or fully determined by social factors. A distinction, according to Haslanger, is a strong pragmatic construction if social factors wholly determine our use of it and it fails to represent accurately any “fact of the matter”³³. Claiming that gender is a strong pragmatic construction would imply claiming that gender, as an explanation, is created through gender as a means for explaining. A distinction, according to Haslanger, is a weak pragmatic construction if social factors only partly determine our use of it. Haslanger suggests that “[i]n cases of weak pragmatic construction our choices of descriptive terms, classificatory schemes, etc., are conditioned by social factors (values, interests, history, etc.) but of course this is compatible with those terms’ and classifications’ capturing real facts and distinctions”.³⁴ Claiming that gender is a weak pragmatic construction implies claiming that while gender exists as a social construction, it is also created by how we explain it as a social construction.

³¹ Haslanger 1995, p. 98.

³² Haslanger 1995, p. 99.

³³ Haslanger 1995, p. 5.

³⁴ Haslanger 1995, p. 101.

Because the concept of gender and the claim that gender is a social construction assumed so many different meanings and have been used for so many analytical and political reasons, there is currently a growing confusion about how, in fact, gender can be used. Some feminists, such as Margaret Davies, have suggested that the concept of gender has lost its analytical potential.³⁵ The meanings of gender and sex and whether either of these concepts still serve feminist scholarship as analytical frameworks has been subject to lengthy discussion within feminist theory during the last decade. Feminist scholars who do sex- and/or gender-related research tend, still, to have a preference for a language of gender. However, with the increased insecurity over what gender actually stands for, what it represents, gender has ended up becoming a *shorthand* term for a number of phenomena and processes. It is not always easy to know what *exactly* gender is a shorthand term for.³⁶ It is not uncommon to begin with statements such as Charlesworth's and Chinkin's emphasis that "[s]exing draws attention to body and nature while gendering emphasises mind and culture. The two approaches are in this sense complementary ..." to legitimate the use of both a language of sex and gender.³⁷

Margaret Davies argues that the language of gender and gendering cannot be used without an acceptance for the sex/gender distinction and, hence, implicitly accepting the idea of a natural sex existing before law.³⁸ According to Davies, the language of gender should be discarded for the benefit of a *critical* language of sex and sexing. A critical approach implies that the languages of sex and sexing is not used with an essentialist connotation but, rather, "[i]t implies that sex is not a 'natural' phenomenon – it is not outside language, culture and perception".³⁹ With Davies' approach, sex and nature become political categories and she argues, with references to Monique Wittig, that the category of sex, i.e., the division into two sexes, is a socio-political act based on the idea of dominance:⁴⁰

So to say that the subject of law is sexed, rather than gendered, indicates that there is a social law – not a natural law – which forces sex upon us. As subjects of this law, we must be sexed, we cannot escape being one thing or the other.⁴¹

³⁵ Davies 1997.

³⁶ Braidotti 1995, Butler 1990 and 1993, Davies 1997, Haraway 1991 and Harding 1987.

³⁷ Charlesworth and Chinkin 2000, p. 4.

³⁸ Davies 1997, pp. 31–2. See also Wittig 1992.

³⁹ Davies 1997, p. 32.

⁴⁰ Davies 1997, p. 32.

⁴¹ Davies 1997, p. 33.

As evidenced by my choice of the title of Chapter 2.2, I prefer the language of sexing to a language of gendering and, thus, also a language of sex and sexual difference to a language of gender. This preference does not mean that I believe that gender cannot be a useful analytical category or relation in feminist or gender studies scholarship. No, indeed. However, because the feminist notion of gender has traveled from feminist scholarship to gender scholarship and then on to public equality discourses, the gendering project has been obscured and the concept of gender has become shorthand for much too much. Hence, I prefer a language of sexing, sex and sexual difference in part because I agree with Davies and scholars such as Braidotti, Donna Haraway and Toril Moi, who argue that the language of gender obscures our understanding of sex as a power-impregnated category, both materially and socio-politically, inter-related to other difference-producing social categories. It is noteworthy that in much of their work, Charlesworth and Chinkin rely on the sex/gender distinction and, as noted above, view sex and gender as complementary. However, in their article, *Sex, Gender and September 11*, while, still, relying on the distinction, the two authors turn to a language of sex, proclaiming that:

[i]n sum, our argument is that *sex* has been a crucial aspect of the events of September 11 and [in] the response to them. Men have been the major players in all contexts and women have been cast as victims without real agency to affect the future. The public and political debate has largely ignored the considerable initiatives and activity of Afghan women aimed at contributing to the design of their future. The exclusion of over half the world's population from the formal decisions of great international significance is more than a question of justice and human rights; it is also a great strategic mistake [*emphasis added*].⁴²

In other words, although viewing the notions of sex and gender as “complementary”, Charlesworth and Chinkin turn to a language of sex when wishing to add a critical and political edge to their argumentation. I have also tried, in part, to avoid the use of gender as an analytic tool because the analytical focus of this thesis is largely on the shift from woman-centred to gender-based strategies for equality and on the changing meaning of gender within the UN-based international human rights framework. I want to avoid mix-ups and ambiguities between UN references to gender and gender mainstreaming and the analytical categories used in this thesis. Thus, I have chosen to minimize the use of gender as an analytical category.

⁴² Charlesworth and Chinkin 2001, p. 604. See also Wylie 2003.

2.3 Discussing and Unpacking Feminist Perspectives on International Human Rights

2.3.1 Feminist Perspectives on Rights

The idea of human rights is embedded in Western political and philosophical history and rights can be viewed as one of the more persuasive constructs of Western modernity.⁴³ Intimately intertwined with this history and construct are the exclusion of women as rights holders and the creation and constantly changing notion of sexual difference.⁴⁴ The history of rights has resulted in women's advocates and feminists having a fairly ambivalent relationship vis-à-vis rights. Feminist perspectives on rights and on international human rights range from a defence of the liberal rights regime to a radical reconceptualization of rights.⁴⁵ Where on this trajectory, different scholars situate themselves, is largely dependent on how the idea of rights is viewed: are rights viewed as intrinsically and inescapably and immutably *male*? Or are rights viewed as having the potential of transcending the initial exclusions in symbolic, politico-legal and institutional terms. The rights' criticism, however, has seldom amounted to a rejection of rights. Instead, attempts have been made to define the productive space of rights for women. The notion of the male norm or the male objective standard was frequently used by feminist legal scholars during the 1990s as a way to describe, as has been noted by Catherine MacKinnon, that "[t]hrough legal mediation, male dominance is made to seem a feature of life, not a one-sided construct imposed by force for the advantage of a dominant group" and that "[f]rom a feminist perspective, male supremacist jurisprudence erects qualities valued from the male point of view as standards for the proper and actual relation between life and law".⁴⁶

In the late 1980s and early 1990s, there were ongoing feminist debates about the usefulness of the liberal rights' regime. As it seems, however, this feminist rights' debate, was, to some extent, exhausted by the feminist engagement in international human rights. In other words, the rather critical feminist debate about the liberal rights' regime, which below will be exemplified through the work of Carol Smart and Luce Irigaray, was

⁴³ See Chapter 1.2.1.

⁴⁴ See Chapter 3.2.1.

⁴⁵ See Nussbaum 1999 and Schneider 1991.

⁴⁶ MacKinnon 1989, p. 238. For further discussion and criticism, see also Lacey 1998, Naffine 1990, Naffine and Owens, eds. 1997 and Spivak 1999. The feminist approach to men and masculinities, especially in relationship to masculinity studies, will be further analyzed in Chapter 4.3.2

silenced by the engagement by feminists in the 1990s in the booming “human rights industry”. In order to capture the change over time in feminist perspectives on rights and on international human rights, in particular, I will, below, first address feminist perspectives on rights and, thereafter, in Chapter 2.3.2, address feminist perspectives on international human rights.

According to Smart, using the concept of equal rights was necessary when law *de facto* preserved rights for men that women did not have, but using similar arguments when law no longer openly privilege men is problematic.⁴⁷ Smart suggests that:

... the rhetoric of rights has become exhausted, and may even be detrimental. This is especially the case where women are demanding rights which are not intended (in an abstract sense) to create equal rights with men, but where the demand is for a ‘special’ right [...] for which there has been no masculine equivalent.⁴⁸

Hence, that rights amount to legal and political power resources should not, argues Smart, be denied, but rather “... the value of such resources seems to be ascertainable more in terms of losses if such rights diminish, than in terms of gains if such rights are sustained”.⁴⁹ While questioning whether rights’ claims can be useful for women outside and beyond the existing liberal equal rights’ framework, Smart acknowledges that rights’ claims are appealing and that using a rights’ language to frame an argument can make a claim popular.⁵⁰ While Smart supports feminist rights claims in areas where women have an equal rights protection or where they lack rights, she has doubts as to whether rights-based strategies are useful beyond the existing liberal rights framework. Smart distinguishes four major problems with rights: rights oversimplify complex power relations; the acquisition of a right in a given area gives the impression that a power difference has been solved; a rights’ claim may be effectively countered by resorting to a competing right, and the rights’ framework provides very little guidance in how to solve rights’ conflicts; rights are formulated to correct a social wrong, yet it remains up to the individual to claim the

⁴⁷ Smart 1989, p. 139.

⁴⁸ Smart 1989, p. 139.

⁴⁹ Smart (1989, p. 143) exemplifies her claim with the right to abortion, noting that “[t]he denial of rights in a given area like abortion will have the definite consequence of forcing women to go through with pregnancies which are unwanted. The provision of abortion rights does not however, guarantee that any woman who wants an abortion can have one. The law may concede a right, but if the state refuses to fund abortions or abortion clinics, it is an empty right”.

⁵⁰ Smart 1989, p. 143.

right; and rights that were devised to protect individuals against the state may be used by stronger individuals against weaker individuals.⁵¹

An, at first sight, opposing perspective has been developed by Luce Irigaray, who disregards the existing rights framework for being inherently male and for excluding women and women's specific experiences and needs. Irigaray's 'sexuate rights' project is a radical feminist project through which she attempts to re-imagine the notion of rights.⁵² Through her project and through re-imagining both the contemporary conceptions of sexual difference and of rights, Irigaray wishes to reinject what she perceives as Antigone's *civilité* into contemporary Western life. Referring to the myth about Antigone, Irigaray argues that, when burying her brother and, thus, defying Kreon's law, Antigone obeyed the basic laws of human existence, laws based on the respect for the genealogy of the mother. Antigone had to bury her brother because burials are manifestations of respect for the genealogy of the mother: a respect that includes equal care for all bodies born of a mother. Irigaray argues that the basic laws of human existence have been forgotten in the contemporary Western world, human beings have become *incivils*. Neither an increase in legal rights nor in material wealth can cure the *incivilité* between people. Irigaray wishes to introduce an alternative to the current patriarchal notion of rights. Her proposed rights project is one that is based on a respect for a re-imagined sexual difference: a rights project that teaches *civilité*.

The rights that Irigaray wishes to include in her 'sexuate rights' project include, for example: the right to human dignity, including no commercial exploitation of women's bodies, no civil or religious exploitation of motherhood and women's reproductive capacities and the right to recognition; the right to human identity, including the right to decide over one's own virginity and the right to motherhood; the rights of mutual responsibilities between mother and child; women's right to defend themselves, their children, their homes, their traditions and their religions against men's decisions, including military decisions and decisions with ecologically devastating consequences; economic rights for solo mothers and the right to media that respects sexual difference; the right to systems of exchange that ensure women and men equal rights to exchange; and women's rights to equal representation in all instances where societal and religious decisions are made.

⁵¹ Smart 1989, p. 144–6. For the question of rights conflicts, see also Svensson 1995 and Kouvo and Svensson 2000.

⁵² Irigaray 1993, Chapter 10 and 1994, pp. 107–34.

While Smart questions the use of rights beyond the liberal equal rights' framework, her project is not a liberal defense of rights, but rather her criticism of women's rights should be read as part of her attempts to redirect the feminist engagement in law from constructing "... legal policies which only legitimate the legal forum and the form of law" to questioning law's definitions of women's rights.⁵³ That is, according to Smart, the rights framework has been exhausted since women have been included as rights holders, and the main reason for a feminist engagement with rights is to provide alternatives. Irigaray's project has been criticized by Cornell for universalizing sexual difference and for denying women the possibility to live their biology in infinitely different ways.⁵⁴ Penelope Deutcher notes, however, in defence of Irigaray, that the sexuate rights' project needs to be interpreted in the context of Irigaray's proposed reforms to language, religion, economic reform, love, daily interpersonal relations, intergenerational relations between parents and children and relations between persons in differential power relations.⁵⁵ Hence, while Smart's and Irigaray's projects, at first glance, each seem radically different from each other and, while Smart and Irigaray probably would not agree on feminist strategy, both scholars seem to define the productive space of rights beyond rights.

2.3.2 Feminist Perspectives on International Human Rights

Similarly, as the above text referred to feminist approaches to rights, feminist scholars engaged in an analysis of international human rights move in the space between a liberal defence of rights and a re-imagination of rights. However, until recently, feminist international human rights scholars, to a greater extent, have attempted to preserve and perpetuate the existing international human rights' discourse, instead of re-imagining it.

In her early analysis of the feminist international human rights' discourse, Engle noted that, while she had had a skeptical approach to rights, her engagement in women's human rights made her suppress her doubts about rights, because "[i]t seemed impossible to reject human rights and to promote women's rights. The latter issue took priority".⁵⁶

⁵³ Smart 1989, p. 165.

⁵⁴ Cornell 1998.

⁵⁵ Deutscher 2000.

⁵⁶ Engle 1992a, p. 603.

Engle identifies three main feminist approaches to international human rights: a doctrinal or legal positivist approach, an institutional approach and an external approach. Further, she notes that, while each approach is different, like her, these approaches all end in a defence of women's human rights. The doctrinal and institutional approaches build on positivist assumptions about international human rights law. They attempt to *find* the women's rights project within the international human rights project. Proponents for the external approach initially situate themselves outside the human rights project, asking whether it is worthwhile to embark on a quest for women's rights within the human rights project. Their answer is a reluctant, but, nevertheless, unanimous *yes*.

The proponents for a *doctrinal approach* frame their arguments within liberal and positivist accounts of international human rights law, arguing that women's rights are human rights *per se*.⁵⁷ The main task for these advocates and scholars is to convince States and other human rights agents to take women's human rights seriously and to work towards their realization.⁵⁸ Within the contemporary feminist international human rights scholarship, this approach is deployed to convince the international human rights community that a certain violation, such as, for example, domestic violence, is a violation of international human rights law. By referring to principles of international human rights law, feminist human rights scholars hope to convince national governments, for instance, that a certain national legal, political or other practice amounts to a violation of international human rights law. The doctrinal method for defining certain violation as women's human rights violations entails three steps: first, buttressing the claim that a certain right exists by locating support

⁵⁷ Some of the texts that Engle analyzes and refers to as using a doctrinal approach are Boulware-Miller, Kay. 1985. Female Circumcision: Challenges to the Practice as a Human Rights Violation. *Harvard Women's Law Journal*, Vol 8; Khushalani, Yougindri. 1982. *Dignity and Honour of Women as a Basic and Fundamental Human Rights*; Cook, Rebecca and Maine, Deborah. 1987. Spousal Veto over Family Planning Services. *American Journal of Public Health*, Vol. 77; and An-Na'im, Abdullahi. 1987. The Rights of Women and International Law in the Muslim Context. *Whittier Law Review*, Vol. 9. The doctrinal approach remains well-represented within feminist international human rights scholarship. It can be argued that it is used in different forms, for example, in Bunch 1995b, Coomaraswamy and Kois 1999, Eriksson 1990 and 2000, Fitzpatrick 1994 and Pentikäinen 1999. However, most feminist international human rights' scholars, to some extent, use a doctrinalist or strategic positivist approach, usually mixed up with an institutionalist approach. See, for example, the edited volumes on women's human rights Askin and Koenig, eds. 1999, 2000 and 2001, Cook, ed. 1994, Herrlin, ed. 1998 and Peters and Wolper, eds. 1995.

⁵⁸ Engle 1992a, p. 531–2.

in mainstream and specialized human rights documents, most often by resorting to what Engle calls the method of overkill;⁵⁹ secondly, identifying gaps between the rights they claim are guaranteed through international human rights law and the real situation of women; thirdly, shifting from a doctrinal mode to an enforcement mode doctrinal advocates and scholars turn to what Engle calls strategic positivism, i.e., after listing all the rights they believe are being violated, they strategically decide which rights to pursue by determining which rights' rubric governments and women are most likely to accept. The doctrinalists grapple, according to Engle, with general issues regarding doctrinalist and positivist approaches to international human rights law, not the least of which are problems regarding how to approach cultural difference and whether to base their arguments in general or woman-specific human rights documents.⁶⁰

The proponents that take the second approach, defined by Engle as the *institutional approach*, focus less on positive law than on the institutions set up to turn positive law into constructive action.⁶¹ Within contemporary feminist international law scholarship, this approach is used by feminists for targeting the shortcomings of the international system and for proposing international human rights law and its institutional avenues as solutions to problems faced by women in different national contexts. The problems dealt with by institutionalists include how to address the gap between the human rights doctrine and women's realities and whether to support either mainstream or specialized human rights institutions.⁶² Hence, the institutionalists begin where the doctrinalists

⁵⁹ Engle 1992a, p. 535. In accordance with the method of overkill, doctrinal advocates and scholars try to find as many international human rights instruments as possible to support their claims. They usually begin the list with references to the UN Charter and Universal Declaration, continuing with references to ICCPR and ICESCR, thereafter, turning to CEDAW, and to more often than not to regional documents that are applicable. Since 1992 references to the Vienna Programme, the Beijing Platform and to other semi-legal and policy-based documents are also usually added to the list.

⁶⁰ Engle 1992a, p. 554–5.

⁶¹ Engle 1992a, p. 555. Some of the texts Engle analyzes and refers to as using the institutional approach are Galey, Margaret E. 1984. *International Enforcement of Women's Rights. Human Rights Quarterly, Vol. 6*; Reanda, Laura. 1981. *Human Rights and Women's Rights: The United Nations Approach. Human Rights Quarterly, Spring 1981*; Burrows, Noreen. 1986. *International Law and Human Rights: The Case of Women's Rights*. In *Human Rights: From Rhetoric to Reality*, edited by Tom Campbell, et al.; and Meron, Theodor. 1986. *Human Rights Law-Making in the United Nations*. More recent examples of a similar approach are found in Byrnes 1997, 2000a–b, and Gallagher 1997.

⁶² Engle 1992a, p. 556.

leave off, by identifying a gap between positive law and women's realities, but they end, according to Engle, in a paradox. The institutionalists

... can argue that mainstream institutions are flawed, but not inherently so; rather they [the mainstream institutions] can only be flawed to the extent that they do not assimilate women's rights or take into account women's special status or issues. The specialized institutions are flawed, not because they do not aim to assimilate women's rights, but because they do not have the same enforcement power as the mainstream institutions. The paradox emerges through the moves the advocates make as they both attack and sustain the mainstream institutional framework in a call for change in the specialized institutions.⁶³

The institutionalists, however, are more critical of human rights than those scholars or advocates who adopt a doctrinalist approach, but they do so, according to Engle, by ignoring two things: first, they continually bump into, encounter new problems, to be addressed through new procedures, but few of them suggest that the problem might lie in the international legal framework itself and might be part of a larger problematic; secondly, when they turn to specialized institutions after having confronted the failure of the mainstream institutions to integrate women's rights, they ignore the interrelatedness of the mainstream and the specialized institutions.⁶⁴

The proponents of the third approach, defined by Engle as the *external approach*, address the international human rights system by initially situating themselves outside the system and analyzing its discourse.⁶⁵ In her article, Engle defined the externalists as either radical or cultural feminists. Within contemporary feminist international human rights scholarship, the external position is taken by poststructural or postcolonial feminists and by the emerging queer criticisms.⁶⁶ The main task of the externalists is to analyze whether the international human rights system and discourse have the potential of including and assimilating into their

⁶³ Engle 1992a, pp. 556–7.

⁶⁴ Engle 1992a, p. 575.

⁶⁵ Some of the texts Engle analyzes and refers to as taking an externalist position are Hosken, Fran P. 1981. *Toward a Definition of Women's Human Rights*. *HRQ*; Eisler, Riane. 1987. *Toward and Integrated Theory of Action*. *HRQ, Vol. 9*; Holmes, Helen. 1983. *A Feminist Analysis of the Universal Declaration of Human Rights*. In *Beyond Domination: New Perspectives on Women and Philosophy*, edited by Carol Gould; and Holmes, Helen and Peterson, Susan. 1981. *Rights Over One's Own Body: A Woman-Affirming Health Care Policy*. *HRQ*.

⁶⁶ See, for example Buchanan and Pahuja 2002, Orford 1998a–b, 1999 and 2002, Otto 1996b, 1997a–b and 1998, Walker 2001 and Wright 2002.

bodies, their systems, their doctrines, women's rights and a substantial concern for women's issues. However, while both doctrinalists and institutionalists argue that women's rights may be integrated through changes in the legal or institutional structures of human rights, the externalists believe that lawmakers, law enforcers, et al., need to *wake up* and acknowledge and accommodate women's concerns.⁶⁷ The proponents of postmodern and postcolonial approaches to international human rights law tend to, as, for example Otto does, acknowledge that human rights are biased, but they also believe that the human rights framework can be transformed.⁶⁸ Since 1992, when Engle produced her aforementioned categories, the feminist discourse on international human rights has developed considerably. In addition to the post-turn, much knowledge has also been produced about regional, national and local differences in women's experiences and needs of human rights protection.

In recent feminist international human rights scholarship, a more sceptical approach to human rights can be detected. In her introduction to the three-volume edition of *Women and International Human Rights Law*, Charlesworth signals the need for a more skeptical approach, noting that the contributors to the volumes "... generally accept, explicitly and implicitly, that women's international human rights are worth pursuing" and that "[i]t is interesting that there are few doubts expressed about the value of the whole enterprise".⁶⁹ An even more skeptical approach is also suggested in Charlesworth's and Chinkin's discussion about the potential

⁶⁷ Engle (1992a, p. 576–99) identifies three main types of external critiques. The first approach is the integrationist approach, according to which a truly *human* human rights discourse is possible, if women reclaim the discourse and change its current male focus. The second approach is the reconceptualist approach, according to which human rights are fundamentally flawed as they are based on a male definition and human rights discourse must be reconceptualized by women if it is ever to accommodate women's experiences and needs. According to Engle (1992a, p. 584), "[p]roponents of this position argue that human rights theory must be reconceptualized and redefined, largely, by women, for women's rights to be accommodated". The third approach views human rights language and discourse as inherently male and question whether it is worth using at all. According to Engle, some of the representatives of this approach come closer to a feminist critique of rights than any of the other feminists engaged in an analysis of international human rights. The concept of rights is viewed as masculinist and patriarchal, conceived with the rise of capitalism and of little use for women. Hence, unlike the other feminist approaches referred to by Engle, the radical externalists refrain from assuming that the human rights discourse was meant to integrate women's rights or to accommodate women's concerns. Nevertheless, the radical externalists do not hereby reject the human rights system, but, rather, turn to it, as it seems, for lack of anything better.

⁶⁸ Otto 1998, p. 47.

⁶⁹ Charlesworth 1999b, p. xxii.

of a feminist international human rights project.⁷⁰ However, while Charlesworth and Chinkin question the value of the human rights project, whether it is worthwhile or whether it is not merely “creating new sites for the subtle oppression of women”, they, still, end up in a defence of rights.⁷¹ Charlesworth and Chinkin argue that the significance of rights discourse outweighs its disadvantages. They continue by saying that “[b]ecause human rights discourse is the dominant progressive moral philosophy and a potent social movement operating at the global level, it is important for women to engage with, and contest, its parameters”.⁷² Their main arguments for human rights include:⁷³

- The human rights framework provides, although not perfectly drafted, a normative legal basis;
- Human rights law is not optional for states, but obligatory;
- A human rights entry point brings the entire human rights structure to bear;
- International human rights can be matched up with corresponding legal bases within States;
- Human rights have an empowering potential; rights might be naïve, but to individuals who have been marginalized and excluded from politics and public dialogue, rights are still quite “deliciously empowering”;⁷⁴
- The symbolic power of international law prevails; international law not only has regulative, but also, symbolic functions, i.e., the realms of international law and the United Nations are, still, laden with symbolic force that can be used to reshape women’s lives.⁷⁵

Many scholars engaging in a feminist analysis of international human rights seem to be bargaining with the human rights system, i.e., they are willing to support the human rights system, but only as long as the

⁷⁰ Charlesworth and Chinkin 2000.

⁷¹ Charlesworth and Chinkin 2000, p. 210.

⁷² Charlesworth and Chinkin 2000, p. 212.

⁷³ Charlesworth and Chinkin 2000, p. 210.

⁷⁴ Williams 1991.

⁷⁵ Charlesworth and Chinkin 2000, p. 337. Charlesworth and Chinkin (2000, p. 212). The critique of welfare regimes as presenting women as victims and dependents is a critique that has been contested by Nordic feminist legal scholars. See Nousianen, Gunnarsson, Lundström and Niemi-Kiesiläinen, eds. 2001.

system engages with and responds to women's quests for rights, recognition and good enough lives. The international human rights system, as noted in Chapter One, is a system under construction. It is a system that, having found its legal forms, is, still, looking for its political and institutional forms. Hence, the position that "let's see where this is going and try to help where we can" is a defensible position. However, when supporting and engaging within the parameters of human rights, it is easy to forget to recognize how supporting and engaging within human rights changes the feminist analysis and to forget to *contest* the same parameters.⁷⁶ Feminist international legal scholars increasingly share their analytical and methodological tools and language with the UN-based women's advancement and gender equality discourses. The shared tools and language have probably contributed to the positive approach of feminist international legal scholars to international law, especially to international human rights law. The shared tools and language is easily transformed into what is presumed to be shared goals, although it is not evident that what feminist international legal scholars mean, for example, by the notion of gender equality corresponds to what, for example, the *Economic and Social Council* (ECOSOC) means when it asserts the importance of working for the goal of gender equality. Otto has shown how the language of equality and human rights used in the Beijing Platform functioned to prevent transformative changes because the Beijing Platform distinguishes between human rights, which are law-based and universal and women's rights which are neither. Hence, the Beijing Platform reproduces the "gendered hierarchy of human rights orthodoxy" and excludes references to issues regarding development and post-Cold War economic globalization.⁷⁷ I will below refer to Bacchi's so-called *What is the problem?* approach as a means to unpack both the strategic positivism of the feminist international human rights discourse and the international legal framework's ongoing reproduction of what Charlesworth and Chinkin call the "sites of subtle oppression of women".⁷⁸

2.3.3 Unpacking Strategies and Concepts

Social constructivist approaches in the form of discourse theory and analysis have become popular as means for showing the historical, cultural and social contingency of how social issues are represented. Such approaches are also popular now for analyzing the shaping of issues and

⁷⁶ Smart 1989, p. 5.

⁷⁷ Otto 1999, p. 132.

⁷⁸ Charlesworth and Chinkin 2000, p. 210.

problems in the interaction within knowledge-power-language systems.⁷⁹ The attraction of these approaches lies in their unpacking of what has been normalized, the taken-for-granted truths of modernity. A critical approach to what has been perceived of as evident knowledge includes an awareness that the knowledge that we acquire about the world is determined by what our context, culture and language allow us to articulate and that the acquired knowledge does not exist in a social vacuum, but rather, is part of, contributes to and affects social processes.⁸⁰

Social constructivist and discursive theories and methods, which, in this thesis, are approached through the work of Bacchi, provide an analytical framework and a tool kit that enable the questioning of the seemingly shared goals between feminist and public equality agendas or, as is the case in this thesis, between feminist international human rights scholarship and the equality agendas of the UN human rights' framework. Bacchi's work and, especially, her so-called *What is the problem?* approach are significant as she focuses on the development, content and changing meanings within public equality discourses and as the approach has been developed to question the taken-for-granted truths and evident knowledge produced and reproduced within public equality discourses. Bacchi also emphasizes the interaction between academic scholarship, on the one hand, and public and policy-based equality discourses, on the other hand. While Bacchi's analysis focuses mostly on the shaping of public and policy discourses, her analytical framework is also applicable to legal frameworks. Bacchi is interested in how social issues or social problems evolve and take shape in public discourses and how issues are affected and given shape by public discourse. The term, discourse, is defined by Bacchi as "... the language, concepts and categories employed to frame an issue".⁸¹ According to Bacchi, public policies regarding, for example, women's human rights should not be approached as solutions to problems, but rather as one among many different problem representations. She proposes a shift in focus from viewing public policies as solutions to seeing them as implied in the construction of competing problem repre-

⁷⁹ For introductions to social constructionism, see, for example, Berger and Luckman 1966. For more recent accounts of social constructionism as a philosophical posture and the implications of social constructionism for contemporary social sciences, see, for example Bacchi 1999, Chapter 3, Glavå 2003, Hacking 2000, Haslanger 1995 and Wenneberg Barlebo 2001.

⁸⁰ Winther Jørgensen and Phillips 2000, pp. 11–2.

⁸¹ Bacchi 1999, p. 2. The notion of discourse, however, is defined very differently by different scholars. For discursive approaches, see Howarth, Norval, Stravarakakis, eds. 2000 and Wetherell, Taylor, Yates, eds. 2001.

sentations. In other words, the objects of study should not be problems, but *problematizations*. Or as Bacchi argues:

[i]t is impossible to talk about any social condition without putting an interpretation to it. Hence, all we as analysts have access to are, the interpretations. So, while I believe that there are a multitude of disturbing social conditions, once they are given the shape of an interpretation, once they are characterised as a ‘problem’ or as a ‘social problem’, they are no longer ‘real’. [...] This is what is meant by the sometimes misunderstood phrase that people do not ‘discover’ problems; they ‘create’ them. It is the particular shape, the problem representation, assigned to a ‘problem’ which is created.⁸²

Bacchi poses the question: what is the problem? which is shorthand for what is the problem represented to be? as a means to achieve the proposed refocusing. A What is the problem? approach should “... create a space to consider competing constructions of issues addressed in the policy process, and the ways in which these constructions leave other issues untouched”.⁸³ According to Bacchi, the approach offers a way to think beyond single issues, to question the separation between different issues and to analyze how the single issue approach and the separation shape policy areas and affect “... what is talked about as possible or desirable, or as impossible or undesirable”⁸⁴.

Social constructivist and discursive approaches emphasize the meaning of concepts and categories, used, for example, in equality policies and laws. Bacchi notes that concepts and categories are core elements in the construction and structuring of a discourse. In her earlier work, Bacchi focused on what she calls category politics, i.e., on “... the deployment of categories for political purposes”.⁸⁵ The term “deployment” is used for both “the imputing of meaning to concepts and analytical categories for political purposes; and the positioning of these categories for political effect”.⁸⁶ Bacchi relies on Alessandra Tanesini in her approach to concepts and categories, noting that “... to make a claim about the meaning of a certain word is to make a claim about how a word should be used, it is not to describe how the word is used”.⁸⁷ Bacchi suggests that the focus

⁸² Bacchi 1999, p. 9

⁸³ Bacchi 1999, p. 4.

⁸⁴ Bacchi 1999, p. 3.

⁸⁵ Bacchi 1996, p. 2.

⁸⁶ Bacchi (1996, p. 2) distinguishes between conceptual categories and identity categories: the first term refers to ideas, i.e., gender equality, private/public et cetera and the latter term refers to identities, i.e., woman, African-American, African-European, et cetera.

⁸⁷ Bacchi 1996, p. 2, references to Tanesini 1994.

should be shifted from the meaning of categories and concepts to how these meanings are construed, to the political contests over meaning.⁸⁸ We should "... become aware of the fact that concepts are not descriptive of anything, but that they are proposals for how we ought to proceed from here" as "[t]he purpose of concepts or categorise is to influence the evolution of ongoing practices".⁸⁹

The questions that Bacchi suggests that we ask our research material in order to manage the refocusing from viewing the policies and the key concepts used as self-evident to viewing them as one among many problems representations are: what is the problem represented to be? That is, what is perceived as the cause of the problem and what is the concern? What presuppositions are implied or taken for granted in the offered problem representation? What effects are connected to the offered problem representation? What is excluded from or viewed as unproblematic in the offered problem representation? How would the responses be different if what has been defined as the problem was represented differently?

I am as convinced as Bacchi that it is necessary to challenge the common presumption that "... achieving social problem status for one's cause is in itself a sign of success [and] a commitment to important change".⁹⁰ The What is the problem? approach should not be interpreted as a means to questioning whether or not social problems are *real*, in the sense of questioning whether, for example, so-called honour crimes exist and whether or not they are a problem. What the What is the problem? approach suggests, however, is that it is impossible to talk about honour crimes, for example, "... outside of their representations, and their representations hence become what is important – because of the shape they give to the problem, and because of what they imply about what should be done or should not be done".⁹¹ Honour crimes, in this respect, are an interesting example because, in Western contexts, they have been interpreted as a form of a crimes existing mainly in what is described of as fundamentalist, uncivilized and patriarchal cultures.⁹² In a Council of Europe report, a distinction is made, for example, between crimes of ho-

⁸⁸ Bacchi 1996, p. 2, references to Tanesini 1994.

⁸⁹ Bacchi 1996, p. 2, references to Tanesini 1994.

⁹⁰ Bacchi 1999, p. 7.

⁹¹ Bacchi 1999, p. 9.

⁹² The question of the so-called universalist and relativist approaches to rights was briefly addressed in Chapter 1.2.1. Questions relating to violence against women and so-called honour crimes will also be addressed in Chapter 5 in the overviews of the work of the Special Rapporteurs on violence against women and on extra-judicial, summary or arbitrary executions.

nor, which are based on culture and crimes of passion, which are based on individual circumstances:

‘[c]rimes of honour’ should not be confused with the concept of ‘crimes of passion’. Whereas the latter is normally committed by one partner (or husband and wife) in a relationship on the other as a spontaneous (emotional or passionate) response (often citing a defence of ‘sexual provocation’, the former may involve the abuse or murder of (usually) women by one of more close family members (including partners) in the name of individual or family honour.⁹³

The rapporteur notes that the use of the term “honor” should be treated with considerable skepticism “... as it is the perpetrator of a particular crime who is allowed to define the meaning of honour”.⁹⁴ The rapporteur also notes that “[c]rimes of honour’ are an ancient practice sanctioned by culture rather than religion, rooted in a complex code that allows a man to kill or abuse a family relative or partner for suspected or actual ‘immoral behaviour’”.⁹⁵ This approach, which attempts to uphold a distinction between, on the one hand, crimes committed towards women by non-Western and Western men and, on the other hand, between non-Western ancient, authentic and backward cultures and Western heterogenous, civilized and individualized cultures has been criticized. Feminist scholars have demonstrated the similarities between so-called domestic violence committed by husbands or male partners towards wives and female partners and so-called honor crimes committed by fathers and brothers towards daughters and sisters.⁹⁶

Bacchi’s What is the problem? approach and the questions relating to the taken-for-granted knowledges and the inclusions/exclusions reproduced by the taken-for-granted knowledges enable the unpacking not only of the human rights discourse, but also the expected positive results of

⁹³ *Crimes of Honour* 2002, para. 3.

⁹⁴ *Crimes of Honour* 2002, para. 4.

⁹⁵ *Crimes of Honour* 2002, para. 6.

⁹⁶ The distinction between crimes of honour and crimes of passion was highlighted by Lynn Welchman during her presentation at the workshop, *Women’s Human Rights in the 21st Century: Challenges and Opportunities* (IISJL, Oñati 2003). For discussions about honour crimes, see Abu-Odeh 1997. The cultural excuse implied in the distinction between crimes of honour and crimes of passion serves largely as an attempt to highlight a distinction between Other men and Western men. The perceived necessity to make this distinction became apparent in Sweden during the media discussion after the murder of Fadime Sahindal by her father in the name of honour. The former spokeswoman for the Swedish Leftist party, Gudrun Schyman, argued that there was no difference between the crime committed by Fadime’s father and the violence of Swedish men. Schyman’s claim was not well-received. Yvonne Hirdman argued that Schyman did not

feminist strategic positivist approaches to rights and of the feminist reconstructive human rights project. This enabling does not mean that a feminist engagement in human rights is not a worthwhile project nor does it mean that feminism will inevitably reproduce certain exclusions. Such enabling should, however, allow for an ongoing questioning of theory, method and content.

2.4 Summary and Conclusions

The purpose of this chapter has been to describe the theoretical and methodological concerns that I have needed to tackle in order to analyze the objectives outlined in Chapter One regarding the integrative strategies. In Chapter One, as well as in the Introduction to this chapter, I emphasized that I approach theory and method as interlinked. In Chapter 2.2.3, I explained the decision to rely on feminist international legal scholarship informed by gender studies scholarship. My decision is mediated by the aims of the thesis and necessitated by a need to limit the scholarship used. Feminist international legal studies provide an analytical framework for analyzing how sexual difference or the analytical category of sex have been implied in the history of human rights, and how they impact on the contemporary international human rights framework. Feminist scholarship also provides openings for self-reflection, and for questioning and, when necessary, for the over-throwing of the discipline's own discursive frames. In this thesis, feminist approaches to international law and human rights will be reviewed mostly in Chapter Three where I provide an overview of the history of human rights and in Chapter Five where I provide an overview of how the integrative strategies have been implemented within the UN human rights framework.

Feminist international legal studies enable us to analyze how sex and/or gender have been implied in the production of human rights and international law. The increased overlapping of analytical and methodological frameworks between feminist international legal scholarship and public equality discourses complicates my reliance only on feminist international legal scholarship in my analysis of the UN-based equality discourses. In Chapter 2.3.3, I introduced the social constructivist and discursive approaches, as means to move behind the feminist and public

acknowledge that through its long-standing work for equality, Sweden had elevated itself from the patriarchal structures, still, existing in traditional societies, and Swedish men made enraged replies to Schyman on the email debate lists of Swedish newspapers. For further discussion, see Kouvo 2004 (forthcoming).

equality discourses and as means to unpack the development, content and implementation of the integrative strategies. The social constructivist approach will be used mostly in Chapter Four where I analyze the content of the integrative strategies and in the concluding chapter.

There are a number of reasons why I am sympathetic to feminist scholarship and to Bacchi's project of shifting our focus from the evident to how what is perceived as evident is discursively construed. Among these reasons are three important ones, viz., the recognition that that knowledge is contingent and that knowledge-production is always, to some extent, political; that knowledge-producers need a considerable amount of humble and humbling self-reflection when producing knowledge. In order for these approaches to be fruitful, it is necessary to open the matter up for discussion and not "shy away from imposing an analysis upon issues".⁹⁷ While the contingency of knowledge and the idea of academic dialogue as an integral part of knowledge production are far from being new ideas, it is the rare academic scholars who is willing to expose hers or his partial vision and stuttering. I think that the incomplete or inchoate can be used as a strategy for getting a critical discussion going.⁹⁸ I also think that we should move away from the current *politics of consensus*. Only in the best of worlds does a lack of polemic mean engaged acceptance. Mostly, it just means disengagement and a lack of interest.⁹⁹

⁹⁷ Bacchi 1999, p. 12.

⁹⁸ Bacchi 1999, Svensson 1997 and Petersen 1999.

⁹⁹ Rosenberg 2002.

3 A Historical Overview: Human Rights, Women's Human Rights and Integration

In Chapters One and Two, I provided a general introduction to the objectives, as well as the principal theoretical and methodological approaches of this thesis. In this chapter, I will concentrate on the first objective of this thesis. In other words, I will outline a historical background for the dual strategies and, then, situate the integrative parts of these strategies into that background. I will begin by offering my understanding of how both the rights discourse of the Enlightenment period and the international human rights discourse of the 20th century have resulted in fostering sexual difference and other differences. Thereafter, I will analyze the gradual developments of the dual strategies and of the strategies for integrating women's human rights and mainstreaming a gender perspective within the UN world conference frameworks.

3.1 Introduction

The general history of European modernity is closely interwoven with the philosophical and political histories of human rights.¹ During the past few decades, however, efforts have been made to identify, infer and extract human rights-like concepts, ideas and political platforms (from) within the histories of other cultural, religious and geopolitical contexts. Nevertheless, the principal controversies of human rights remain understood, first and foremost, as ideas, which have emerged out of the events and processes of European history. Not being impervious to the effects of world political currents, the international human rights framework is

¹ For an analysis of modern European history and the history of ideas about human rights, see, for example Bobbio 1996, Douzinas 2000, Finnis 1980, Ishay, ed. 1997 and Strelwicz 2001.

indeed susceptible to change. This mutability or, perhaps, even responsiveness, has evidenced itself, over time, in a number of changes. I outlined these changes in Chapter One as exemplifications of the different equality strategies adopted within the UN human rights framework.²

The UN human rights framework, has developed on two parallel, albeit interlinked, tracks. On the one hand, since its establishment and since the adoption of the *Universal Declaration on Human Rights* (Universal Declaration), the UN has attempted to advance the codification of human rights. On the other hand, since the 1960s, the UN has organized world conferences on human rights and other social and economic issues of special interest for the global community.³ To a greater extent than has been the case for the formal law-making processes within the UN, these aforementioned world conferences serve as platforms for discussion between not only governmental, but also other agents, organizations and institutions.⁴

The 1990s world conferences, especially the world conferences on human rights and on women, have wielded a considerable influence on the development of the UN dual strategies for the promotion *and* integration of women's human rights *and* for the advancement of women *and* gender equality. The *Vienna Declaration and Programme of Action* (Vienna Programme), i.e., the official final document from the Second World Conference on Human Rights (Vienna 1993), emphasizes the need to strengthen the human rights of women in two principal ways, viz., by consolidating the specialized regime and by integrating the human rights of women. Another dual strategy developed, emerged out of the Fourth World Conference on Women (Beijing 1995). The *Beijing Declaration and Platform for Action* (Beijing Platform), i.e., the official final document from the Beijing conference, emphasizes in its twelve different critical

² For an introduction to the three equality strategies, see Chapter 1.3.2, for further analysis of the sex-neutral and woman-centred equality strategies, see Chapter 3.3. The integrative strategies will be unpacked in Chapter 3.4-5 and Chapter 4.5.

³ Examples of early UN world conferences are the World Conference on Human Rights (Teheran 1965), the World Conference on Human Environment (Stockholm 1972), the First World Conference on Women (Mexico 1975) and the Second World Conference on Women (Copenhagen 1980). A Third World Conference on Women was held in Nairobi 1985. Some examples of post-Cold War world conferences are the World Conference on Environment (Rio de Janeiro 1992), the Vienna conference (1993), the Cairo conference (1994), the Beijing conference (1995), the World Social Summit (Copenhagen 1995), Habitat II (Istanbul 1996) and the Durban conference (2001).

⁴ For a discussion, see Charlesworth 1996a, Chinkin 1996, Fraser 1987 and Otto 1996c. See also Chapter 3.5.

areas of concern the importance of targeted initiatives for women and of integrating a gender perspective.

In this third chapter, I will analyze the development of the human rights framework from Western localisms to an international law project. That is, I will trace some of the core developments in the history of human rights from the Enlightenment throughout the history of the UN in the 20th century. The focuses will be on the initial exclusion of women as rights holders and on the UN's attempts to fight the exclusion through the use of several, successive strategies, first, through a sex neutral equality strategy, thereafter, a woman-centred equality strategy and, finally, through integrative strategies.

3.2 A Brief History of Human Rights

3.2.1 From Men's Rights to Human Rights

The American and French Revolutions and the Declarations of Rights

The idea of human rights can be traced back to natural law history.⁵ The idea of human rights moves into the political sphere during the 18th century as part of the bourgeois uprisings against the hegemonic hold of the aristocracy and against feudalism. The revolutionary rights discourses both provoked and were provoked by the institution of slavery.⁶ The emergence of a human rights discourse and the triumph of the American and French Revolutions, in particular, have been used to symbolize the beginning of European modernity.⁷ The revolutionary documents – the American Declaration of Independence (1776), the American Bill of Rights (1791) and the French *Déclaration des droits de l'homme et le citoyen* (1789) – have guided the drafters of subsequent human rights documents.⁸

Under the old colonial system, the British settlements in America had largely been free to govern themselves. Towards the end of the 18th cen-

⁵ For further discussions, see Douzinas 2000, Finnis 1980 and Pateman 1988.

⁶ For a discussion about slavery and human rights in a historical perspective, see Harmer 2001, Strezelewicz 2001, Trotman 2002 and Vorenberg 2001. For a discussion about the UN and contemporary forms of slavery and human rights, see for example, www.unhchr.ch/html/menu6/2/fs14.htm (25-09-2003).

⁷ Douzinas 2000, p. 85.

⁸ Forerunners to the American and French Declarations were the British Magna Carta (1215), the Habeas Corpus Act (1679) and the Bill of Rights (1689). For an overview of historical human rights documents, see Ishay, ed. 1997.

ture, however, Britain attempted to tighten its grip on the colonies. The American War of Independence started in 1775. In June 1776, a committee headed by Thomas Jefferson was entrusted with the task of drafting the American Declaration of Independence. Besides American independence, the Declaration of Independence proclaimed that "... all men are created equal; that they are endowed by the Creator with certain unalienable rights; that among these are life, liberty and the pursuit of happiness".⁹ When the United States Constitution was drafted, the ideas of the Declaration were included in the Bill of Rights.

The French Revolution has been described by Albert Saboul as "... the most dazzling of the bourgeois revolutions".¹⁰ The alliance between the French bourgeoisie and the popular masses and the unwillingness of the aristocracy to make compromises led France on "... a truly revolutionary path from feudalism to capitalism".¹¹ The French Revolution and the fall of the *ancien régime* enabled the establishment of a modern state that responded primarily to the interests and requirements of the new bourgeoisie.¹² The changes on the social, economic and political scenes were vested in the French Declaration and in the other similarly transformative legal changes.¹³

As noted by Douzinas, there are many similarities between the American and French Declarations in that "[b]oth declarations proclaim their rights to be universal and inalienable. They both state that limitations and restrictions on the exercise of rights must be introduced by means of laws legislated by democratically elected bodies. Finally, they both present similar rights: religious freedom and freedom of expression, the security of person, due process of law and the presumption of innocence in criminal proceedings".¹⁴ However, while many of the ideas that were codified through the declarations traveled between the different countries, the American and French contexts are different and the declarations were supposed to function in radically different contexts. For the French, "... the Revolution was an act of supreme popular will, aimed at radically restructuring the relationship between society and state according to the principles of natural rights".¹⁵ That is, the French wanted to

⁹ The American Declaration of Independence 1776, Art. 2.

¹⁰ Saboul 1998 p. 32. See also Lucas 1998.

¹¹ Saboul 1998, p. 32.

¹² Saboul 1998, p. 33–4.

¹³ Scott (1996, p. 19) notes that when the Declaration was adopted some delegates "... cautioned against telling people about their rights before it had decided exactly what these were, how they were to be implemented, and for whom".

¹⁴ Douzinas 2000, p. 86.

¹⁵ Douzinas 2000, p. 89.

abolish a corrupted system and a corrupted government and supplant it with a new system and government well governed by the new Constitution. The Americans were not in such a hurry to establish the forms for a new, independent state. It was considered that some laws, much freedom and encouragement would lead "... inexorably to the establishment of human rights and the almost natural adjustment between moral demands and empirical realities".¹⁶

In both North America and France, the spirit of the revolutions faded away quite quickly, not in the least because it soon became evident how many people had been excluded from the protective sphere established by the rights of man. While, for different reasons, excluded from enjoying the rights and freedoms of free men, women, the working classes and slaves, could use the language of rights, asking why they were not among "the men", who had been created equal and who possessed inalienable rights.

The Rights of Man and the Question of Women's Rights

In the late 18th and 19th centuries, women's advocacy for women's right to the rights of man was initially a bourgeois women's movement, but it had much in common with and used the avenues that had been created by the Abolitionist movement.¹⁷ Some feminist scholars have argued that men's domination of women in contemporary Western societies is largely a result of the late 18th century paradigmatic shift resulting from the Enlightenment and the bourgeois revolution. These scholars have also argued that the birth of the first wave feminist movement coincides with the birth of women's oppression.¹⁸ Liisa Nieminen argues that the myth about a premodern golden age was created within the early 20th

¹⁶ Douzinas 2000, p. 89.

¹⁷ Women on both sides of the Atlantic were active in the abolitionist movement and were also able to use the language of slavery and the slave trade when arguing for women's rights. For a discussion about the feminist anti-slavery movement, see for example, Campbell 1989, Ferguson 1993, Newman 1999 and Offen 2000. For feminist analysis of contemporary forms of slavery, see, for example, Altink 1995, Chiang 1999, Chuang 1998 and Gallagher 2000b and Kouvo 2003.

¹⁸ Just as the American and French Revolutions have been extensively analyzed, the question of sexual difference during this period and the late 18th and 19th century feminist movements and rights advocacy have been targeted by feminist historians and social scientists. See, for example, Grimshaw, Holmes and Lake, eds. 2001, Lloyd 1993, Nieminen 1990, Offen 2000, Offen, Roach Pierson, Randell, eds. 1991, Pateman 1988, Scott 1996 and Stienestra 1994.

century feminist movements and that the 1970s feminist historians adopted this myth as fact.¹⁹ Nieminen notes that although the legal obstacles to women's civil and political agencies might have been less evident before the 19th century, in political terms women's civil and political positions were not necessarily undisputed.

While the image of the premodern era as a golden age for women is largely mythical, the situations of European women and American women changed during early modernity. Thomas Laqueur's analysis of the emergence of the gradual shift from a one-sex to a two-sex model is often used to describe the renegotiation of sexual difference in the shift from the premodern to a modern era. According to Laqueur, before the 18th century, the difference between women and men had been considered to be one of degree and not of kind.²⁰ Gradually, however, the dominant ideology changed: men and women were viewed as essentially different. Bodily differences were considered as spilling over into differences between masculine and feminine genders, into masculine and feminine spheres, their natural positions within social and cultural orders.²¹ Men's capacities included features such as rationality, intelligence and strength, undeniably requisite in public decision-making, women's capacities included features such as emotionality, sensitivity and submissiveness, apparently more suited for lives as committed wives and mothers.

Feminists have underscored that the creation and perpetuation of the creature known as the autonomous individual would have been impossible without the occurrence of two connected factors: the actual exclusion of women and without, further, the "exclusionariness" of the domain to which they were relegated, viz., the private sphere where women reigned as carers, wives and mothers. A prerequisite for the creation of the autonomous individual is the separation thesis, according to which, the "distinction between what it means to be you and me is central to the meaning of the phrase human being and that individuals are distinct and not essentially connected with one another" and, as feminists have pointed out this distinction is sexed.²² The separation thesis has been

¹⁹ Nieminen 1990, p. 316.

²⁰ In accordance with the premodern one-sex model, argues Laqueur, women's sexual organs were viewed as an inward bound penis. Further, although women's lack of an outward bound penis affected their lives, it was believed that women could become complete men. During the 18th century reproductive organs, argues Laqueur (1990, p. 149) "... went from being paradigmatic sites for displaying hierarchy, resonant throughout the cosmos, to being the foundation of incommensurable difference".

²¹ Laqueur 1990, Chapter 1.

²² Salecl 1994, p. 113, in part, citing West 1991 p. 201.

much criticized during the 1990s by feminist theorists, *inter alia*. For example, Robin West argues that "... perhaps the central insight of feminist theory of the last decade has been that women are essentially connected, not essentially separate, from the rest of human life, materially, through pregnancy, intercourse, and breastfeeding, and existentially, through the moral and practical life".²³

The distinction between the public and private spheres dates back to classical Greece and the idea of *res publica* as the space where democratic decisions were made by free men and which was separate from the *oikos*, a space both for economic matters and for women, children, slaves, et cetera.²⁴ The distinction between the public and private spheres was reproduced and reinforced during the great revolutions by virtue of an assertion that the bourgeois man was supposed to engage actively in state and community affairs, while the bourgeois woman was supposed to be as active, but her activities were relegated to the private sphere and to the making of new citizens.

The revolution saw not only the triumph of the new bourgeois class in economic and political matters, it also saw the triumph of what came to be known as 'bourgeois morality', a code that put particular stress on family life, male authority, female submission and chastity, and 'good appearances'.²⁵

Hence, the private/public distinction results in a distinction between the political and productive spheres and the reproductive sphere. Kevät Nousiainen and Anu Pylkkänen examined the results of the interaction of two developments in the early modern period, viz., the creation of the private sphere as signifying the domain of only the most intimate of

²³ West 1991, p. 202.

²⁴ Nousiainen and Pylkkänen 2001, p. 29–30. The thinking within Western modernity has been criticized for being construed around dualisms such as the man/woman, self/other and private/public distinctions. Feminist scholars, while using and relying on the sex/gender distinction, have criticized the public/private distinction for excluding women and women's spheres of life from public politics. Poststructurally inspired feminists have included the sex/gender distinction among the criticized distinctions that they have attempted to deconstruct, see Chapter 4.3.1. For a general feminist analysis of the private/public distinction, see, for example, Baker and van Doorne-Huiskes, eds. 1999 and Boyd, ed. 1997, for a feminist analysis of the private/public distinction with respect to human rights and international law, see Bock 1991, Buss 1997, Charlesworth 1992, Chinkin 1999, Olsen 1993, Otto 2000, Romany 1993 and Sullivan 1995 and. For post-structural criticism of dualist thinking, see Braidotti 1995, Butler 1990 and 1993, Haraway 1991, Moi 1997 and Spivak 1999.

²⁵ Pope 1987, p. 142, cited in Nieminen 1990, p. 355, see also Nieminen 1990 p. 305.

family members and the crystallizing of women's roles as carers, mothers and wives. According to Nousiainen and Pylkkänen, the coupling of these factors resulted in the intertwining of the notions of personal integrity and the right to a private, family life, an intertwining which, still, persists to this day.²⁶

The late 18th century women's advocates and proponents of the women's cause used different strategies to negotiate the boundaries established by the idea of incommensurable sexual difference and the public/private distinction. In the United States, Abigail Adams wrote a letter to her husband, John Adams, who, as President, was active in the drafting of the American Declaration of Independence. Before the signing of the Declaration took place, she lamented to her husband that:

I can not say that I think you very generous to the Ladies, for whilst you are proclaiming peace and good will to Men, Emancipating all Nations, you insist upon retaining an absolute power over Wives.²⁷

Adams' indignation with the lack of interest of her husband and the lack of interest of his peers vis-à-vis women's inequality might be seen as an early example of the feminist strategy to claim that the personal is political. As she noted in many of her letters, while her husband was advancing his political career and while she, as a political wife, was left in charge of the farm and other family enterprises, she was unable to enter into any contracts or sell any property without her husband's signature.²⁸

In France Olympe de Gouges drafted the *Déclaration de la femme et de la citoyenne* (1781), arguing for women's rights and using both basic principles from the French Declaration and the idea of sexual difference. According to de Gouges, women had the right to all the rights enjoyed by men, because they were human beings, but they also had special rights to rights, because they were women.²⁹ De Gouges argued that women had the same capacities as men, both in imagination and intelligence. But, she lamented, women were not taken seriously enough.³⁰ De Gouges also extended her equality discourse to the slaves in the French colonies. The

²⁶ Nousiainen and Pylkkänen 2001, p. 30–1. For a discussion about violence against women see for example Bunch and Reilly 1994, Coomaraswamy and Kois 1999, Copelon 1994, Eriksson 2000, Fitzpatrick 1994, Phillips 1999, Romany 1993 and 1994, and Roth 1994. See also Chapters 3.4.2, 4.6.3, 5.3.2 and 5.4.6.

²⁷ Abigail Adams 1776, cited in Hernández-Truyol 1999, p. 3. See also Fraser 1999, pp. 864–67.

²⁸ Fraser 1999, p. 865.

²⁹ Scott 1996, p. 20.

³⁰ Scott 1996, p. 31.

play, *Zamore et Mizrah ou l'Esclavage des Nègres*, written by de Gouges, emphasizes the shared humanity between blacks and whites.³¹ In the introductory text to her *Déclaration de la femme et de la citoyenne*, de Gouges asks whether men dare to be just, defying men's right to decide over women's rights.

Homme, es-tu capable d'être juste ? C'est une femme qui t'en fait la question; tu ne lui ôteras pas du moins ce droit. Dis-moi ? Qui t'a donné le souverain d'opprimer mon sexe ? Ta force ? Tes talents ? Observe le créateur dans sa sagesse; [...] Partout tu les [les animaux] trouveras confondus, partout ils coopèrent avec un ensemble harmonieux à ce chef-d'œuvre immortel. L'homme seul s'est fagoté un principe de cette exception. Bizarre, aveugle, boursoufflé de sciences et dégénéré, dans ce siècle lumières et de sagacité [...] il prétend jouir de la révolution, et réclamer ses droits à l'égalité, pour ne rien dire de plus.

In England, Mary Wollstonecraft argued that women's right to enjoy civil and political rights was self-evident, but that what was needed was a discussion about women's socio-economic rights.³² Wollstonecraft's *A Vindication of the Rights of Woman* (1792) was written as a reaction against the misogynistic rights and educational ideologies and policies of her time. It is a polemic against, in particular, Jean Jacques Rousseau's ideas in connection with the rights of women and how girls should be educated to become good women.³³ Wollstonecraft was inspired by the feminists and abolitionists of her time when writing *A Vindication*.³⁴ Wollstonecraft used a language of slavery both metaphorically, i.e., to refer to women as enslaved by men, viz., through passion, fashion, marriage, et cetera and with reference to the specific conditions of colonized slaves.³⁵ Moira Ferguson argues that Wollstonecraft "... re-emphasizes that the historical subjugation of women is linked to male desire for sexual as well as political and social power. In doing so she fuses the oppression of

³¹ Scott 1996, p. 30. The play was closed down after only a few performances by the authorities owing to pressure from slave holder organizations, fearing rebellion in the colonies.

³² Fraser 1999, p. 862–3.

³³ Ferguson 1993, p. 23. See also Kaplan 1986.

³⁴ Wollstonecraft was inspired by William Roscoe, who had offered the profits of his poem, *The Wrongs of Africa*, to the Abolition Committee formed in 1787. In 1789, she wrote a review of the self-biographical novel, *The Interesting Narrative of the Life of Olaudah Equiano, or Gustavus Vassa, the African. Written by Himself*, for the *Analytical Review*. Equino's self-biographical tale tells the story about how he had been kidnapped in Africa and subjugated into slavery. He was renamed "Gustavus Vassa", after a Swedish king. See Ferguson 1993, p. 13.

³⁵ Ferguson 1993, pp. 16–7.

white women and black female slaves as well as slaves in general”.³⁶ Ferguson concludes that “[b]y theorizing about women’s rights using old attributions of harem-based slavery in conjunction with denotations of colonial slavery, Wollstonecraft was a political pioneer, fundamentally altering the definition of rights and paving the way for a much wider cultural dialogue”.³⁷

Wollstonecraft took a different approach than the approach taken by de Gouges. For one thing, she did not highlight women’s capacities as women as de Gouges had done. Instead, Wollstonecraft recognized that women are ignorant, sentimental and vane, but, she asked, can one expect women, who have been educated with the foremost task to please men, to be anything else?³⁸ Hence, Wollstonecraft argued for women’s equality with men, not only in terms of political rights, but also in terms of social, economic and cultural rights, legitimizing her claim with public utility arguments.

To render women truly useful members of society, I argue that they should be led, by having their understandings cultivated on large scale, to acquire a rational affection for their country, founded on knowledge, because it is obvious that we are little interested about what we do not understand. [...] Let women share the rights and she will emulate the virtues of man ...³⁹

However, while feminists had been active and remained so in the Abolitionist movement on both sides of the Atlantic and while feminists found useful arguments both within the Rights of Man and the anti-slavery rhetoric, they did not necessarily focus on all women. Moreover, when feminists were criticized for claiming rights for delicate, emotional and sentimental womankind, the criticizers also focused largely on bourgeois women. Women subdued by slavery or women who worked for their living were not always recognized in the intellectual and political debates of the time. Sejourner Truth’s speech at a Women’s Convention in 1851 is often used as an example of early black feminist struggle. Truth was a former slave who questioned white men’s reasoning behind the exclusion of women from attaining citizenship and rights. The men’s arguments against women’s rights put forth at the Convention dealt with women’s fragility and lack of intellect. Truth asked “Ain’t I a woman?”,

³⁶ Ferguson 1993, p. 22.

³⁷ Ferguson 1993, p. 33.

³⁸ Through her focus on education and assertion that women would become as enlightened as men given the same education as men, Wollstonecraft shared her position with many of the post-1970s, so-called Second Wave feminists, addressed in Chapter 4.2.

³⁹ Wollstonecraft 1792, Chapter XIII, at www.bartleby.com/144/13.html (25-09-2003) and Wollstonecraft 1997.

noting that she had worked all her life and had given birth to thirteen children, most of whom had been sold off into slavery. And she continues:

Well, children, where there is so much racket there must be something out of kilter. I think that 'twixt the negroes of the South and the women at the North, all talking about rights, the white men will be in a fix pretty soon.

In the United States, the ratification of the Fourteenth and Fifteenth Amendments (1868–70) resulted in the legal recognition of the citizenship of black and immigrant men. White women could no longer claim shared political status with black men. The women who had supported the Republicans during the Civil War felt betrayed of their rights.⁴⁰ Cady Stanton, a figure at the forefront of the American women's movement, proclaimed "[t]hink of Patrick and Sambo and Hans and Yung Tung [...] who do not know the difference between a monarchy and a republic, who can not read the Declaration of Independence or Webster's spelling-book". She continued "[a]ll manhood will vote not because of intelligence, patriotism, property or white skin, but because it is male, not female".⁴¹ Stanton's statement is a reaction against the decades of Abolitionist and suffragist struggle where black men and white women were kept outside political rights based on similar arguments of a lack of capability. Suddenly, women lost their male partners in the struggle and the rationale for exclusion, very convincingly, became one of sex.⁴²

According to Karen Offen, the European feminists of the 18th and 19th centuries lobbied for three main objectives, viz., for women's full spiritual and intellectual development as individuals, a goal embedded in the language of rights; for the acknowledgement of women's values and reason, as opposed to masculine rationality; and, for a rethinking of women's societal importance as mothers and nurturers and as partners with in the project of civilization.⁴³ As has been noted by Joan Scott, the 18th century feminist project exemplifies the paradox of feminism.

Feminism was a protest against women's political exclusion; its goal was to eliminate 'sexual difference' in politics, but it had to make its claims on behalf of 'women' (who were discursively produced through 'sexual difference'). To the extent that it acted for 'women', feminism produced the 'sexual difference' that it sought to eliminate.⁴⁴

⁴⁰ Newman 1999, p. 4.

⁴¹ Newman 1999, p. 5, references to Stanton's Address to the National Woman Suffrage Convention.

⁴² Newman 1999, p. 6.

⁴³ Offen 2000, p. 33. See also Anderson 2000 and Offen 2001.

⁴⁴ Scott 1996, p. 4.

The paradox only deepened as a result of how the early, largely bourgeois feminists chose to relate to and make use of the institution of slavery and abolitionist arguments. The paradox, which is embedded in the idea of sexual difference and other differences, is reproduced in contemporary feminist and public equality strategies.

3.2.2 Internationalization of Human Rights

International Debates on Human Rights prior to the Second World War

It was only towards the end of the 19th century and especially after the Second World War that human rights issues became the subject of international agreements and international public law. The issues of slavery and the slave trade, including the issue of so-called white slavery, i.e., otherwise known in contemporary discourse as trafficking in women for sexual purposes, are among the earliest human rights issues on the international agenda. Nevertheless, before the First World War, very few agreements that today would be defined as human rights documents were, internationally agreed upon.

The proposal for the creation of a League of Nations was accepted after the First World War at the Paris Peace Conference in January 1919.⁴⁵ The foremost goal of the League was to promote international cooperation and to achieve peace and security. Human rights were not included in the League's mandate, but the League did undertake some actions for the promotion of human rights-related issues.⁴⁶

Since the late 19th century, women had organized themselves internationally. Their status grew during the First World War. Women in

⁴⁵ The United States President Woodrow Wilson included in his list of the conditions for peace after the First World War an item demanding that “[a] general association of nations should be formed on the basis of covenants designed to create mutual guarantees of the political independence and territorial integrity of States”. The League had 42 members when it entered into force in 1920. All in all, 63 governments joined the League, although the highest number of members at any one time never exceeded the 1934 high of 58 members, see at www.library.miami.edu/gov/intro (25-09-2003).

⁴⁶ For example, the League did continue the late 19th century work against slavery and adopted the Convention to Suppress Slave Trade and Slavery (1926). Further, it set up a working group on women's issues and initiated a study concerning women's political rights. The International Labour Organization, however, because its mandate concerned socio-economic issues, focused, in particular, on the rights of workers and their family members to a greater extent than the League focused on human rights. Hence, while civil and political rights were first to gain constitutional protection, socioeconomic rights, at least, in the specific context of workers' rights, were the first to enjoy international protection. Moreover, while the League did not address women's issues to any extent, the

many countries had to take over sectors traditionally designated as male after the men had been sent to fight in the war. An International Congress of Women, an international women's conference, had been organized in The Hague in 1915 and a follow-up congress was organized in Paris during the Paris Peace Conference (1919).⁴⁷ Delegates from the Women's Congress were allowed to make presentations at the Peace Conference and women managed to ensure that the Covenant of the League made some references to women and equality.⁴⁸

The League, as well as the International Labour Organization, remained rather powerless organizations during the inter-war period because their Member States were unwilling to surrender any of their sovereignty to the organization. Arendt described the inter-war period as a period when “[h]atred, certainly not lacking in the pre-war world, began to [in the inter-war period] play a central role in public affairs everywhere, so that the political scene in the deceptively quiet years of the twenties assumed the sordid and weird atmosphere of a Strindbergian family quarrel”.⁴⁹

Nothing perhaps illustrates the general disintegration of political life better than this vague, pervasive hatred of everybody end everything, without a focus for its passionate attention, with nobody to make responsible for the state of affairs – neither the government nor the bourgeoisie nor an outside power. It consequently turned in all directions, haphazardly and unpredictably ...⁵⁰

Some early 20th century feminists also questioned the relevance of international human rights, addressing certain issues related to human rights within a legal framework. For example, Emma Goldman reacted against the concern of the public and the League over the anathema of trafficking in women, arguing that “[t]he papers are full of these ‘unheard-of-conditions’ [of trafficked women], and lawmakers are already planning a new set of laws to check the horror”.⁵¹ She wondered how politicians and legislators could deny the existence of a problem for so long and then believe that it could be solved with simple measures.

International Labour Organization has always included women's rights and non-discrimination issues within its mandate. See at www.ilo.org/public/english/about/history.htm, www.ilo.org/public/english/about/mandate.htm (25-09-2003).

⁴⁷ Stienestra 1994, pp. 51–9.

⁴⁸ For further, discussion see Stienestra 1994, pp. 56–58, references to Shotwell 1934 and Whittick 1979.

⁴⁹ Arendt 1967, p. 268.

⁵⁰ Arendt 1967, p. 268.

⁵¹ Goldman 1969.

International Human Rights in the Post-Second World War Period

The contemporary history of the international human rights project might be seen as having started with President Franklin Roosevelt's State of the Union address in 1941, in which he stated that the aim of the war was to achieve a global world order based on four fundamental freedoms: the freedom of speech and expression, the freedom of worship, the freedom from want and the freedom from fear. In 1944, representatives from China, the United Kingdom, the United States and Soviet Union met at the Dumberton Oaks Conference to establish an initial framework for the UN. In February 1945, Churchill, Roosevelt and Stalin met at the Yalta Conference and conferred about the potential new world order and the establishment of the UN was agreed upon.⁵² At the San Francisco conference held in April 1945, the UN Charter was signed by 51 nations. Women had been absent from the Dumberton Oaks and Yalta or Crimea conferences that had preceded the San Francisco conference. Women delegates, however, were included in a number of the country delegations present at the San Francisco Conference.⁵³ The UN Charter included only sporadic references to human rights. At the closing session of the San Francisco Conference, however, President Harry Truman proclaimed that the UN Charter would make it possible to frame an international bill of rights which would be acceptable to all nations involved and which would become as much part of international life as the United States Bill of Rights had become a part of the United States Constitution.⁵⁴

The Preamble to the UN Charter states that the peoples of the UN "... reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small".⁵⁵ The wording of the preambular text was

⁵² Stienestra 1994, p. 77. See also at http://history.acusd.edu/cdr2/BYRD/COFEREN/YALTA_CO:TXT (20-06-2003). See also Hilderbrand 1990 and Lake 1996 and 2001.

⁵³ Stienestra 1994, pp. 77–8.

⁵⁴ Morsink 1999, pp. 3–4 and Cassese 1996, pp. 25–6.

⁵⁵ The UN Charter includes only sporadic references to human rights: Art. 1 states that the purpose of the UN is to promote and encourage respect for human rights and fundamental freedoms, Art. 13 gives the General Assembly the mandate to initiate studies for assisting the realization of human rights and fundamental freedoms, Art. 55 emphasizes that the UN should promote human rights and Art. 68 gives the ECOSOC the mandate to establish commissions in the field of human rights. Women's rights and sex equality issues entered onto the San Francisco agenda besides through the wording of the preambular text, also through the application of rights and freedoms without distinction to sex, women's and men's equal access to positions within the UN and discussions on the establishment of a UN commission on the status of women. According to Art. 8, the UN

introduced by Field Marshal Smuts of South Africa. Smuts wanted the preamble that would be "... a statement of ideals and aspirations which would rally world opinion in support of the Charter".⁵⁶ Anecdotally, he is said to have perceived of the ideal of equality between women and men as one that would really rally the world.⁵⁷ Hence, both human rights and equality between women and men were emerging issues on the mid-20th century international political scene.

In January 1946, after the end of the Second World War the first session of the UN General Assembly was held in London.⁵⁸ The UN Charter's emphases on human rights and on the equal rights between women and men were celebrated at the session. During the first session Eleanor Roosevelt presented to the General Assembly, on behalf of the female delegates to the UN, an *Open Letter to the World's Women*. According to the letter:

[t]he United Nations marks the second attempt of the peoples of the world to live peacefully in a democratic world community. This new chance for peace was won through the joint efforts of men and women working together for common ideals of human freedom at a time when the need for united efforts broke down barriers of race, creed and sex.⁵⁹

However, the letter also noted that women did not participate on equal terms with men in national and international politics and it was recognized that:

[w]omen in various parts of the world are at different stages of participation in the life of their community, that some of them are prevented by law

shall place no restrictions on the eligibility of women and men to participate in UN activities. The Latin American countries took credit for the adoption of Art. 8. Bertha Lutz of Brazil noted in her comment to the article that it is "... a Latin American contribution to the constitution of the world". She explained the visionary thinking of both herself and of the other women delegates by noting that the fact that they had been able to "... play a part in drafting of the Charter is a consequence of the fact that they are full-fledged citizens in their own land", see Stienestra 1994, p. 78. See also Fraser 1999, p. 886, Pietilä and Vickers 1990 and Stienestra 1994.

⁵⁶ Stienestra 1994, p. 78.

⁵⁷ Stienestra 1994, pp. 78–80.

⁵⁸ On July 16, in the New Mexico desert, the United States detonated the first atomic bomb, named *Fat Man* and called *the gadget* or *the thing*. The successful detonation was the green light for the bombing of Hiroshima with the atomic bomb, *Little Boy*, considered slightly less powerful than *Big Boy*. In the bombing of Nagasaki, the atomic bomb, *Big Boy*, was again used. See seattletimes.nwsourc.com/trinity/articles/part1.html. (25-09-2003). On August 14, Japan announced its surrender and the Second World War ended. On December 31, Time Magazine proclaimed President Truman its *Man of the Year*. See history.acusd.edu/gen/20th/truman45.html (25-09-2003).

⁵⁹ UN doc. A/Pv.29 (1946).

from assuming full rights of citizenship, and that they therefore may see their immediate problems somewhat differently.⁶⁰

Agreeing to the foregoing text, the drafters of the letter advise the women of the UN:

[f]irst, to recognize the progress women have made during the war and to participate actively in their own countries and in the pressing work of reconstruction, so that there will be qualified women ready to accept responsibility when new opportunities arise; second, to train their children, boys and girls alike, to understand world problems and the need for international cooperation, as well as the problems of their own countries; third, not to permit themselves to be misled by anti-democratic movements now or in the future; fourth, to recognize that the goal of full participation in the life and responsibilities of their countries and of the world community is a common objective toward which the women of the world should assist one another.⁶¹

While many of the statements following Roosevelt's presentation articulated a strong belief in the good will of the UN and in the capacities of women, not all in attendance were convinced about the sincerity of the political commitment to equality between women and men. Mrs. Verveij of the Netherlands, sardonically expressed her gratitude to the General Assembly's male members, who had so warmly supported the women's quest within the UN. She noted that perhaps there was no opposing voices because no one in the General Assembly expected that "... a recommendation like this [for women's equality] would result in a future Assembly with as many women as there are men".⁶² In other words, supporting the formalized version of women's equality with men is less effort than ensuring equality between women and men in practice.

⁶⁰ UN doc. A/PV.29 (1946).

⁶¹ UN doc. A/PV.29 (1946).

⁶² *The UN and the Advancement of Women 1945-1995*, 1995, doc. 2, p. 105.

3.3 The UN Human Rights Framework and the Sex-Neutral and Women-Centred Equality Strategies

3.3.1 The UN Human Rights Framework and the Sex-Neutral Equality Strategy

The International Bill of Rights and the Sex-Neutral Equality Strategy

The Universal Declaration is the first major human rights document drafted by the Commission on Human Rights and adopted by the General Assembly.⁶³ According to Johannes Morsink, the General Assembly Plenary, at which the Universal Declaration was adopted, was taken up by “... self-congratulatory speeches about what the delegates felt they had done”. Morsink argues that the pride of the drafters and the delegates over a job well done made them tempted to “... move from the inclusive process to the claim that the product therefore had worldwide applicability”.⁶⁴ At the beginning of the Third Committee’s proceedings, leading up to the plenary, Renée Cassin of France, for example, expressed his hopes that the Universal Declaration was to be the expression of the rights of all peoples of the world and not only of the 58 nations then constituting the UN.⁶⁵ The intentions and aspirations of the drafters and the General Assembly to promote the Universal Declaration as an inclusive and sex-neutral, instrument is well exemplified with the use of words, such as, all human beings,⁶⁶ all,⁶⁷ everyone⁶⁸ and no one⁶⁹ in the Universal

⁶³ For discussions about the Universal Declaration, see, for example, Eide 1998, Marks 1998 and Morsink 1999. For feminist analysis of the Universal Declaration, see, for example, Charlesworth 1998. For information about the Universal Declaration’s 50th anniversary, see www.unhchr.ch/html/50th/50anniv.htm and www.udhr50.org/ (25-09-2003). The Universal Declaration has been translated into most of the languages of the UN Member States, see www.unhchr.ch/udhr/navigate/alpha.htm (25-09-2003).

⁶⁴ Morsink, 1999, p. 11. Compare with Douzinas 2000. Morsink (1999, p. 41) identifies four forces at work in the drafting and adoption of the Declaration: the Holocaust, the Cold War, the women’s lobby and the tradition of Latin American socialism. See also Humphrey 1984.

⁶⁵ Morsink, 1999, p. 11.

⁶⁶ The Universal Declaration, Art 1.

⁶⁷ The Universal Declaration, Arts. 7 and 16.

⁶⁸ The Universal Declaration, Arts. 2, 3, 6, 8, 10, 11, 13, 14, 15, 17, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28 and 29.

⁶⁹ The Universal Declaration, Arts. 4, 5, 9, 11, 12, 18 and 20.

Declaration. The Universal Declaration does not include any sex-specific non-discrimination or equal rights clause, but reaffirms in the preamble the faith in equal rights of men and women.⁷⁰ A general non-discrimination clause is introduced in Art. 2. The clause includes sex among the forbidden grounds for discrimination and the clause established a form reproduced in later non-discrimination clauses.

The inclusiveness and sex neutrality of the Universal Declaration and of the whole international human rights project were already questioned at the time of the adoption of the Universal Declaration.⁷¹ Some, like Arendt, questioned the usefulness of the human rights framework, others, like the American Anthropological Association questioned the cultural inclusiveness of the Universal Declaration and women's advocates, such as, the Chair of the Commission on the Status of Women, Bodil Bergtrup of Denmark, questioned the sex neutrality of the Universal Declaration. Arendt had reacted against how the use of human rights language had become an alternative to action in post-Second World War Europe. Arendt notes that "[n]o paradox of contemporary politics is filled with a more poignant irony than the discrepancy between the efforts of the well-meaning idealists who stubbornly insist on regarding as 'inalienable' those human rights, which are enjoyed only by citizens of the prosperous and civilized countries, and the situation of the rightless themselves".⁷² She further argued that "[t]he very phrase 'human rights' became for all concerned – victims, persecutors, and onlookers alike – the evidence of hopeless idealism and fumbling feeble-minded hypocrisy".⁷³ The American Anthropological Association reacted against the adoption of the Universal Declaration because it imposed the Western worldview on the rest of the world and it opposed a tolerance of difference. The drafters of the American Anthropological Association's statement noted that:

[t]he problem of drawing up a Declaration of Human Rights was relatively simple in the eighteenth century, because it was not a matter of *human* rights, but of the rights of men within the framework of the sanctions laid

⁷⁰ References to women are also included in the Universal Declaration, Art. 16, which states that men and women of full age have the right to marry and to found a family and in Art. 25 when in conjunction with economic and social rights promoting the right to security in the event of for example widowhood, and when endowing motherhood and childhood with the right to special care and assistance.

⁷¹ See Chapter 1.2.1.

⁷² Arendt 1967, p. 279.

⁷³ Arendt 1967, p. 269.

by a single society [...] Today the problem is complicated by the fact that the Declaration must be of worldwide applicability.⁷⁴

Supported by the Soviet delegation, Bergtrup pointed out that the statement that all *men* are equal used in an early draft of Universal Declaration Art. 1 might be misleading and might invite usages that discriminated against women.⁷⁵ The version of Universal Declaration Art. 1 that was adopted states that “[a]ll human beings are born free and equal in dignity and rights”, but it still demands that human beings should “... act towards one another in a spirit of brotherhood”.⁷⁶ Besides its emphasis on brotherhood, the Universal Declaration also uses male pronouns in several articles, see for example Arts. 10, 12, 13, 17, 18, 21 and 25.

The Universal Declaration, however, was only supposed to lay the groundwork for an international human rights treaty that would protect on the one hand, civil and political rights and on the other hand, economic, social and cultural rights. The Commission on Human Rights devoted its fifth to tenth sessions (1949–54) to the drafting of the human rights covenants.⁷⁷ The drafting process, however, was held up by the emergence of the Cold War for the reason that the area of human rights became one of the battlegrounds of the Cold War.⁷⁸ After a recommendation by the General Assembly, the Commission on Human Rights decided to draft two covenants instead of one, separating civil and political

⁷⁴ Cited in Steiner and Alston 1996, p. 200, for a reinterpretation of the American Anthropological Association’s statement in light of the Association’s 1999 Declaration on Anthropology and Human Rights, see Engle 2001 and Higgins 1996.

⁷⁵ Fraser 1999, p. 888.

⁷⁶ Morsink 1999, p. 37.

⁷⁷ Hernández-Truyol 1999, p. 20.

⁷⁸ Craven (1995, p. 9) noted that the use of rights as one of the Cold War battlegrounds resulted in an excessively monolithic perception of the history of human rights and it contributed to the hierarchical approach to rights. The Western states, argued Hernández-Truyol (1999, p. 20) maintained that “... social, economic and cultural rights were aspirational goals rather than rights, as the attainment thereof was dependent upon economic resources and economic theory and ideology”. The Cold War and the split between so-called blue and red rights were two of the main reasons for the lengthy process. There were other issues, however, which contributed to the delay. Some of the other issues which hampered the process included, for example, the extent to which States Parties should be held accountable to an international body; the desirability of both a reporting system as well as individual or interstate complaints procedures; the extent to which the Covenants provisions could be applicable to non-parties; the roles of General Assembly, the ECOSOC and the Commission on Human Rights; and the appropriate division of competences in technical and formal jurisdictional terms between the UN and its specialized agencies, did also hamper the process. See, also Alston 1996b, p. 476 and Opsahl 1996, pp. 372–3.

rights from economic, social and cultural rights.⁷⁹ In accordance with the General Assembly recommendation, the two Covenants, however, were to overlap as much as possible and they were to be presented to General Assembly at the same time.⁸⁰ When the two Covenants were adopted in 1966, they only overlapped in connection with certain references in the Preamble texts, the provisions on non-discrimination, self-determination and sovereignty over natural resources.⁸¹

While the *International Covenant on Civil and Political Rights* (ICCPR) and the *International Covenant on Economic, Social and Cultural Rights* (ICESCR), from a rights perspective, are less inclusive than the Universal Declaration, the Covenants aspire towards the same inclusiveness as concerns rights holders. The Covenants include references to equality in the Preambles and they include general non-discrimination clauses.⁸² In addition, the ICCPR and the ICESCR each include in their Arts. 3 a specific clause, according to which the States Parties of the Covenants "... undertake to ensure the equal rights of men and women to the enjoyment of all civil and political rights set forth in the Covenant".⁸³ The attempts to use a sex-neutral language in the Covenants in order to make them inclusive fail, because both the ICCPR and the ICESCR use male pronouns quite extensively.⁸⁴ Feminists have reacted against both

⁷⁹ Hernández-Truyol 1999, p. 20.

⁸⁰ Hernández-Truyol 1999, p. 21.

⁸¹ Hernández-Truyol 1999, p. 21. The ICCPR and the ICESCR are opened for ratification on the 16th of December 1966, see General Assembly Resolution 2200 A (xxi). The ICCPR entered into force on 23 March 1976 and the ICESCR entered into force 3 January 1976.

⁸² See, for example ICCPR Arts. 2, 4, 24 and 26, and ICESCR Arts. 2.

⁸³ Women and men are also mentioned specifically in ICCPR Art. 23(2), regarding "... the right of women and men of marriageable age to marry and found a family ...". Art. 23(3) underlines that "... no marriage shall be entered into without the free and full consent of the intending spouses". Art. 6(5) is the only article that includes a specific regulation regarding certain women. It forbids death sentences to be imposed on pregnant women and minors. ICCPR Art. 6(5), however, was probably construed more for the protection of the unborn child than the pregnant women. Women are mentioned specifically in a number of articles of the ICESCR: ICESCR Art. 7 on the right to work includes a general non-discrimination principle regarding fair wages and equal remuneration and states, in particular, that women should be guaranteed conditions of work not inferior to those conditions of men, with equal pay for equal work. ICESCR Art. 10 on the right to family includes three statements worth noting, viz., that marriage must be entered into with the free consent of the intending spouses, that mothers should be protected both before and after childbirth and that working mothers should be accorded paid leave with adequate social security benefits.

⁸⁴ The ICCPR uses male pronouns, for example, in Arts. 9, 12, 13, 14, 17, 18 and 24. The ICESCR uses male pronouns to a lesser extent than do the Universal Declaration

the male bias of the rights of the International Bill of Rights, but also against the use of a male-centered language.⁸⁵ Busby argues, for example, that “[a]ccording to the masculinist theory of marking, male pronouns can be marked or unmarked. The context is supposed to determine whether the referent is a male gender specific noun (marked) or a noun that includes man and women (unmarked)”.⁸⁶ Such a use of generic male pronouns “... perpetuates and conceals male domination at all levels of conceptualization and language”.⁸⁷

When the Universal Declaration was drafted, the sex-neutral equality strategy was innovative and even radical because women in many UN Member States, still, lacked basic civil and political rights. The sex-neutral equality strategy, not in the least because it has become the dominant equality strategy, provides a necessary baseline for equality and non-discrimination work.⁸⁸ The strategy can be used as a means to block legislation, which *de jure* supports inequality or which discriminates against certain groups. However, as the sex-neutral equality strategy became common practice, it also became evident that it did not suffice as a strategy for promoting substantial equality between the sexes. With respect to women, the sex-neutral equality strategy is an attempt to include women as opposed to excluding them actively. In other words, no one seems to have asked whether the rights’ framework, in any other way, would need to adapt when women were included as rights holders. With respect to women, three main shortcomings of the sex-neutral equality strategy have been emphasized, viz., its equating of equality with non-discrimination, its excessive focus on discrimination categories and its insufficiency for addressing the structural reasons for and the consequences of the exclusion of women and others.⁸⁹ The group-specific

and the ICCPR. Nonetheless, a male pronoun is, still, used, for example, Arts. 6, 7, 8 and 11.

⁸⁵ For a discussion about language, see Busby 1989, Hevener and Lindquist 1995 and Nousiainen 1993.

⁸⁶ Busby 1989, p. 196.

⁸⁷ Busby 1989, p. 196.

⁸⁸ The sex-neutral equality strategy was also discussed in Chapter 1.3.2. Note also Smart’s criticism of the rights’ discourse beyond “equal rights”, see Smart 1989 and Chapter 2.3.1.

⁸⁹ The changes and regional differences may be exemplified through the non-discrimination clauses included in the regional human rights treaties. The African Charter on Human and Peoples’ Rights (1981) Art. 2 forbids discrimination on the basis of “... race, ethnic group, colour, sex, language, religion, political or any other opinion, national or social origin, fortune, birth, or other status”. The Cairo Declaration on Human Rights in Islam (1990) Art. 1(a) states that “[a]ll men are equal in terms of basic human dignity and basic obligations and responsibilities, without any discrimination on the

human rights instruments addressed below and the woman-centered human rights instruments addressed in Chapter 3.3.2 have been promoted as a means to overcome the aforementioned shortcomings.

Specialized Human Rights Treaties and the Sex-Neutral Equality Strategy

Since its establishment, the UN has adopted a large number of specialized human rights treaties, addressing either group- or issue-specific human rights topics.⁹⁰ The specialized human rights treaties, whether addressing the rights of a specific group or specific rights' issues, are adopted to put a special emphasis on the importance of within the general human rights regime marginalized groups or issues. I will focus, here, on the *Convention on the Elimination of Racial Discrimination* (CERD) and the *Convention on the Rights of the Child* (CRC). The aim is not to provide a substantial overview of the conventions, but to show how the two different conventions have approached and incorporated the principle of equality and equal rights between the sexes.

During its first decades the UN was dominated by Western states. Some decades later, during the 1960s, the Socialist Bloc and the newly independent African, Asian and Latin American states consolidated their position. This consolidation of position of these varied member states contributed to the reopening of the debate regarding the International Bill of Rights and the adoption, for example, of the Declaration on the

grounds of race, colour, language, sex, religious belief, political affiliation, social status of other consideration". The Arab Charter on Human Rights (1994) forbids in Art. 2, after a list equivalent with the Universal Declaration list, "... discrimination between women and men". The recently adopted Charter of Fundamental Rights of the European Union (2000) forbids "... discrimination based on any ground such as sex, race, colour, ethnic or social origin, *genetic features*, language, religion or belief, political or other opinion, membership of a national minority, property, birth, *disability*, *age* or *sexual orientation* [emphasis added]". The inclusion of new non-discrimination categories, such as genetic features, disability, age and sexual orientation exemplify the historical contingency of discrimination, but also the persistence of certain non-discrimination categories such as sex, race and birth. The Charter of Fundamental Rights is the latest entry into the family of regional human rights documents. It is not legally binding and the extent to which its equality and non-discrimination clauses might become binding on the European Union or on its Member States is well circumscribed, thus, perhaps, a reason for the extensive equality and non-discrimination clauses. For further information see europa.eu.int/comm/justice_home/unit/charte/index_en.html (25-09-2003).

⁹⁰ The OHCHR web provides an overview of UN human rights treaties, and the by the UN addressed group- and issue-specific issues, see at www.unhchr.ch (14-01-2004).

Granting of Independence to Colonial Countries and Peoples (1960) and, of course, CERD (1965). When the CERD entered into force in 1969, nineteen of its Member States were from Third World countries, five from Eastern Europe and only three from Western Europe.

The focus of the CERD is on different forms of racial discrimination. Art. 1(1) of the CERD contains a definition of racial discrimination that has become a guiding one for subsequent non-discrimination clauses, such as, the clause in CEDAW. According to the definition, racial discrimination shall mean:

... any distinction, exclusion, restriction of preference based on race, color, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.

The CERD prohibits discrimination with respect to both civil and political rights and economic, social and cultural rights. The Universal Declaration addressed both types of rights, but as noted above, the Cold War hampered attempts to draft *one* international treaty addressing both types of rights. The CERD does however, as later both the CEDAW and the CRC do, address both *generations* of rights.

The focus of the CERD is, however, as was noted, primarily on discrimination related to race, color, descent et cetera, and the CERD includes only a brief reference to sex. The preamble of CERD includes references to the UN Charter and the UN's devotion to the promotion and encouragement of "... universal respect for and observance of human rights and fundamental freedoms for all, without distinction as to race, sex, language or religion". However, while the first part of the preamble includes sex in the list of non-discrimination grounds, the second part of the preamble stresses only that "... all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set out therein, without distinction of any kind, in particular as to race, colour or national origin".

While CERD was not successful in addressing sex among other grounds of discrimination, CERD's definition of discrimination has guided the drafters of CEDAW. CERD's definition has also been referred to by the Human Rights Committee in a general comment.⁹¹ The CERD Committee has responded, however, as shall be shown in Chapter Five, to the post-Beijing emphasis on the importance of mainstreaming a gender

⁹¹ See the Human Rights Committee's General Comment No. 8 (1989). See also Chapter 5.5.3.

perspective through the adoption of General Recommendation No. 25 on the gender-dimension of racial discrimination (2000), which has come to alter the Convention's focus slightly.⁹²

In between the adoptions of the CERD in 1965 and the CRC in 1989, the UN's approach to women and equality between the sexes had changed considerably. Some of these changes will become evident when addressing the UN world conferences for human rights and women, but they can also be exemplified by how the CRC addresses girl-children and boy-children and equality between the sexes. The CRC may be described as the most successful of the UN human rights treaties partly because of its overwhelmingly swift and next to global ratification.⁹³

The CRC Art. 2 includes a general non-discrimination clause according to which every child has the rights to the rights set forth in the Convention "... irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status".⁹⁴ The CRC has omitted any equal rights article equivalent to Arts. 3 in the ICCPR and the ICESCR and it does not distinguish between violations that are specific as to boy- or girl-children. The CRC, however, does refer to both boy-children and girl-children throughout its text. For references to both boy-children and girl-children see, for example, CRC Arts. 2(1), 3(2), 7, 8, 10, 12 and 16. Two Optional Protocols to the CRC have recently been adopted. The protocols deal with the sale of children, child prostitution and child pornography (2000) and with the involvement of children in armed conflict (2000). A slight shift in the language used can be detected between the CRC and the optional protocols. The latter while including some specific references to violations suffered by girl-children and while using, for example, the term gender discrimination,

⁹² See Chapter 5.4.2.

⁹³ The CRC was adopted in November 1989 and it came into force in September 1990. By December 1999, it had been ratified by 191 states. Only Somalia and the United States have failed to ratify the Convention. The CRC was adopted at the end of the Cold War, at a time when the UN, its member states and an ever-growing number of international non-governmental organizations increasingly were focusing on human rights. While media coverage of issues, such as, street children, child workers, child soldiers and child prostitution and pornography has been topical, the coverage and the political debates around these issues have led to an increasing awareness about the situation of children around the world.

⁹⁴ CRC Art. 2(1). In accordance with CRC Art. 2(2), States Parties shall take all appropriate measures to ensure that children are protected from all forms of discrimination or punishment related to activities of their parents, legal guardians or family members.

do not consequently refer to boy-children and girl-children or use sex-specific pronouns.⁹⁵ The protocols rely largely on a sex-neutral language.

As shall be shown in Chapter Five, the CRC Committee has been one of the treaty bodies that to the greatest extent have focused on the human rights of the girl-child. It has also occasionally included a boy-child perspective. However, as I will suggest, it is a best example on decline.⁹⁶

While brief, the above overview of the CERD and the CRC shows that the UN approach has changed in between the 1960s and the 1980s. The group-specific approach or so-called targeted interventions for a specific group, while necessary as a short-term strategy for advancing structurally disadvantaged groups, can also contribute to furthering the marginalization and stigmatization of that specific group. The UN has, moreover, in its group-specific approaches tended to focus on one so-called group or issue at the time. The exceptions are the subgroup and multi-dimensional discrimination approaches evolved during recent years.

A Brief Note on Multi-Dimensional Discrimination

Since the 1980s, there has been a growing trend within the UN, not only to identify broad categories of vulnerable or structurally disadvantaged groups, such as children, indigenous peoples or women, but also, to identify sub-groups within these groups, that are even more likely to be vulnerable or disadvantaged.⁹⁷ An extreme example of the strategy of identifying sub-groups within an identified category is noted by the Special Rapporteur on education, who refers to the CRC Committee, which has come to identify thirty-two sub-groups of children as being particularly likely to be excluded from education.⁹⁸ Identifying sub-groups of

⁹⁵ See for example the preamble of the Optional Protocol on the sale of children, child prostitution and child pornography.

⁹⁶ See Chapter 5.4.7.

⁹⁷ For discussions regarding minority women, see, for example, Jansson, ed. 1998 and Spiliopoulou Åkermark 1996 and 1999, for a discussion regarding indigenous women see, for example, Bell 1992.

⁹⁸ The Special Rapporteur's list includes, in alphabetical order, "... abandoned children; asylum-seeking children; beggars; child labourers; child mothers; child prostitutes; children born out of wedlock; delinquent children; disabled children; displaced children; domestic servants; drug-using children; girls; HIV-infected children; homeless children; imprisoned children; indigenous children; married children; mentally ill children; migrant children; minority children; nomadic children; orphans; pregnant girls; refugee children; *sans-papiers* children (children without identity papers); sexually exploited children; stateless children; street children; trafficked children; war-affected children; and working children", UN doc. E/CN.4/2003/9, para. 25.

children, indigenous peoples, minorities or women as particularly disadvantaged or likely to be discriminated against can be a necessary strategy to ensure, for example, that when implementing the right to education, UN Member States do not omit implementing it with regard to girl-children or immigrant children, as is often the case. The focus on a specific group, however, can also lead to a focus on that group as a problem, rather than on the underlying reasons for the discrimination or the marginalization. Thus, while identifying a sub-group or a specific category of people as especially vulnerable to discrimination might be a necessary strategy to counteract exclusion, it does not necessarily lead to a focus on the underlying reasons for discrimination or to inclusion. The focus on groups and categories can also contribute to disempowering a group.⁹⁹ For example, by identifying a group as “minority women” or by ascribing to the group certain characteristics and capabilities, or a lack thereof, agencies which are hoping to be helpful might actually undermine the possibilities of the group, so identified, to define itself and to find its own solutions. The fact that the strategy of identifying different groups as particularly vulnerable can have counter-effects was also noted by the Special Rapporteur, who suggested that “[b]ecause most of these [groups] combine several grounds of discrimination with poverty-related exclusion from education, the Special Rapporteur recommends merging the conventional focus on legislative measures for elimination of discrimination with measures aimed at over-coming poverty-based exclusion”.¹⁰⁰

An alternative to identifying sub-groups is the strategy for identifying multi-dimensional discrimination. The strategy for identifying multi-dimensional discrimination was introduced to the UN around the time of the *Third World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance* (Durban conference).¹⁰¹ An expert group meeting, for example, was organized by the Division for the Advancement of Women, OHCHR and *UN Development Fund for Women* (UNIFEM) before the Durban conference in order to address the issues of gender *and* racial discrimination. In the summary of the discussion, it was noted:

[d]iscrimination emanating from categorical distinctions on the basis of sex and race have historically intersected in multiple and diverse ways, and

⁹⁹ For discussions about the consequences of category politics, see, for example, Douglas and Hull, ed. 1992, Folkelius and Noll 1998, Hacking 1995 and Macklin 1995.

¹⁰⁰ UN doc. E/CN.4/2003/9, para. 25.

¹⁰¹ For discussions about multi-dimensional discrimination with respect to human rights, see, for example, Crenshaw 2000, Makkonen 2002, Romany 2000 and Spiliopoulou Åkermark 1999.

have taken specific forms during particular historical conjunctures, such as in the context of slavery and colonialism. The dominant structures of power often relied on violence to sustain their patriarchal and racial boundaries.¹⁰²

The report also noted that while sexist and racist politics are no longer legitimized by law contemporary states establish their "... gender and racial regimes through the 'unmarked' discourse of citizenship which is defined along the principle of individual rights".¹⁰³ In contemporary states, the gender regime, however, is "firmly ingrained in the patriarchal household" and the racial regime through "immigration and naturalisation laws".¹⁰⁴ The report also noted that processes of globalization have made exclusion and discriminatory identity politics more prominent. The Durban conference came to address the gender dimension of racial discrimination in its preamble, reaffirming that "... States have the duty to protect and promote the human rights and fundamental freedoms of all victims, and that they should apply a gender perspective, recognising the multiple forms of discrimination that women can face ...".¹⁰⁵ In the aftermath of the Durban conference, during its 45th session (2001), the Commission on the Status of Women discussed *Gender and All Forms of Discrimination*, adopting agreed conclusions as to the intersection between gender and racial discrimination, in particular. In the summary of the panel discussion the Commission on the Status of Women emphasized

... the need to develop analytical tools to expose the intersection of gender and race discrimination and other forms of discrimination, and to develop gender-sensitive policies and programmes to protect and promote the human rights of all women.¹⁰⁶

As was noted above, the CERD Committee has adopted General Recommendation No. 25 (2000) on the gender dimension of racial discrimination.¹⁰⁷

¹⁰² *Gender and Racial Discrimination*, Report of the Expert Group Meeting, November 2000.

¹⁰³ *Gender and Racial Discrimination*, Report of the Expert Group Meeting, November 2000.

¹⁰⁴ *Gender and Racial Discrimination*, Report of the Expert Group Meeting, November 2000.

¹⁰⁵ Durban declaration, preamble.

¹⁰⁶ See UN doc. E/2001/27 – E/CN.6/2001/14, Annex II, para. 16.

¹⁰⁷ For further discussions see, Chapter 5.4.2.

3.3.2 The UN *Women's Human Rights Framework* or the *Woman-centred Equality Strategies*

Since questions regarding women's inequality were forced onto the UN agenda at the San Francisco Conference and framed in human rights language, the UN has grappled with the question of whether to address women's inequality as part of the core human rights agenda or, instead, through a specialized women's human rights agenda.¹⁰⁸ Women are currently rights holders under *all* human rights treaties, viz., the ICCPR, the ICESCR, et cetera, the group-specific and issue-specific treaties, viz., the CERD, the CAT and the CRC et cetera and under the specialized *women's* human rights treaties, viz., the CEDAW, et cetera. In practice, however, women and the violations of women's human rights are not, equally recognized under all human rights treaties.

The tension between promoting women's *rights* through general, *human* human rights instruments or through targeted, *women's* human rights instruments had already been addressed by the 18th century feminists. As Scott has noted, this tension was described by de Gouges as the paradox of feminism.¹⁰⁹ Laura Reanda calls this tension the familiar dilemma.

The historical development [...] reflects a familiar dilemma in efforts to achieve equality for women. The creation of separate institutional mechanisms and the adoption of specialised measures for women are often necessary in order to rectify existing situations of discrimination. The danger of creating a 'women's ghetto' endowed with less power and resources, attracting less interest and commending lower priority than other [...] goals is latent in this approach.¹¹⁰

Besides battling over whether to address women's human rights in general human rights instruments or whether to focus on promoting women's human rights through woman-centred human rights instruments, the UN has also grappled with what kinds of women's human rights instruments to use. As I perceive it, over the last half a century, the UN has adopted three types of woman-centred human rights instruments. These three types are as follows: first, women's human rights instruments adopted during the early years of the UN that only aim at bringing attention to women, but that do not change the content or scope of the human rights framework; secondly, women's human rights instruments

¹⁰⁸ For a discussion see for example Byrnes 2000a, Pentikäinen 1999 and Reanda 1996.

¹⁰⁹ Scott 1996, p. 4, see also Chapter 3.2.1.

¹¹⁰ Reanda 1996, p. 267. See also Coliver 1989 and Gallagher 1997. The paradox or dilemma has also been addressed by Engle 1992a, see Chapter 2.3.2.

adopted around the time of the UN decade for women (1976–85) that began the transformative trend of substantially adapting the UN human rights framework to the inclusion of women as rights holders; and, thirdly, the integrative approach adopted during the 1990s that attempts not only to transform how human rights are conceptualized at the woman margins of the UN human rights framework, but that aim at bringing a new understanding of women’s human rights to the core of the human rights system. It is noteworthy that while the different phases in how women’s human rights are addressed develop towards approaches that increasingly acknowledge specificities of (some) women’s lives, might also have obscured a focus on, for example, development-related and poverty-related discrimination.

The *early woman-centred human rights instruments*, such as, the UN Convention on the Political Rights of Women were mainly reaffirmations that the rights contained in the Universal Declaration were also women’s rights.¹¹¹ That is, the early woman-centred human rights instruments omitted any mention of rights substantially different from those rights included in the *human* human rights documents. If these instruments did include rights substantially different from those rights found in the Universal Declaration, then, as Otto has noted, such rights

¹¹¹ The Commission on the Status of Women had not originally been given a standard-setting mandate, but it was inspired by the Inter-American Commission on Human Rights that had adopted an Inter-American Convention on the Granting of Political Rights to Women (1948) to draft an International Convention on the Political Rights of Women. The Convention on the Political Rights of Women was opened for signature by General Assembly Resolution 640 (VII) of 20 December 1952. The Convention entered into force 7 July 1954 in accordance with Art. VI. The Convention on the Political Rights of Women is basically a non-discrimination convention, i.e., no additional or even reinterpretations of the Universal Declaration rights are presented through the Convention, it only emphasizes the importance of the promotion and protection of women’s political rights on equal terms with men. Hence, the 1952 Women’s Convention targets women’s right to vote, be elected and hold public office “... on equal terms with men, without any discrimination” (Arts. I-III). The aim of the convention was to promote legislative changes in Member States, so as to eradicate any direct discrimination in Member States’ constitutions and laws. Note that, in the late 1940s, the Inter-American Commission on Human Rights had already adopted a number of conventions focused on women’s rights, see www.oas.org/CIM/english/Conventions.htm (26-09-2003). The Commission on the Status of Women also drafted a resolution on the elimination of customs, ancient laws and practices affecting the human dignity of women (1954) and the adoption of the Convention on the Nationality of Married Women (1957). For an overview of early UN and the Commission on the Status of Women activities in the field of women’s human rights, see *The United Nations and the Advancement of Women 1945–1995* 1995 and Reanda 1996.

were protective in their approach to women.¹¹² As Otto noted, the problem with this type of woman-centred human rights instruments is that their dominant conception of equality is based on a “... comparative standard that entitles women to rights, opportunities, and benefits that similarly situated men enjoy. Understood in this way, gender equality forecloses the possibility of contesting the baseline of men’s experience which constitutes the *status quo*, and glosses over the inequalities among men that it reproduces among women. Therefore, the concept of equality ultimately legitimates and endorses existing arrangements of power by advocating for women’s participation in them”.¹¹³

The *Declaration on the Elimination of Discrimination against Women* (DEDAW), adopted by the General Assembly in 1967 initiates a slight shift in the UN’s approach to women’s human rights.¹¹⁴ DEDAW can be defined as the second type of women’s human rights instruments, because it is not only an attempt to emphasize that human rights are *really* also women’s rights, but it also acknowledges that to ensure women rights’ protection, the rights’ framework might need to be adapted. While DEDAW does not include any particular *new* rights, it does take a holistic approach toward discrimination against women and violations of women’s human rights. In Art. 1 DEDAW states that “[d]iscrimination against women, denying or limiting as it does their equality or rights with men, is fundamentally unjust and constitutes an offence against human dignity”. In the following articles, DEDAW addresses issues such as harmful traditional practices, basic political rights, basic civil rights, women’s position within the family, trafficking, et cetera, thereby creating a framework of different human rights and issues, which are considered of particular importance when opposing discrimination. DEDAW began the trend of changing the conception of human rights by including and new interpretations of rights into the human rights framework under the banner of women’s human rights. CEDAW, adopted in 1979, on the basis of DEDAW, continues this trend.

¹¹² Otto (1999 p. 118) argued that the dominant approach in the Cold War’s women’s human rights conventions was protective, referring to the Convention Concerning Maternity Protection (1952), the Convention Concerning Night Work of Women Employed in the Industry (1948), the Convention Concerning Discrimination in Respect of Employment and Opportunity (1958) and the Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others (1950) and the Convention on the Consent to Marriage, Minimum Age for Marriage, and Registration of Marriages (1962).

¹¹³ Otto 1999, pp. 118–9.

¹¹⁴ Rehof 1993, pp. 6–7. See also General Assembly Res. 2263(XXII), 1967.

In 1974, eight years after presenting the draft DEDAW to the General Assembly, the Commission on the Status of Women decided that a legally binding treaty was needed. The Secretary-General was requested to invite comments from governments, specialized agencies and non-governmental organizations on a text prepared by the Commission on the Status of Women working group for the Convention. In 1976, the Commission on the Status of Women considered the draft CEDAW, this work continued in 1977, the same year in which the Draft CEDAW was submitted by the ECOSOC to the Third Committee of the General Assembly.¹¹⁵ During the General Assembly Plenary at which CEDAW was adopted, Mrs. Loranger of Canada noted that the draft CEDAW is a "... result of years of efforts on the part of many people representing many cultures and civilizations, [and it] marks an important stage in the process of recognising the full equality of women and men".¹¹⁶ However, while many like Loranger emphasized the importance of the draft CEDAW, many also, including Loranger, commented on the inconclusiveness of the draft CEDAW and that many of its articles were open to much interpretation.¹¹⁷

Although it is one of the most ratified of UN human rights treaties, CEDAW is also subject to a large number of reservations. Some of these reservations conflict with the purpose of the convention.¹¹⁸ The question of reservations was addressed by the Mr. Edis of the United Kingdom at the General Assembly session when CEDAW was adopted. According to Edis, the Third Committee had hastened through important questions during the committee proceedings, leaving lacunae and unresolved issues, which could only "increase the number of reservations which States will feel compelled to enter".¹¹⁹ Reservations to international treaties are justified under international law if they are not incompatible with the

¹¹⁵ CEDAW was formally opened for signing at the Second World Conference on Women held in Copenhagen in 1980. Over fifty states signed and two states submitted instruments of ratification to CEDAW during the Conference. Today, 170 states have signed and ratified CEDAW, which makes CEDAW the second most ratified human rights convention after CRC, which has been ratified by 191 states. The ICESCR has been ratified by 145 states, the ICCPR by 148 states, CERD by 162 states and CAT by 130 states. See *The Status of Ratification of the Principal International Human Rights Treaties as of 21 August 2002*, www.unhcr.ch/pdf/report.pdf (26-09-2003).

¹¹⁶ UN doc. A/34/PV.107 (1979), p. 1993.

¹¹⁷ See, for example, the British, Canadian, Moroccan, Dominican Republic statements in, UN doc. A/34/PV.107 (1979). A large number of states abstained from voting.

¹¹⁸ Charlesworth and Chinkin 2000, pp. 102–13, Lijnzaad 1995, Tomaševski 1998a–b and White and Blakesley 2000.

¹¹⁹ UN doc. A/34/PV.107 (1979), p. 1992.

object or purpose of the international treaty. This point was also noted in CEDAW Art. 28 (2). Many reservations to CEDAW, however, seem to be contrary to the object and purpose of the Convention, which has also been noted by the CEDAW Committee. Nevertheless, general reservations have been allowed, as well as reservations regarding core provisions such as Art. 2 on State Parties obligation to condemn and eliminate discrimination against women, and Art. 16 on State Parties obligation to condemn and eliminate discrimination against women in marriage and family relations.¹²⁰

When CEDAW was drafted, some countries, including Sweden, argued that CEDAW should not focus on women, but rather on the eradication of discrimination based on sex.¹²¹ The discussion emanated from the definition of discrimination against women included in CEDAW's Art. 1, which had borrowed its wording from CERD's definition of racial discrimination. CEDAW's Article one reads:

[f]or the purpose of the present Convention, the term "discrimination against women" shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect of purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on the basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

Canada's and Sweden's proposals for a sex-neutral definition of non-discrimination that would have been equally applicable to men and to women, however was rejected.¹²² CEDAW was not supposed to be equally applicable to women and to men, but its aim was specifically to highlight discrimination against women with respect to different human

¹²⁰ General reservations, for example, concern the incompatibility of CEDAW with Sharia law, Arts. 2 and 16 reservations concern the obligation to eliminate all forms of discrimination against women. General reservations with reference to Sharia law has been submitted by Bangladesh, Egypt, Iraq, Kuwait, Libya, Malaysia, Maldives and Morocco. Other general reservations, for example, concern the relationship between CEDAW and domestic law and have been submitted by Lesotho, Mexico, Tunisia and Singapore. Arts. 2 and 16 reservations have been submitted by Bangladesh, Cook Islands, Bahamas, Egypt, France, India, Iraq, Ireland, Israel, Jordan, Korea, Kuwait, Lesotho, Libya, Luxembourg, Malaysia, Malta, Mauritius, Maldives, Morocco, Singapore, Thailand, Tunisia, Turkey and United Kingdom. There is also a backlog in state reporting. There are currently 290 overdue reports under CEDAW, which makes CEDAW the Convention with the second largest reporting backlog after CERD with 458 overdue reports. CAT has 150 overdue reports, CRC 181, ICCPR 159 and ICESCR 194. See Tomaševski 1998b.

¹²¹ Rehof 1993, p. 46.

¹²² UN doc. A/32/218/Add.1 (1977), p. 2, para. 6 through Rehof 1993, p. 46, footnote 92.

rights. CEDAW recognizes that women's disadvantage is rooted in systematic and structural discrimination, often supported by social and cultural patterns and customary and other practices.¹²³ CEDAW also thrusts the rights' framework into the private sphere and creates new opportunities for new kinds of analysis regarding women's human rights and violations. Further, as is noted in *The UN and the Advancement of Women*, "[w]hat made the Convention unique is its requirement that Governments work to eliminate discrimination against women not only in the public sphere but in private life as well".¹²⁴ CEDAW provides a very useful framework that can be used both as a political and legal tool.¹²⁵ The reasons for the usefulness of CEDAW's framework as a tool, both politically and legally, is essentially two-fold: first, CEDAW recognizes that discrimination on the ground of sex is embedded in social and cultural patterns and, secondly, it acknowledges that these patterns are not only present in the public sphere, but that discrimination on the grounds of sex is just as much a private matter. The substantial articles of CEDAW deal with both civil and political and economic, social and cultural rights, including some specific issues, such as harmful traditional practices, prostitution and trafficking in women and the situation of rural women.

As has been noted by, for example, Rebecca Cook, CEDAW provides a shift from a sex-neutral norm that requires, "... equal treatment of men and women, usually measured by how men are treated" towards a normative framework that recognizes that "... the particular nature of discrimination against women merits a legal response".¹²⁶ That is, CEDAW

... progresses beyond earlier human rights conventions by addressing the pervasive and systematic discrimination against women, and identifies the need to confront the social causes of women's inequality by addressing 'all forms' of discrimination that women suffer.¹²⁷

The adoption of CEDAW implied a shift from addressing women's inequalities within the *human* human rights framework to addressing

¹²³ See CEDAW Art. 5 demands that States Parties adopt appropriate measures to "... modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for women and men". See also Rehof 1993, pp. 77–81 for the drafting history of the article.

¹²⁴ *The United Nations and the Advancement of Women 1945–1995* 1995, p. 42.

¹²⁵ See for example CEDAW art. 5b.

¹²⁶ Cook 1994, p. 11.

¹²⁷ Cook 1994, p. 11.

them principally from within a *women's* human rights framework.¹²⁸ While woman-centred institutions have contributed to the development of knowledge concerning different women's concerns, experiences, needs and priorities, the woman specific human rights instruments and institutions have also contributed to a de-individualization of women, a "marginalization" and a "ghettotization" of women's human rights within the overall women's human rights system.¹²⁹ CEDAW and the CEDAW Committee have been marginalized within the overall human rights framework for two reasons, in particular. The first reason for its marginalization stems from the nature of the subject matters dealt with and their connection to other women's equality matters. The second reason for its marginalization stems from the location of the CEDAW Committee in New York, administered by the Division on the Advancement of Women.¹³⁰ While the DEDAW and CEDAW did mark the beginning of a re-interpretive woman-centred equality strategy within the UN human rights framework, they also contributed to separating women as rights holders and women's human rights from the core of human rights.

The third type of women's human rights instruments and the third equality strategies are part of the post-Cold War renaissance for human rights. The ideological lacunae, which resulted from the Cold War have been filled up with human rights discourse. With respect to women's human rights the 1990s resulted in an increased openness towards women's claims. These claims insisted, for example, that different types of violence against women could and should be addressed within the human rights framework, and that women's human rights should not only be addressed at the margins in a "women's ghetto", but as part of the core of human rights. These issues will be further addressed below.¹³¹

¹²⁸ Otto (1999, p. 120–1) noted that while CEDAW promotes "... women's equality with men and obligates state parties to implement measures that will counter 'discrimination against women', it does not recognize or protect rights that are specific to women's gendered experience of corporeality [...] [and it also] carries a raft of provisions which privilege the homemaker as the primary female subject of international law".

¹²⁹ Gallagher 1997, O'Hare 1997 and Roth 2002.

¹³⁰ See Chapter 5.5

¹³¹ The development of the integrative strategies will be addressed in Chapter 3.4–3.5 and their content in Chapter 5.

3.4 The World Conferences on Human Rights and Integration of Women's Human Rights

3.4.1 From Teheran to Vienna

The first world conference on human rights was organized in Teheran in 1968, a few years after the adoption of CERD, ICCPR and ICESCR. At the Teheran Conference, human rights remained a battleground between East and West, North and South. Roger Clark called the Teheran conference output something of a “damp squid” vis-à-vis issues such as, for example, implementation, which was an issue high on the agenda of human rights advocates after the adoptions of CERD, ICCPR and ICESCR.¹³² The output on issues regarding the human rights of women is similar; the Proclamation includes a general non-discrimination clause and an article stating that discrimination against women must be eliminated, but the emerging focus on women's human rights within the UN system, for example, with the adoption of the DEDAW is not highlighted.¹³³

The Second World Conference on Human Rights in Vienna in 1993 was organized, as it seems, in a completely different world political climate. The Vienna conference was organized as an attempt to celebrate that human rights were no longer a battleground between East and West.¹³⁴ That human rights were moving into a new era was highlighted

¹³² Clark 1999, p. 312

¹³³ The Proclamation of Teheran, the Final Act of the International Conference on Human Rights, states in Art. 1 that “[i]t is imperative that the members of the international community fulfil their solemn obligations to promote and encourage respect for human rights and fundamental freedoms for all without distinction of any kind such as race, colour, sex, language, religion, political or other opinions”. A resolution, however, was passed during the Teheran conference recommending guidelines for a long-term UN program for the advancement of women. See Rehof 1993, p. 7

¹³⁴ The decision to convene a world conference on human rights was made by the General Assembly in 1990, see the UN doc. A/Res/45/155 (1990), UN doc. A/Res/46/116 (1991) and UN doc. A/Res/47/122 (1992). Some of the key issues to be addressed included the review and assessment of the progress made in the field of human rights since the adoption of the Universal Declaration; examine the relationship between the development and the enjoyment of economic, social and cultural rights; examine ways to improve the implementation of existing human rights standards and instruments; evaluate the effectiveness of the UN methods and mechanisms in the field of human rights; formulate concrete recommendations for improving the effectiveness of UN activities in the field of human rights; and make concrete recommendations for ensuring the necessary financial and other resources for the UN's activities in the field of human rights. The key issues are analyzed in UN doc. A/Conf.157/PC/60/Add.2-7 (1993). The choice of key issues clearly shows that at the advent of the Vienna conference, the UN had been preoccupied with issues regarding the implementation of human rights.

in the Secretary-General's speech at the opening of the Vienna conference. The Secretary-General lauded the remarkable historical intuition of the General Assembly, when, two months after the fall of Berlin Wall, it asked its Member States whether a world conference on human rights would be desirable. The fall of the Berlin Wall was described as "... carrying away with it a certain vision of the world, and thereby opening up new perspectives".¹³⁵ The Secretary-General continued that:

[i]t was in the name of freedom, democracy and human rights that entire peoples were speaking out. Their determination, their abnegation – sometimes their sacrifices – reflected then, and still reflect, their commitment to do away with alienation and totalitarianism.¹³⁶

As are many of the final documents emanating from UN world conferences, the Vienna Programme is lengthy and non-committal.¹³⁷ Nevertheless, the Vienna Programme is unique in the sense that it is the first general human rights document agreed upon after the end of the Cold War. In certain respects, the Vienna Programme did also advance the position of human rights and did alter the traditional understanding of human rights.¹³⁸ The draft outcome document for the Vienna Conference was prepared by the UN Secretariat in part based on the results of the regional meetings.¹³⁹ The drafting process, however, was hampered by a number of issues, not the least of which was the indecisiveness over the positioning of human rights within the hierarchy of the UN system. Other issues, which impeded progress, included determining the methods of supervising the implementation of human rights, determining

¹³⁵ UN doc. A/Conf.157/22 (1993).

¹³⁶ UN doc. A/Conf.157/22 (1993).

¹³⁷ The Vienna Programme is endorsed through A/Res/48/121 (1993). Through its Resolution Art. 11, the General Assembly also decided to include in its agenda item, *Human Rights Questions*, a sub-item entitled, *Comprehensive Implementation of and follow-up to the Vienna Declaration and Programme for Action*. Under this sub-item, the General Assembly has adopted resolutions, such as UN doc. A/Res/51/118, and UN doc. A/Res/53/166.

¹³⁸ See Vienna Programme, Part A, C, E and F.

¹³⁹ Regional preparatory meetings for the Vienna conference had been organised in Tunis in Africa, in San Jose in Latin American and in Bangkok in Asia. Western countries did not hold a regional preparatory meeting in order to avoid regional polarization, but an informal meeting was however held in Strasbourg, and the European Communities did adopt a position paper regarding the Vienna conference. For the final documents from the regional meetings see UN doc. A/Conf.157/PC/57, UN doc. A/Conf.157/PC/58 (1993) and UN doc. A/Conf.157/PC/59 (1993). See also Davidse 1995, Marks 1994 and UN doc. A/Conf.157/PC/87. For an overview of the UN preparation process see the introduction to the Report of the World Conference on Human Rights, UN doc. A/Conf.157/24 (Part I). The draft Vienna Programme was allegedly the most heavily bracketed document in United Nations history, see UN doc. E/CN.4/1998/104.

the universality of human rights standards and developing the *right* human rights agenda.¹⁴⁰ The difficulties suggested that, while human rights were no longer a Cold War battleground, they remained controversial on the North-South trajectory and, increasingly so, especially between the West and Asia.¹⁴¹ The nature of the difficulties leads one to wonder, as Koen Davidse notes, just how universal the support for hu-

¹⁴⁰ Davidse 1995. Regarding the provisional agenda for the Vienna conference, see UN doc. A/Conf.157/1. Setting the agenda for an international conference, such as, the Vienna conference, is important because the adopted agenda largely decides what issues will be dealt with during the conference and how these items will be prioritized. The importance of the agenda is well exemplified by the large number of recommendations by non-governmental organizations and others. See for example: The Statement by the International Council of Jewish Women, UN doc. A/Conf.157/PC/46/Add.5, and the Statement by the International Fellowship of Reconciliation, UN doc. A/Conf.157/PC/46/Add.9, which drew attention to the question of anti-Semitism. The Statement by Pathways to Peace and the Coalition for Children of the Earth, UN doc. A/Conf.157/PC/46/Add.6, which proposed a focus on children's rights. The Statement by the International Federation of the Aging and the American Association of Retired Persons, UN doc. A/Conf.157/PC/46/Add.7, which proposed a focus on older persons everywhere. The Statement by the World Federation of United Nations Association, UN doc. A/Conf.157/PC/46/Add.8, which proposed a focus on science, technology and human rights. For information on the draft Vienna Programme see UN doc. A/Conf.157/2. See also UN doc. A/Conf.157/3/Add.2 and Add.3. According to the Report of the Conference, the Vienna Conference was attended by representatives of 171 states, 2 national liberation movements, 15 UN bodies, 10 UN specialized agencies, 18 international governmental organizations, 24 national institutions and 6 ombudsmen, 11 UN human rights and related bodies, 9 other organizations, 248 non-governmental organizations with consultative status with the ECOSOC and 593 other non-governmental organizations. See UN doc. A/Conf.157/24 (Part I), Chapter 1, for a complete list of the attendees of the conference, see Annex II to the report.

¹⁴¹ Davidse 1995, p. 2. The UN preparatory committee meetings were marked by a regional polarization, partly enhanced by the regional groups defined by the UN (Africa, Asia, Latin America, Eastern Europe, Western Europe and other groups). The Western and Asian groups were most at odds with each other. Davidse (1995) notes that the ideological dividing line is also present in the Bangkok Resolution which stressed that human rights should not be used as a condition in development aid or for any other type of political pressure and that international human rights should respect national sovereignty. See also UN Doc. A/Conf.157/PC/59. The West-Asia split is also noted in the declaration presented by Asian human rights non-governmental organizations, UN doc. A/Conf.157/PC/63/Add.5, which request the Vienna Conference use all of its power against the Northern transnational corporations exploitation of the poor in Asia and the Northern non-governmental organizations to "... l'utiliser l'espace démocratique qu'offrent leurs sociétés pour mieux sensibiliser le public à la manière dont le contrôle et la domination que le Nord exerce sur le système internationale répriment et limitent les droits fondamentaux des populations d'Asie". Iraq submitted a report on the right to development, UN doc. A/Conf.157/PC/63/Add.2, which noted that while the Declaration on the Right to Development had been adopted in 1986, the right seems to have been lost during the post-Cold War period because most of the Third World seems to have been forgotten due to political developments.

man rights really are, and they opened up opposition to the conference and suspicions about hidden agendas.¹⁴²

Problems aside, the aspects that have been perceived as radical in the Vienna Programme include the following three aspects, in particular: the holistic perspective taken on human rights, the acceptance that the universality of human rights can be contested and the strong focus on group-based human rights claims and on ending the marginalization of different groups with respect to human rights.¹⁴³ Part I, Art. 5 of the Vienna Programme states:

[a]ll human rights are universal, indivisible and interdependent and inter-related. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be born in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms.

The paragraph highlights, as is appropriate in the post-Cold War era that civil and political rights and economic, social and cultural rights and the International Bill of Rights and the other human rights treaties are universal and indivisible. However, the Vienna Programme uses an approach to universality as if, in quotes, i.e., human rights are “universal”, in the sense that everyone should have the right to human rights – but, human rights are also historical constructs and they should be allowed to change so as to correspond to everyone’s perception of human rights.¹⁴⁴ The Secretary-General attempts to capture the complexities of the post-Cold War human rights debate by emphasizing that human rights, on the one hand, are a historical synthesis and, therefore, in constant movement. On the other hand, human rights are an absolute yardstick constituting the common language of humanity.¹⁴⁵

To be sure, human rights are a product of history. As such, they should be in accordance with history, should evolve simultaneously with history and should give the various peoples and nations a reflection of themselves that they recognize as their own. Yet, the fact that human rights keep pace with the course of history should not change what constitutes their very essence, namely their universality.¹⁴⁶

¹⁴² See Davids 1995. The draft Vienna Programme was allegedly the most heavily bracketed document in United Nations history.

¹⁴³ See Vienna Programme, Part I, Art. 5 and Part II, Chapter B.

¹⁴⁴ See Chapter 1.2.1.

¹⁴⁵ UN doc. A/Conf.157/22. Compare, however, the OHCHR report for the five-year review, which includes a more conventional notion of universality, see UN doc. A/53/372.

¹⁴⁶ UN doc. A/Conf.157/22.

The emphasis on the universality and interdependence of all human rights not only relates to the historical distinction between civil and political rights and economic, social and cultural rights, but it is also an attempt to bridge the gap between the aforementioned general human rights and group- or issue-specific human rights. Below, I will address the focuses of the Vienna conference and its programme focus on women's human rights, but the Vienna conference and programme also emphasized the rights of, for example, minorities and indigenous' peoples, migrant workers, children and the disabled.

3.4.2 The Global Campaign for Women's Human Rights and the Vienna Dual Strategy

As was noted above, the UN preparations for the Vienna conference had been troublesome and the intergovernmental preparatory meetings had not managed to decide on an agenda for the Vienna conference or on what to include in the draft Vienna Programme.¹⁴⁷ Still, at the final preparatory meeting, there was no common agenda. According to Charlotte Bunch and Niamh Reilly, this lack of a common agenda provided "... an important opportunity for women who had focused on building coalitions across North-South lines and addressing socio-economic as well as civil and political rights, to get their ideas included in the Conference agenda".¹⁴⁸ In other words, the fact that the UN intergovernmental preparations were slow provided an opportunity for well-organized non-governmental organizations to introduce issues onto the Vienna agenda and to influence the draft Vienna Programme.

¹⁴⁷ Bunch and Reilly 1994, pp. 6–7.

¹⁴⁸ Bunch and Reilly 1994, p. 7. In the aftermath of the UN decade for women and the Nairobi conference, women's groups around the world began to show an increased interest in international politics and law, including in human rights. At the beginning of the 1990s, a number of mainly United States-based women's organizations had begun the process of initiating and forming what later became the global campaign for women's human rights. Different women's groups also worked towards the regional preparatory conferences held in Tunis, San Jose and Bangkok, demanding that issues regarding equality between the sexes and the human rights of women be discussed during these conferences. Bunch and Reilly 1994, p. 3. See also Abeyesekere 1995 and *International Campaign for Women's Human Rights 1992–1993 Report* 1993 and Bunch 1995b. The Women's Caucus, convened in preparation for the Vienna Conference, succeeded in including text on women in the draft Vienna Programme, which was a precondition for the text on women included in the adopted version of the Vienna Programme. This success also served as an inspiration for further cooperation in conjunction with the Vienna conference.

The global campaign for women's human rights convened a Global Tribunal on Women's Human Rights as part of the non-governmental activities parallel to the Vienna Conference, but it also targeted government delegations and the media. The slogan, *Women's rights are human rights*, was probably one of the most frequently heard slogans at the Vienna Conference. After the conference, the *Women's rights are human rights* slogan has traveled the world.¹⁴⁹ The aim of the tribunal was to demonstrate that the international human rights system had failed to acknowledge many types of violations suffered by women as human rights violations and that the system failed to promote and protect women's human rights. The tribunal was organized around six panels. The topics chosen for these panels were among the core topics addressed by the international women's human rights movement, later, in the 1990s. The panels addressed human rights abuse in the family, war crimes against women, violations of bodily integrity, socioeconomic rights and political persecution and discrimination.¹⁵⁰ A report from the tribunal was presented together with a petition for the human rights of women at the Vienna conference.¹⁵¹ Sunila Abaysekere noted that:

[i]n a way, the campaign for women's human rights served as a temporary 'unifying' factor for a large number of very disparate groups and organisations from all over the world. However, the end of the Vienna Conference demonstrated clearly that this unity was indeed a very fragile one.¹⁵²

¹⁴⁹ After the Vienna conference, the slogan, *Women's rights are human rights*, has been used by UN institutions, such as, the OHCHR, UNIFEM and the Division for the Advancement of Women in their publications. It has also been used by non-governmental organizations, such as, Amnesty International and Human Rights Watch and has been used in numerous speeches, pamphlets, articles, et cetera. by a varied range of people. See, for example, Hilary Clinton's address *Women's Rights are Human Rights* given at the Beijing conference, at www.douglassarchives.org/clin_a64.htm (28-09-2003).

¹⁵⁰ On each panel, a number of women from different parts of the world testified about the violations that they had suffered. Key persons within the international human rights framework and the women's human rights framework have been chosen as judges for the different panels. See Bunch and Reilly 1994.

¹⁵¹ The petition for the human rights of women was part of the Global campaign. According to Rogers (1995, p. 131), it had been organized by over 900 women's groups, circulated in 124 countries and translated into 21 languages. Members of the Global Campaign also participated in and contributed to the common position paper prepared by non-governmental organizations and sent to the Vienna Conference. They managed to incorporate issues regarding equality between the sexes and the human rights of women under most of the core items of the common position paper, see Bunch and Reilly 1994, p. 101–2.

¹⁵² Abaysekera 1995, p. 9.

The importance of the strategic alliance formed by women's movements vis-à-vis Vienna is not undermined by its temporality.¹⁵³ Because the *global* movement for women's human rights at the Vienna conference did not address the dividing lines within the women's movement on the grounds of, for example, region, ethnicity, class or sexuality, and because it did not recognize how differences in resources and power between different women's groups affected how the women's human rights agenda was framed, difference became a conflict rather than a source of knowledge and empowerment. Dianne Otto has shown that while the 1990s campaign for women's human rights did manage to put a number of *new* issues onto the international human rights agenda, the campaign also led to a deepening chasm between the human rights agenda and development agendas and served to reinforce a hierarchy between civil and political rights and economic, social and cultural rights.¹⁵⁴

The Vienna Programme included in its Part II, Chapter B on *Equality, Dignity and Tolerance* a special heading *The Equal Status and Human Rights of Women*. The issues addressed under this heading included, for example, the importance of global action for women towards sustainable and equitable development; the importance of women's enjoyment of mental and physical health and the importance of working towards the elimination of violence against women in public and private life, including elimination of sexual harassment and trafficking.¹⁵⁵ Except for the focus on violence against women, issue-wise the Vienna Programme fails to introduce an especially *new* human rights agenda.

The Vienna statement on violence against women stressed the importance of working towards

... the elimination of all forms of violence against women in public and private life, the elimination of all forms of sexual harassment, exploitation and trafficking in women, the elimination of gender bias in the administration of justice and the eradication of any conflicts which may arise between the rights of women and the harmful effects of certain traditional or customary practices, cultural prejudices and religious extremism.¹⁵⁶

The Vienna conference aimed at strengthening the position of women's human rights within the UN system and at furthering the transformative

¹⁵³ Abeyesekera 1995, pp. 8–10. The global campaign had not envisaged any follow-up plans. It had also not planned for any collective processes vis-à-vis any analysis or discussion about what the notion behind the slogan, Women's Rights are Human Rights, really signified, or what the implications of that notion might be for specific violations suffered by different women in different parts of the world.

¹⁵⁴ Otto 1999.

¹⁵⁵ Vienna Programme, Part II, Arts. 37, 38 and 41.

¹⁵⁶ Vienna Programme, Part II, Art. 38.

trend towards new approaches to women's human rights. The Vienna Programme transgressed the boundaries between private and public, for example, by opening up within the UN human rights' framework discussion about new forms of violence against women. The Vienna Programme's focus regarding women's human rights is rather on how to promote and implement the human rights of women.

In order to promote women's human rights and to ensure that they are perceived of as an integrated part of all human rights, the Vienna Programme promoted a dual strategy, proposing targeted and integrative action for the implementation of women's rights *as* human rights within the UN system. The dual strategy promoted through the Vienna Programme is largely an invention of the UN preparatory work, but traces of a similar approach are found in some of the regional preparatory declarations.¹⁵⁷ According to Bunch and Reilly, the idea of promoting women's human rights was well received during the preparatory process, but strong opinions were expressed both before and at the Vienna Conferences against the integration of women's human rights.¹⁵⁸

The Vienna Programme Part I, para. 18 provides a background for and outlines the dual strategy:

[t]he human rights of women and of the girl-child are an inalienable, integral and indivisible part of universal human rights. The full and equal participation of women in political, civil, economic, social and cultural life, at the national, regional and international levels, and the eradication

¹⁵⁷ For example, the African regional meeting adopted a resolution on the protection of the rights of women, which focuses on women's full integration into the development and decision-making processes, see UN doc. A/Conf.157/PC/57-AFRM/14. The report from the Asian regional meeting contained a commitment to the human rights of women and to the eradication of discrimination and of gender-based violence against women, see UN doc. A/Conf.157/ASRM/8-A/Conf.157/PC/59, Art. 22. The report from the Latin American and Caribbean regional meeting contained an emphasis on three needs, viz., on the need to implement the human rights of women, on the need to integrate women into decision-making processes and on the need to eradicate different forms of discrimination and gender-based violence and sexual exploitation, see UN doc. A/Conf.157/LACRM/15-A/Conf.157/PC/58, Art. 14. The European Community position paper included a statement regarding the need to focus on the human rights of women, especially on issues regarding violence against women, see UN doc. A/Conf.157/PC/87, Art. 27. The position paper of the European Community also noted vis-à-vis women's human rights, "[u]ne action cohérente, entreprise dans l'ensemble du système, est indispensable". It highlights the importance of the Commission on Human Rights on the integration of the human rights of women. So, while the African report emphasizes the need to integrate women into the development process, the European Community position paper emphasizes the need for a system-wide UN strategy.

¹⁵⁸ Bunch and Reilly 1994.

of all forms of discrimination on grounds of sex are priority objectives of the international community [...] The human rights of women should form an integral part of the United Nations human rights activities, including the promotion of all human rights instruments relating to women.

According to the Vienna Programme, elements or components of the dual strategy are targeted intervention and integrative initiatives, further broken down into measures for institutional cooperation and measures for substantial integration.

Targeted intervention includes the strengthening of existing legal and institutional structures for the human rights of women and new standard-setting initiatives aimed at reinterpreting human rights. The targeted intervention proposed by the Vienna Programme includes, viz., first, encouraging a focus on issues, such as development, health and violence, secondly, encouraging the universal ratification of CEDAW by the year 2000; thirdly, strengthening the position of CEDAW by fostering the development of ways and means to address the large number of reservations to CEDAW; and, fourthly, urging the withdrawal of reservations that are contrary to the object and purpose of CEDAW. Moreover, the CEDAW Committee and the Commission on the Status of Women were asked to analyze the possibility of creating a right to petition under CEDAW. The Vienna Programme welcomed the Commission on Human Rights' decision to consider the appointment of a Special Rapporteur on violence against women. The standard-setting initiatives proposed by the Vienna Programme included urging the General Assembly to adopt the draft declaration against violence against women.

One component of the *integrative initiatives* is the notion of measures for *institutional co-operation*, i.e., measures for increased co-operation among UN woman-centred institutions and among woman-centred and human rights-centred institutions. In order to ensure that the human rights of women are not only approached via the women's human rights scheme, the Vienna Programme proposes that:

[t]he equal status of women and the human rights of women should be integrated into the mainstream of United Nations system-wide activity. These issues should be regularly and systematically addressed throughout relevant United Nations bodies and mechanisms.¹⁵⁹

¹⁵⁹ See the Vienna Programme Art. 37 for an additional listing of UN institutions which should cooperate in the mainstreaming of women's human rights and Art. 42 about the mainstreaming of women's human rights and gender-specific data within the UN treaty body system. See, also, the Vienna Programme, Part C-D, concerning the strengthening of institutional structures and the monitoring mechanisms for human rights.

The co-operative measures proposed by the Vienna Programme included further integration of objectives and goals, for example, among the Secretariat's Division for the Advancement of Women and the Centre for Human Rights, the inter-governmental institutions' Commission on the Status of Women and the Commission on Human Rights and the development agencies.¹⁶⁰ The Division for the Advancement of Women and the Centre for Human Rights were asked to ensure that UN human rights institutions addressed the topic of the human rights of women regularly and that UN human rights and humanitarian relief personnel provided training regarding these issues.¹⁶¹

Another component of *integrative initiatives* is measures for *substantial integration*. Such measures are aimed at the integration of the human rights of women into the work of the UN human rights treaty bodies, special procedures and other human rights-centred institutions. The measure for substantial integration proposed by the Vienna Programme included demanding that the UN human rights treaty bodies include the status of women and the human rights of women in their deliberations and findings. The demand also included that States parties supply information in their periodic reports about the *de jure* and *de facto* situations of women.¹⁶² The Vienna Programme also included an emphasis on the integration of women in decision-making.

In order to ensure that these changes would be effectuated, the Vienna Programme's Art. 99 proposed that the General Assembly, the Commission on Human Rights and other relevant bodies take appropriate measures for the implementation of the Vienna Declaration and that a five year review of the Vienna Programme be held in conjunction with the 50th anniversary of the Universal Declaration. The follow-up mechanisms for the Vienna Conference have included consideration by the General Assembly, the ECOSOC and the Commission on Human Rights of appropriate measures for the implementation of the Vienna Programme.¹⁶³

The five-year review of Vienna Programme included an initial review by the Commission on Human Rights during its 44th session in 1998. The ECOSOC devoted the coordination segment of its substantive session in 1998 to the co-ordinated follow-up to and implementation of

¹⁶⁰ Vienna Programme, Art. 37.

¹⁶¹ Vienna Programme, Art. 42.

¹⁶² Vienna Programme, Arts. 42 and 43.

¹⁶³ Vienna Programme Arts. 99–100 and UN doc. A/Res/48/141, Art. 4. The plenary session of the General Assembly 10 December 2003 will commemorate the 10th anniversary of the Vienna conference.

the Vienna Programme. The General Assembly analyzed at its 53rd session in 1998 the progress achieved.¹⁶⁴ The five-year review of the Vienna Programme coincided with the 50th anniversary of the Universal Declaration.¹⁶⁵

Many of the recommendations for targeted intervention made in the Vienna Programme have had practical consequences within the UN system, viz., an Optional Protocol to CEDAW has been adopted allowing for the right to petition under CEDAW, the General Assembly has adopted the DEVAW, the Commission on Human Rights has established a Special Rapporteur's mandate on violence against women, the Secretariat's Division for the Advancement of Women and the OHCHR have adopted annual joint work plans and the UN human rights treaty bodies, as well as other UN human rights institutions, although to varying extents, have begun to address the human rights of women in their work. However, in connection with the Vienna Programme's emphasis on the integration of women's human rights, an integration that goes beyond institutional cooperation, the some concerns can be detected. The Beijing conference is often, for example, in the Vienna+5 review is depicted as continuing the Vienna women's rights stance. As will be noted in Chapter 3.5.3, the Beijing process does water down the Vienna emphasis on women's rights as human rights. Moreover, the strategy for integrating women's human rights was in the five-year review process undermined by the strategy for mainstreaming human rights.¹⁶⁶

¹⁶⁴ Since 1994, the Commission on Human Rights has reviewed the implementation of the Vienna programme at its sessions. See UN doc. E/CN.4/Res/1994/95, 1995/93, 1996/83, 1997/69 and 1998/78. Note that the resolutions include no substantive references regarding the Vienna Programme's emphasis on the human rights of women. UN doc. E/CN.4/Res/1998/78, Art. 12, however, underlines "... the need to give particular attention to the human rights of women and the girl child in the five year implementation review of the Vienna Declaration and Programme of Action, taking into account that gender mainstreaming is a key strategy for achieving equality between women and men and the full enjoyment of all human rights by women". With regard to the five-year review, the Commission on Human Rights undertook at its 44th session (1998) an initial review of the implementation of the Vienna Programme, see UN doc. E/CN.4/1998/177-E/1998/23. The review was based on the Interim report of the OHCHR, see UN doc. E/CN.4/1998/104.

¹⁶⁵ See UN doc. A/Res/52/117, UN doc. A/Res/53/168 and UN doc. E/CN.4/Res/1998/56, see also website of the Universal Declaration's 50th anniversary at www.unhchr.ch/html/50th/50anniv.htm (28-09-2003).

¹⁶⁶ The issue of mainstreaming of human rights is addressed in relationship to the democracy and development themes in the OHCHR final report. The Universal Declaration activities for mainstreaming of human rights are highlighted in this context, see UN doc. A/53/327, Art. 32. The OHCHR interim report takes a slightly different approach

3.4.3 Between Vienna and Beijing: The Conference on Population and Development (Cairo 1994)

The Cairo conference was the third world conference on population and development, following the Bucharest conference (1974) and the Mexico City conference (1984). In some respects, the Cairo conference continued the weaving process by picking up the loose pieces of yarn from the women's human rights agenda of the Vienna conference. Charlesworth notes that the advancements made for women's reproductive rights at the Vienna conference and, especially, the Cairo conference were circumscribed at the Beijing conference.¹⁶⁷ The focus on women at the Cairo conference was highlighted right from the start, in the opening speeches, when, for example, Gro Harlem Brundtland of Norway, stressed that "[w]omen's education is the single most important path to higher productivity, lower infant mortality and lower fertility". In her speech, Nafis Sadik, Secretary-General of the Cairo Conference, stressed that "[e]very day hundreds of women die from causes related to pregnancy and childbirth. Every day hundreds of newborn babies die because their mothers lacked basic maternal health care. We have the means at our disposal to prevent this tragedy. Let us agree to do so, in the name of humanity".¹⁶⁸

I will not address the Cairo Conference in at any length, but I wish to emphasize two issues. First, included among the Cairo conference's contributions to the women's human rights discourses was the Cairo Programme placing the issue of women's human rights and women's reproductive rights at the centre of the world political debate regarding population growth and development.¹⁶⁹ Kurt Tarnoff noted that "[p]erhaps the most significant departure [at the Cairo conference] from previous population conferences is the emphasis placed on women's status and the importance of women in the broader context of sustainable develop-

to the Vienna Programme, and focuses especially on the development of methodologies for the promotion and protection of human rights stressing the importance of an integrated and holistic approach, mainstreaming of human rights and target-oriented protection, see UN doc. E/CN.4/1998/104. For further discussion, see Chapter 4.6.2.

¹⁶⁷ Charlesworth 1996a. The Beijing Platform in Art. 223, reaffirming the Vienna and Cairo reproductive rights statements, noted that "... reproductive rights rest on the recognition of the basic right of couples and individuals to decide freely and responsibly on the number, spacing, and timing of their children ...". Note that this article is one of the articles, against which, many states reserved themselves. The article, however, avoids making reproductive rights into an issue interlinked with women's bodily integrity. Similar points of views were expressed in interviews Nos. 3 and 13.

¹⁶⁸ UN doc. A/Conf.171/13/Add.1 (1994).

¹⁶⁹ For further analysis of the Cairo conference, and especially of reproductive rights, see Eriksson 2000. For references to the strengthening of the pro-life anti-abortion agenda, Buss and Herman 2003 and Head 2000a–b.

ment”.¹⁷⁰ However, he also stated that “[b]y far the most controversial issue expected to be taken up at the Cairo conference is language in the Plan of Action addressing aspects of sexual and reproductive rights and health”.¹⁷¹ While the Cairo conference did emphasize women’s bodily integrity and women as agents in the population and development debate, the Conference also showed that women’s bodily integrity remains an area for cultural, religious, economic and political conflicts vis-à-vis the question of abortion and other similar issues. For example, in his opening speech, Al Gore, at the time the United States Vice President, brought the controversial issue of abortion to the table as he underlined that the United States Constitution “... guarantees every woman within its borders a right to choose an abortion, subject to limited and specific exception”, he continued noting that:

[w]e are committed to that principle [women’s right to choose abortion].
But let us take a false issue on the table: The United States does not seek to establish a new international right to abortion ...¹⁷²

In her speech, Benazir Bhutto, then Prime Minister of Pakistan, highlighted the importance of the principle of equality between women and men, but she also referred to the principle of sanctity of life enshrined in the Koran and condemned the use of abortion as a means for family planning and population control.¹⁷³ Eriksson notes with respect to the contemporary approach to reproductive rights within international law that the concept failed to comprehend either in depth or in breadth by the international entities, instead “... the definition of several key terms, which form part of it [reproductive rights], has remained rigid and narrow”.¹⁷⁴

Secondly, the Cairo Programme emphasized as core political issues women’s right to bodily integrity, women’s agency *and* male responsibility within the family as well as within national and international politics and lawmaking.¹⁷⁵ That is, the Cairo conference recognized men, the construction of masculinities and the promotion of the partnership be-

¹⁷⁰ Tarnoff 1994.

¹⁷¹ Tarnoff 1994, see also Nikolay 1994.

¹⁷² UN doc. A/Conf.171/13/Add.1 (1994). Gore’s strong statement in favor of abortion is interesting with respect to subsequent developments of the Bush administrations so-called war against women.

¹⁷³ UN doc. A/Conf.171/13/Add.1 (1994).

¹⁷⁴ Eriksson (2000, p. 491) also notes that as gender remains only marginally integrated into the human rights framework, and that reproductive right remains only marginally integrated as part the right to life, the right to health and the prohibition against torture.

¹⁷⁵ The Cairo Programme Chapter 5, para. 1 acknowledges that various forms of the family exists in different social, cultural, legal, and political systems. The Cairo Programme included a chapter on *Gender Equality, Equity and Empowerment of Women* UN doc. A/Conf.171/13, Chapter IV.

tween men and women as core issues of the 1990s sexual and reproductive health and gender equality debates. While the partnership approach is viewed as important in the Beijing and the Beijing+5 processes, it is only in the Cairo Programme that the focus on men and male responsibilities for sexual and reproductive health issues and gender equality is framed in a language of men's power and dominant position within the family and in national and international politics. The Cairo Programme notes that:

[c]hanges in both men's and women's knowledge, attitudes and behaviour are necessary conditions for achieving the harmonious partnership of men and women. Men play a key role in bringing about gender equality since, in most societies, men exercise preponderant power in nearly every sphere of life, ranging from personal decisions regarding the size of families to the policy and programme decisions taken at all levels of Government.¹⁷⁶

In later UN documentation, the issue of a woman's bodily integrity, especially, with a focus on abortion and the issue of men's responsibilities have been framed using a less strong language.¹⁷⁷

3.5 The World Conferences on Women and Gender Mainstreaming

3.5.1 From Mexico to Nairobi

In 1972, the General Assembly and the ECOSOC proclaimed 1975 as the International Women's Year and suggested that a world conference on women be held during that year.¹⁷⁸ Few objected to the proposal, ex-

¹⁷⁶ UN doc. A/Conf.171/13, Chapter 4, Art. 24. In the same article, it is noted that "[i]t is essential to improve communications between men and women on issues of sexuality and reproductive health, and the understanding of their joint responsibilities, so that men and women are equal partners in public and private life". The objectives tied to Art. 24 include to promote gender equality in all spheres of life (Art. 25). The actions envisaged include the education of men (Art. 25), including of boys before they become sexually active (Art. 29). Emphasis is also placed on the prevention of violence against women and children (Art. 28), and the safety of women in abusive relationships.

¹⁷⁷ The integration of men into equality politics will further be addressed in Chapters 3.4.3, 4.3.2 and 6.3.

¹⁷⁸ Fraser (1987, pp. 1–2) noted that the idea of an international women's year did not come from the UN, but from "traditional women's organizations" which, according to Fraser, "... would never publicly admit to being feminist, [although] they carried on the feminist tradition from the suffrage movement of the nineteenth and early twentieth century to the resurgence of the women's movement in the late 1960s". Hernández-Truyol (1999, p. 31) claimed that the "... emergence, evolution and revolution of women's human rights dates from 1975, which was proclaimed International Women's Year".

cept the Saudi Arabian delegate, who argued that women already had all the equality that they needed and that the proposed conference would be “disruptive”.¹⁷⁹ Princess Ashrah Pahlavi of Iran objected by arguing that “male imperialism” had paralyzed important parts of society in both the developing and the developed worlds long enough and that it was time that women stopped being “a colony of man”.¹⁸⁰

The First World Conference on Women was held in Mexico in 1975 during the International Women’s Year. It marks the beginning of the UN Decade for Women (1975–85). Arvonne Fraser notes that the “... fact that this conference was held in the developing world, in a country contiguous to one of the most highly industrialized nations of the world, graphically illustrated and symbolized the divisions that would be felt and discussed at this conference”.¹⁸¹ The differences between southern and northern experiences were also highlighted in many of the opening speeches at the Mexico conference. The Secretary-General for the International Women’s Year and the Conference, Helvi Sipilä of Finland underlined in her opening speech that “[i]n fact, women throughout the world share so many problems that they can and must support and reinforce each other in a joint effort to create a better world”.¹⁸²

The symbol for the International Women’s Year was a stylized dove with a women’s symbol, viz. a circle on top of a cross. A symbol designed, argues Fraser, to transcend cultural, language and not the least literacy barriers. The symbol has “... become an international symbol of the drive for women’s equality, reprinted literally millions of times, recaptured in jewellery and printed in fabric used the world over ...”.¹⁸³

¹⁷⁹ Fraser 1987, p. 18, citing *Meeting in Mexico 1975*, p. 17.

¹⁸⁰ Fraser 1987, p. 18, citing *Meeting in Mexico 1975*, p. 17. Fraser (1987, p. 19) noted that while few Governments objected to the conference, the work of Helvi Sipilä of Finland, who had been chosen as Assistant Secretary-General for the Women’s Year, was far from easy because many high level members of the UN staff, remained sceptical about the conference.

¹⁸¹ Fraser 1987, p. 17.

¹⁸² Fraser 1987, p. 23, citing *Meeting in Mexico 1975*, p. 20–23. The final document from the Mexico conference highlights the north-south and man-woman frames. The final document has a strong focus on development issues, at the same time as it uses a women’s perspective. The main objective is outlined in Art 14 as “... to define a society in which women participate in real and full sense in economic, social and political life and to devise strategies whereby such societies could develop”. The General Assembly endorsed the results of the First Women’s Conference through adopting ten resolutions for their implementation.

¹⁸³ Fraser 1987, p. 21.

The second World Conference on Women was held in Copenhagen in 1980. The aim of the Copenhagen conference was to readjust programmes for the second half of the Women's decade.¹⁸⁴ Important issues regarding women's inequality were discussed at the Copenhagen conference. While an official signing ceremony for CEDAW was held at the Conference, it was also used as a political platform to discuss other world political issues. The difference between what was perceived as women's issues and *real* political issues became clear at the Copenhagen conference. It also became clear who has the power to discuss which issues. Fraser provides an image of when what she calls "troublesome international issues" were to be discussed at the Copenhagen conference. While women had dominated most of the conference, suddenly, when certain issues were to be discussed, there was "... a flurry of activity as women delegates were moved aside and the men in virtually every delegation began to move into the chairs behind the microphones".¹⁸⁵

As more men moved into the room and the country chairs, gradually little murmurs of conversation was heard as one woman whispered to another about male takeover and transfer of power. Eventually [...] a few delegates had the courage to make slightly humorous or ironic comments on this almost universal practice. The point was made that women were not in the ultimate decision making positions in any country ...¹⁸⁶

However, while women were able to unite as not being dominant in their national contexts or as not being chairs of their country's delegations when certain issues were discussed, the final document from the Copenhagen conference provided an image of a world divided not as much between women and men, but, rather, as among the developing world, the developed world and countries with centrally planned economies.¹⁸⁷

The Third World Conference on Women, which also ends the UN Decade for Women, is held in Nairobi in 1985. The aim of the Nairobi

¹⁸⁴ The sub-themes chosen for the Copenhagen conference were education, employment and health. See Fraser 1987 and Rehof 1993. See also General Assembly resolution 3520 (xxx) (1975), UN doc. A/Res/35/175, and *Yearbook of the UN 1975*, pp. 658–662.

¹⁸⁵ Fraser 1987, p. 81.

¹⁸⁶ Fraser (1987, pp. 79–81) also noted that the situations in Mexico and Copenhagen became too embarrassing to persist and that by the end of the Nairobi conference, women dominated the debate throughout the whole conference. However, as noted by Björk (2003), dominating discussions at a women's conference does not necessarily mean being dominant when and where "important" issues are being discussed. See Chapter 5.2.2.

¹⁸⁷ Fraser 1987, p. 82.

conference was to review the progress made during the UN Decade for Women and to identify remaining obstacles. The review of the progress made showed that the Decade had played a catalytic role with respect to legal reforms and with respect to the promotion of *de jure* equality, but that reality lagged far behind.¹⁸⁸ When outlining world developments, The Nairobi Forward-Looking Strategies provided, a rather gloomy image of socioeconomic and natural environments in flux. It was also noted that women are the ones who lose out if significant action is not taken to reduce the economic and political gaps between the industrialized and the developing worlds, as well as the gaps between men and women.¹⁸⁹ Mass poverty and the backwardness of the majority of the world's population stemming from underdevelopment produced by imperialism, colonialism, neo-colonialism, apartheid and racism are used to explain the disparity in resources and power between women and men.¹⁹⁰

The conference organizers, however, decided to take a progressive perspective and to design forward-looking strategies to the year 2000. Fraser described the Forward-Looking Strategies as aggressive in their assertion that a women's perspective is necessary on all issues. The Nairobi Forward-Looking Strategies did occasionally use a gender language and noted, for example, that "[w]omen, by virtue of their gender, experience discrimination in terms of denial of equal access to the power structure that controls society and determines development issues and peace initiatives".¹⁹¹ Similarly, the Nairobi Forward-Looking Strategies referred occasionally to rights, but it does not have a strong human rights focus.¹⁹²

Fraser argued that "[i]n feminist terms, what was under discussion at Mexico City and again at Copenhagen was patriarchy, male power and structures", but these themes were blurred by the other issues, viz., equal-

¹⁸⁸ Fraser 1987, p. 161.

¹⁸⁹ Nairobi Forward-Looking Strategies Arts. 22–36.

¹⁹⁰ Nairobi Forward-Looking Strategies Arts. 44, 49–50 and 60–76.

¹⁹¹ Nairobi Forward-Looking Strategies Art. 46. The UN-based follow-ups to the Nairobi conference and to the Nairobi forward-looking strategies have been carried out within the framework of the UN system-wide plans for the advancement of women. The first system-wide plans were adopted as a response to the Nairobi conference on the initiative of the Commission on the Status of Women. See UN doc. E/1986/8 and E/Res/1986/71. However, while providing a general map of world scale differences affecting the lives of women, the Nairobi Forward-Looking strategies also began the trend of identifying special, or especially vulnerable, groups of women, such as, urban poor, elderly, young, disabled, female-headed households, victims of trafficking and prostitution, migrant and refugees, women deprived of their traditional livelihood, et cetera. See also Chapter 3.3.1.

¹⁹² See, for example, Nairobi Forward-Looking Strategies Art. 57. The main reference to human rights related references to the emphasis that states should sign and ratify CEDAW, see Art. 60.

ity, development and peace.¹⁹³ The obfuscating impact of the latter on the issues of patriarchy, male power and male structures, however, does not suggest that the issue of patriarchy is not implied in issues, such as, equality, development and peace, but “[t]he deeper implications of the drive for equality by women were often either denied or ignored by delegates”.¹⁹⁴

Diversionary tactics are often strategic defenses. And power is illusive. If equality had to wait for development, [...] and development could not occur until the vestiges of colonialism were eradicated, then the argument could be about the new international economic order. This delayed arguing about equality. [...] The questions are complex. The diversionary tactics were to avoid the deeper meanings of the equality questions and to ask women to choose between loyalty to their country and its point of view or to their own interests and that of their sisters.¹⁹⁵

However, she also noted that the Nairobi Forward-Looking Strategies implied that “... women must accept much of the burden for advancing their own status. They must act as equals in order to become equal. This means sharing responsibilities in order to demand rights and sharing control over children and home in order to free themselves for other responsibilities and rights. It means taking power and not asking for it”.¹⁹⁶ Fraser’s comment is interesting because it counteracts the current trend of viewing equality politics as uncontroversial. She recognized that it is and, in all likelihood, will continue to be for a while women who work for equality between the sexes because it is women who are most likely to suffer from structural inequalities between the sexes.

Fraser used the image of the Peace Tent, an innovation at the Nairobi conference, as an image to sum the Nairobi conference. The idea of the Peace Tent was to invite opposing groups, which at the Nairobi Conference included Iranian and Iraqi delegates, Palestinian and Israeli delegates and Soviet and United States delegates to dialogue with respect to differences in experiences, positions and worldviews.¹⁹⁷ In the Peace Tent, the media was sidelined and the focus was on women’s own dialogue. Fraser summed up the UN Decade for Women stating:

[i]n a world torn by violence, they [women] have declared that violence is no solution to problems. In a world structured on inequality, they have de-

¹⁹³ Fraser 1987, p. 79.

¹⁹⁴ Fraser 1987, p. 79.

¹⁹⁵ Fraser 1987, p. 80. Compare with Otto’s (1999) analysis of the Beijing conference, see Chapter 3.5.2.

¹⁹⁶ Fraser 1987, p. 169.

¹⁹⁷ Fraser 1987, pp. 210–1.

clared equality as a goal. And in a world that considered development equivalent to economic growth, they have put forward a more comprehensive definition. Development, in a women's perspective, is not measured solely by gross national product numbers; it is measured in human terms, qualitatively.¹⁹⁸

While Fraser probably captures much of the trends and dominant ideas of the women's decade, in her analysis from the consciousness-raising conference in Mexico to the forward-looking conference in Nairobi, her choice of language and her perspective also capture some of the women's advancement discourse of the 1970s and 80s: that is, it was argued that women could transcend the great cultural, religious, geopolitical barriers and, if they could not, they could somehow use the difference. Further, it was argued that a women's perspective was *per se* about promoting peace, equality and development.

3.5.2 The Fourth World Conference on Women and the Dual Strategy

The Beijing Conference

The three themes of the UN Decade for Women were development, peace and equality. While unresolved, it seemed as though the themes had been exhausted by the time of the Beijing conference.¹⁹⁹ The Beijing conference was largely dominated by the gender equality and women's rights agendas. The world political situation and power relations had changed between the Nairobi and Beijing conferences. According to Otto, the feminist agenda at Beijing was influenced by the rejection of Communism in Eastern Europe and the "triumph of capitalism", the advances of the human rights framework and the increased post-colonial, post-structural and queer critiques of modernity.²⁰⁰ That is, at the Beijing conference and also in the Beijing Platform, there was a shift in focus from a development agenda with a strong economic and social rights focus to a human rights agenda with a strong civil and political rights focus.

The shift in focus from economic and social rights to civil and political rights had been feared as being the hidden agenda already at the time of the Vienna conference. As Otto noted "[t]he Western prioritisation of political and civil rights, increasingly endorsed by the former

¹⁹⁸ Fraser 1987, p. 213.

¹⁹⁹ Fraser 1987, p. 90.

²⁰⁰ Otto 1999, pp. 122–5.

East, served as a new orthodoxy of free-market ideology and neo-imperialist development models".²⁰¹ The Beijing conference removed "... class inequality from the global agenda".²⁰² For example as Otto has noted, the emphasis on an integrated approach to women's human rights and on the indivisibility of the different generations of rights are ideas which are not reproduced under the strategic objective on poverty, but the language of rights disappears when poverty is addressed. According to Otto, this occurrence suggests that the Beijing Platform assumes:

[f]irst, that capitalism has the ability to deliver economic equality to poor women of the world and, second, that the obligation of states to guarantee certain economic and social rights is made redundant by the more 'efficient' processes of free-market forces. Further, the reproduction of gender hierarchies by free market competition is ignored and there is no attempt to address the global imbalance of wealth and consumption that exists between the North and South. This outcome further highlights the limitations of the equality paradigm, which is blind to inequitable standards that underpin its formal comparisons.²⁰³

The shift from a development-oriented to a fairly, as it seems, conservative human rights agenda, however, must also be seen in light of the fact that the Beijing conference was a women's conference and not a human rights conference. The Beijing conference and platform, in fact, addressed economic and social issues extensively, but not within its human rights segment. Hence, while Otto was certainly correct in her claim that there was little contact between the woman-in-development and women's-rights-are-human-rights tracks at the Beijing conference and on the Beijing Platform, this occurrence is probably as much a consequence of world politics as it is the historical and constantly reproduced separation between the women's advancement agenda and the human rights agenda and the ambiguous position of the women's human rights agenda between the two tracks.²⁰⁴

The question of differences among women, as Higgins noted, did also present a series of practical and theoretical problems at the Beijing conference.²⁰⁵

The practical problems arose out of the enormous task of negotiating among a large group of people a single, albeit complex document that would set

²⁰¹ Otto 1999, p. 123.

²⁰² Otto 1999, p. 122. See also, for example, Falk 2002, Milner 2002 and Orford 2002.

²⁰³ Otto 1999, pp. 128–9.

²⁰⁴ Otto 1999, pp. 123–4. See also Otto 1996c and 1999.

²⁰⁵ Higgins 1996, p. 89.

the agenda for addressing the problems of women globally. Differences in culture, language, religion and education presented complications at every stage of the process.²⁰⁶

The Beijing Platform Art. 46 included what Otto called the Beijing Platform's "pivotal statement about diversity".²⁰⁷ The Beijing Platform Art. 46 recognized, for example that

... women face barriers to full equality and advancement because of such factors as their race, age, language, ethnicity, culture, religion or disability, because they are indigenous women or because of other status. Many women encounter specific obstacles related to their family status, particularly as single parents; and to their socio-economic status, including their living conditions in rural, isolated or impoverished areas.

However, while the article airs an inclusive and diversity-friendly approach, the inclusiveness is conditioned and, as noted by Otto, "[t]he contestation of the limits of women's identities was a consistent undercurrent in Beijing".²⁰⁸

These negotiations of gendered identities mark the contested boundaries of acceptable womanhood in the global frame.²⁰⁹

Otto exemplified the boundaries with the varied topics of discussions that took place at Beijing, viz., about sexual orientation, women's place within and alternatives to the heterosexual family unit and women's dual roles as mothers and nurturers and as managers and entrepreneurs.²¹⁰ Hence, while the Beijing Platform allowed for some additional scope for a woman's self-definition, more, for example, than was recognized in CEDAW, it also resulted in what Otto calls "... a new alliance between traditional ideas about women as mothers and wives and the current imperative to harness the skills and energies of women to support free-market development".²¹¹

That is, the Beijing agenda was dominated by rights and gender issues, but how rights and gender were to be conceptualized was not evident and during the conference process attempts were made to circumscribe, rather than to expand the women's human rights agenda and the frames of allowed womanhood.

²⁰⁶ Higgins 1996, p. 89.

²⁰⁷ Otto 1996c, p. 25.

²⁰⁸ Otto 1996c, p. 25.

²⁰⁹ Otto 1996c, p. 25.

²¹⁰ Otto 1996c, p. 27.

²¹¹ Otto 1999, p. 131.

The Preparatory Regional Conferences

Five regional preparatory meetings for the Beijing conference were held in late 1994 and early 1995.²¹² While differently and to a different extent, the final regional documents almost all used a language of gender and included some references to human rights. They also all, at least with respect to certain, issues promoted some form of a dual strategy, emphasizing, at the same time, the strengthening of woman-centred initiatives and the integration of either women or gender.

The *Jakarta Declaration for the Advancement of Women in Asia and the Pacific* (the Jakarta Declaration) used a language of gender. The Jakarta Declaration noted, for example, that gender roles are changing in contemporary Asia and in the Pacific region and that women have been more open to these changes than men. The Jakarta Declaration approached the notion of gender as socially construed and changeable. Art. 13 stressed, for example:

[d]espite overwhelming evidence to the contrary, the assumption that gender roles are fixed biologically has become embedded in cultures, resulting in attitudes and behaviour of both women and men that have proved particularly resistant to change.

The Jakarta Declaration also included a critical area of concern over women's human rights. The issues characterized as women's human rights issues were described as different forms of violence against women, the rights of indigenous women, work and family relations.²¹³

A dual strategy for equality between the sexes is proposed in the Jakarta Declaration especially at the part when the declaration discusses national and development initiatives.²¹⁴ According to the Jakarta Declaration,

²¹² The final documents from the regional meetings were used in the UN drafting process for the Beijing Platform. The following regional platforms were adopted the Jakarta Declaration (the Asia and Pacific Regional Conference), UN doc. E/CN.6/1995/5/Add.1; the African Platform for Action (African Regional Conference), UN doc. E/CN.6/1995/5/Add.2; the Latin American Program for Action (Latin American Regional Conference), UN doc. E/CN.6/1995/5/Add.3; the *Economic Commission of Europe* (ECE) Programme for Action (European Regional Conference), UN doc. E/CN.6/1995/5/Add.4; and the Arab Plan of Action (Arab Regional Conference), UN doc. E/CN.6/1995/5/Add.5. See also Otto 1996c, pp. 10–1.

²¹³ UN doc. E/CN.6/1995/5/Add.1, Arts. 40–9. Strategic objectives were developed with regard to violence against women, indigenous women and women under war and conflict situation, see UN doc. E/CN.6/1995/5/Add.1, Chapter IV (E).

²¹⁴ The Jakarta declaration refers to the integration of women as agents in the development process (Art. 1), and to the "... integration of gender concerns in all stages and at all levels of sustainable development as a means to ensure human well-being, equitably

strong woman- or equality-centered institutions are needed within bureaucracies at the same time that gender concerns should be mainstreamed into public policies and programmes. The Jakarta Declaration defines gender mainstreaming as:

[a] assigning well-defined responsibilities, and strengthening the institutional capacity of all government agencies to undertake gender-responsive development planning in their sectors or areas of responsibility; [b] timely and reliable statistics on the situation of women and men to provide a basis for formulating policies and programmes, and for monitoring and evaluating them.²¹⁵

The *African Platform for Action* (the African Platform) used a language of gender. As opposed to the Jakarta declaration, the African platform used a language of gender mainly as an alternative for sex. The African Platform, for example, refers to the importance of “gender-disaggregated” data.²¹⁶ To a more significant degree, the African Platform focused on human rights. One of its critical areas of concern is women’s legal and human rights. The African Platform refers to the Vienna Conference, noting that “[t]he conference took historic new steps in declaring that violation of women’s rights is violation of human rights” and to Art. 18 of the Vienna Programme that states that the human rights of women and the girl-child are an inalienable, integral and indivisible part of universal human rights.²¹⁷ While not extensively referring to or outlining a dual strategy, the African Platform does between the strategy for integrating a gender perspective and human rights. The mission statement of the African platform notes that:

[t]he operating principle of the African Platform for Action is the integration of the gender perspective in all policies, plans and action directed to-

enjoyed by all people” (Art. 5), and the declaration stresses that “[c]onsistent efforts towards achieving a balanced gender partnership are a prerequisite for the full development of human potential” (Art. 6). However, gender-responsive planning, policy-making and implementation are referred to as mechanisms for increasing equality between women and men under many of the strategic objectives. See the strategic Objectives B1, B2 and B4.

²¹⁵ Jakarta declaration art. 69–70.

²¹⁶ For alternatives see, for example, the African Platform Arts. 4, 21, 41, 73 and 75. When addressing women’s and men’s roles in the family and in society, the Platform noted that: “[s]ocialization is the process by which a child is taught the roles he or she is to play in society. This process determines how adult men and women behave as chief agents of socialization in families, schools and communities”, see the African platform, Art. 41.

²¹⁷ African platform, Art. 56.

wards the achievement of equality, development and peace. The underlying assumption is that international instruments that have been developed for human rights should be applicable to all sectors of society.²¹⁸

The *Latin American and Caribbean Programme for Action* (Latin American and Caribbean programme) picked up, although somewhat reluctantly, the language of gender. The Programme expressed an ambivalent approach to gender and gender analysis. Gender equity and analysis were perceived as potentially dynamic, at the same time that the meaning of gender was pinned down by biological differences and its consequences for human reproduction. The programme notes, for example, in paragraph 11 that:

[i]n recent years, the new concept of gender equity has been developed as a means for approaching this problem [participation of women in social and economic life without discrimination on the grounds of sex, race or ethnic group]; though not yet an object of consensus, it is a dynamic idea that is still evolving and that represents a basic contribution to the analysis of women's position in society. The gender inequalities in the economic, political, social and cultural spheres have arisen from the biological differences between the sexes in terms of reproduction.

When addressing the strategic area of concern on Human Rights, Peace and Violence, the Latin American and Caribbean programme noted that there is a limited recognition that "... women's rights are human rights".²¹⁹ Among the many strategic actions proposed by the programme is the need for a "... theoretical framework with which more effective steps can be taken to promote equality and combat violence ..." and "... taking the concept of human rights as the cornerstone of that framework ..."²²⁰

The *Arab Plan for Action* (Arab Plan) eschewed any use of gender language and, in fact, cited the term, gender, only very sparingly and as an alternative for sex.²²¹ The Arab Plan differed from the other regional platforms in that it explicitly defined religious values as the foundation

²¹⁸ African platform, Art. 1a. When approaching global perspectives (Art. 4), the Platform stated that "[t]he gender perspective and its incorporation in all policy decisions is of paramount importance in engendering equality, development and peace".

²¹⁹ Latin American and Caribbean programme, Art. 175g.

²²⁰ Latin American and Caribbean programme, Art. 190.

²²¹ For example, the Arab Plan referred to "gender statistics" (Art. 19), to "gender differences in school enrolment rates" (Art. 29 (2a)) and to "gender discrimination in education" (Art. 29 (2m)).

for the plan and for the rights of women as human beings.²²² The Arab Plan referred to human rights by noting, for example, that the rights of women are an integral part of the social, economic, political and cultural rights defined in the Universal Declaration under any circumstances and for any reason and via references to CEDAW²²³ The Arab Plan used a woman-centred approach, emphasizing the extirpation of obstacles for the advancement of women and the importance of empowering women within the different target areas. The term, mainstreaming, and a language of integration were used mainly to refer to the necessity of integrating women, i.e., as a means of highlighting women's participation, for example, in decision-making processes.

The *Economic Commission of Europe's Programme for Action* (ECE Programme) used a strong gender language.²²⁴ The ECE Programme was the only regional document that elaborated upon the meaning of gender as an analytical tool, however, in this case equating gender with sex and giving it a strong woman focus.²²⁵ The ECE Programme's Art. 94 stated that:

[g]ender analysis, including statistics, should be used systematically to identify the gender-specific impact and implications of economic, political and social reforms and policies, including international trade agreements. In many instances the gender analysis should be further broken down into age-specific categories and the outcome of the gender analysis incorporated in decision-making processes. A systematic gender analysis of the causes and consequences of poverty should be developed to identify those categories of women that are most affected. Efficient systems are needed for monitoring potentially harmful impacts so that policies can be redesigned as required. These should be developed with the active participation of Governments and non-governmental organizations.

²²² Arab plan, Art. 4.

²²³ Arab plan, Arts. 24 and 39.

²²⁴ See, for example, the ECE Programme for Action Arts. 9, 27, 30, 31, 43, 63, 93, 124, 125 and 156. Gender as social sex was used, for example, in the context of changing "gender roles" within the family and in the labor market, Art. 9, in stressing the close interrelatedness of human sexuality and "gender relations" and that these together "... effect the ability of women and men to achieve and maintain sexual health and manage their reproductive lives", Art. 27. The ECE Programme also stressed, for example, the urgent need of refugee women for "gender-sensitive" protection, Arts. 30–3, and addressed "gender concerns" in employment, Art. 43, and "gender-stereotyping" in the media, Art. 63.

²²⁵ The ECE Platform was also elaborate in its promotion of gender analysis and of a strategy for mainstreaming gender concerns. See, for example, ECE Platform Arts. 16, 102j, 106, 119, 181 and 209c.

The ECE programme also referred in its preambular declaration to human rights underlining that:

[t]he human rights of women are an inalienable, integral and indivisible part of universal human rights and must therefore be promoted, protected and realized at all stages of the life cycle – childhood, adolescence, adulthood and old age – and must further reflect the full diversity of women, recognizing that many women face additional barriers because of such factors as their race, language, ethnicity, culture, religion, sexual orientation, disability, socio-economic class or status as indigenous people, migrants, displaced people or refugees.²²⁶

The ECE Programme underlined the importance of a dual strategy for women's advancement and equality.²²⁷ While accentuating the need for targeted action for women, the ECE programme underlined that the gender impact must be taken into account from the earliest stages of and throughout the implementation and evaluation of policies.²²⁸ The outlined system-wide and broad-based strategy for gender analysis was based on "... lessons drawn from a gender and development approach, as well as from countries which pursue gender-sensitive policy implementation strategies" and these should be furthered so as to develop "... methodologies and mechanisms and for mainstreaming gender concerns into economic and social policy".²²⁹ The gender mainstreaming strategy as outlined in Art. 189 stated that:

[m]ainstreaming of the gender perspective should be applied to cooperation programmes aimed at developing the private sector of the economy in the countries in transition. Western establishments and joint ventures should be stimulated through these programmes to apply and promote non-discrimination and affirmative action measures.

The ECE Programme promoted a connection between what it defines as the partnership approach and gender mainstreaming.

Partnership between women and men is the basis for a new gender contract based on equality, which would entail a redistribution of domestic and family care, contribute to economic independence for women, reduce women's double workload and break down existing stereotypes of the roles of women and men [...] An active and visible strategy of gender mainstreaming is perceived as a integral to the process for transforming the gender contract.²³⁰

²²⁶ UN doc. E/CN.6/1995/5/Add.4, Art. 2a.

²²⁷ ECE Programme Art. 212.

²²⁸ ECE Programme, Art. 22.

²²⁹ ECE Programme, Art. 22.

²³⁰ ECE Programme, Art. 2.

The partnership approach is later recognized, especially in conjunction with the Beijing+5 process as an integral part of, alternatively as an addition to the strategy for mainstreaming a gender perspective.

Hence, while a language of gender, a focus on rights and some form of a dual strategy are promoted in all regional documents, the emphasis of each document is different. Moreover, the similarities in the choice of concepts and phrasing, i.e., the emphasis, for example, on women's rights as human rights or on the mainstreaming of a gender perspective, does not have the same meaning in the different regional platforms. It is the European approach that became dominant at the Beijing conference and in the Beijing Platform with regard to both rights and gender mainstreaming.

Advancing Women and Mainstreaming Gender

The drafting and negotiation processes of the Beijing Platform were affected by the above-referenced trends. The draft Beijing Platform remained heavily bracketed throughout the drafting process and up until the last stages of the negotiation process at the Beijing Conference.²³¹ Moreover, many states submitted reservations and interpretive comments, delimiting the scope and interpretation of the Beijing Platform, both with respect to the use of the term, gender, and in areas, such, as the sexual and reproductive rights of women.²³² The version of the Beijing Platform, which ended up being adopted, became, nevertheless, a much referred to and fairly useful document.

The Beijing Platform consists of twelve critical areas of concern, viz., women and poverty, the education and training of women; women and health; violence against women; women and armed conflict; women and the economy; women in power and decision-making; institutional mechanisms for the advancement of women; women and the media; women and the environment; and the girl-child. The twelve critical areas all have a strong woman-focus. However, the Beijing Platform also established the dual strategy, which has since been promoted as the dominant dual strategy for women's advancement and gender equality within the UN system. The dual strategy promoted in the Beijing Platform emphasized, on the one hand, woman-centred equality initiatives by developing twelve

²³¹ Otto (1996c, p. 7) noted that the Beijing Conference was defined as much by its participants as by its non-participants. Saudi Arabia and Granada did not participate and Somalia and the Federal Republic of Yugoslavia were not invited.

²³² For an overview of the reservations and interpretive comments, see Dormady 1997. For alternative analysis, see Buss and Herman 2003.

critical woman-centred areas of concern and by identifying strategic objectives to be taken by governments and by UN inter-governmental institutions and specialized agencies. On the other hand, the Beijing Platform, also under each of the strategic objectives, emphasized its the strategic objectives cannot be attained through woman-centred initiatives alone, but that

[g]overnments and other actors should promote an active and visible policy of mainstreaming a gender perspective into all policies and programmes, so that, before decisions are taken, an analysis is made of the effects on women and men, respectively.²³³

The term, gender, nevertheless, remained in brackets in the draft Beijing Platform during much of the negotiation process, both during the 39th session (1995) of the Commission on the Status of Women, that served as a preparation for the Beijing conference, and during the actual Beijing conference itself. At its 39th session, the Commission on the Status of Women decided to establish an informal contact group to seek agreement on the "... the commonly understood meaning of the term 'gender' in the context of the Platform for Action of the Fourth World Conference on Women".²³⁴ The informal contact group adopted a statement indicating the commonly understood meaning of the term, gender.²³⁵ The statement was to be read at the conference by the President of the Beijing Conference. According to the statement:

[t]he word "gender" had been commonly used and understood in its ordinary, generally accepted usage in numerous other United Nations forums and conferences; there was no indication that any new meaning of connotation of the term, different from accepted prior usage, was intended in the Platform for Action.²³⁶

However, there was no commonly known definition and usage of the word, gender, within the UN prior to the Beijing Conference. The term, gender, and different forms of gender mainstreaming strategies had already been promoted within different parts of the UN system, but the term was neither common nor ordinary.²³⁷

The fact that the term gender remained controversial throughout the Beijing conference can be exemplified by some of the interpretive com-

²³³ Beijing Platform art. 79. See also Arts. 105, 123, 141, 164, 189, 202, 229, 238, 252 and 273.

²³⁴ UN doc E/CN.6/1995/14-E /1995/26, Chapter I, decision 39/3 and Chapter VIII, Art. 17. See also Otto 1996, p. 11.

²³⁵ UN doc. A/Conf.177/L.2, Art. 2.

²³⁶ UN doc. A/Conf.177/L.2, annex, Art. 2.

²³⁷ UN doc. HRI/MC/1998/6.

ments submitted by states as regards the Beijing platform. The interpretive statements, such as the ones submitted by the Holy See and Paraguay, reacted against the idea that gender is socially construed, i.e., against the idea that men and women do not have predefined roles. These interpretive statements also reacted against the idea that just as gender is construed, so, too, is dominant forms of sexuality. In other words, these statements reacted against the idea that heterosexuality should not be vouchsafed a prioritized position vis-à-vis other forms of sexuality. The Holy See, for example, submitted an interpretive statement regarding the concept of gender, accepting its usage in the Beijing Platform, but noting that it should be understood "... according to ordinary usage in the United Nations context, the Holy See associates itself with the common meaning of the that word, in languages where it exists" and further, that:

[t]he term 'gender' is understood by the Holy See as grounded in biological sexual identity, male or female. Furthermore, the Platform for Action itself clearly uses the term 'both genders'. The Holy See thus excludes dubious interpretations based on world views which assert that sexual identity can be adapted indefinitely to suit new and different purposes.²³⁸

The delegation of Paraguay pointed out in its interpretive statement that the government of Paraguay interpreted the term gender as referring to both sexes, man and women, and that it is with this sense that the term had been integrated in Paraguay's national documents.²³⁹

The tensions regarding the term, gender, are also present throughout the Beijing Platform. The Beijing Platform promoted several different, and to some extent, contradictory meanings of gender, using it both as the social dimension of sex and as an alternative to sex. For example, the Beijing Platform, when it emphasized under the strategic objective on education the "gender-bias" in teaching and educational material, the lacking "gender-awareness" of educators and non-discriminatory and "gender-sensitive" professional school counseling, the Beijing Platform seemed to promote a social constructionist approach to gender and to aim at unpacking gender stereotypes.²⁴⁰ However, gender is also used as an alternative for biological sex. The following examples describe situations when gender is used in that way, viz., when governments, intergovernmental organizations, et cetera, are encouraged to collect "gender- and age-disaggregated" data; when highlighting the importance of "gender

²³⁸ UN doc. A/Conf.177/20.

²³⁹ UN doc. A/Conf.177/20. Note, however that the Holy See's definition was subsequently picked up by the International Criminal Court's Statute and in the final document of the Durban conference, see Chapter 6.3.

²⁴⁰ See the Beijing Platform Arts. 71, 74, 75, 80a and 83g.

balance” in connection with nominating persons to judicial and other positions; or when proposing the elimination of “gender disparities” with respect to access to all areas of tertiary education by ensuring that women have equal access to career development, training, scholarships and fellowships.²⁴¹

The basic idea behind the Beijing Platform’s dual strategy for the advancement of women and gender equality is that woman-centred initiatives are necessary as long as women remain structurally disadvantaged within, for example, the framework of the twelve critical areas of concern. Woman-centred initiatives, however, can only *promote* women; they are not designed to change core economic, political or legal structures. Gender-based mainstreaming initiatives are designed to change the core by making gender everybody’s concern and by making gender analysis an integral tool in all policy development. However, given the extensive debate about and the contradictory meanings assigned to the concept of gender, one might ask whether the notions of mainstreaming a gender perspective held much substantial content at Beijing.

Women’s Human Rights

The Beijing Platform’s ninth critical area of concern addresses *Human Rights of Women*. Many of the other critical areas of concern and strategic objectives of the Beijing Platform, such as, for example, education, health and violence, are issues that can be addressed both in terms of the advancement of women and of human rights.²⁴² The Beijing Platform addresses these issues in terms of the advancement of women, with sparing references to rights, while human rights are referred to as a separate issue.

²⁴¹ The Beijing Platform made references to “gender-disaggregated data” when addressing poverty, Art. 68a, and violence against women, Art. 206j; references to “gender-balance” are made when addressing international bodies, Art. 142b, for lists of national candidates for election or appointment to UN bodies, Art. 190j and, in general, in UN Member States, UN delegations and international fora, Art. 192i, 299; and “gender disparity” is emphasized when proposing that universal access to and when ensuring “... gender equality in the completion of, primary education for girls by the year 2000”, Art. 81b; and the proposal to “... take specific measures for closing the gender gaps in morbidity and mortality where girls are disadvantaged”, Art. 106l. In the Division for the Advancement of Women report on gender mainstreaming, use of concepts, such as, “gender-disaggregated data”, was noted. See UN doc. HRI/MC/1998/6, Arts. 30–31 and footnote 27.

²⁴² Violence against women is, however, addressed in relationship to women’s human rights in larger extent than is the case regarding education, poverty and health. See the Beijing Platform Arts. 112 and 114. A rights’ language is used with reference to women’s health. See Beijing Platform Art. 89.

The critical area of concern of *Human Rights of Women* is focused on emphasizing the importance of human rights and on what I have defined as targeted intervention and integrative action focused on institutional cooperation when addressing the Vienna Programme.²⁴³ The Beijing Platform Art. 222 stresses the importance of gender analysis arguing that

[i]f the goal of full realization of human rights for all is to be achieved international human rights instruments must be applied in such a way as to take more clearly into consideration the systematic and systemic nature of discrimination against women that gender analysis has clearly indicated.

The Beijing Platform Art. 225 adds an emphasis on women's diversity, noting that:

[m]any women face additional barriers to the enjoyment of their human rights because of such factors as their race, language, ethnicity, culture, religion, disability or socio-economic class or because they are indigenous people, migrant workers, displaced women or refugees.

The draft Art. 225 included reference to sexual orientation, but it was deleted in the adopted version.²⁴⁴ The article also notes that women may be marginalized as a consequence of their lack of knowledge about their human rights.

While, at first glance, the Beijing Platform builds on the Vienna Programme's statement that the human rights of women throughout the life cycle are an inalienable, integral and indivisible part of human rights and that all human rights are universal, indivisible, interdependent and interrelated, the overall emphasis is less clear.²⁴⁵ When addressing women's (human) rights the Beijing Platform shifts between a language of "women's rights" and "women's human rights". The Beijing Platform reaffirms the Vienna Programme's emphasis that women's human rights are human rights, but limits the notion of *women's* human rights to the CEDAW framework.

In some respects, the draft Beijing Platform included stronger statements regarding women's human rights than were included in the adopted version of the Beijing Platform. The differences in commitment may be exemplified by, for example, the Beijing Platform Arts. 213 and 222. Art. 213 affirmed that all human rights are universal, indivisible, interdependent and interrelated. The article did not affirm that women's

²⁴³ The importance of recognizing human rights is emphasized in the Beijing Platform Arts. 210–213. Targeted intervention and integrative action focused on institutional cooperation is emphasized in Arts. 214–228.

²⁴⁴ UN doc. A/Conf.177/L.1, Art. 226.

²⁴⁵ Beijing Platform Arts. 213 and 216.

human rights are an inalienable part of universal human rights, but referred to the Vienna Programme's affirmation that women's human rights are human rights.²⁴⁶ The article also stated that the full and equal enjoyment of all human rights by women was a *priority* for Governments and the UN. The draft Beijing Platform included a bracketed, stronger commitment, stating that the full and equal enjoyment of all human rights by women was a *requirement* of international law. Similar differences between the Beijing Platform and the draft Beijing Platform can be detected regarding how gender analysis is introduced to the human rights framework in Art. 222. The Beijing Platform Art. 222 reads "[i]f the goal of full realization of human rights for all is to be achieved, international human rights instruments must be applied in such a way as to take clearly into consideration the systematic and systemic nature of discrimination against women that gender analysis has clearly indicated". The Draft Beijing Platform Art. 222 reads "[[g]ender] analysis applied to human rights law has shown that the formal requirement of equal treatment of men and women does not take into consideration the systematic nature of discrimination against women. Consequently, if the goal of universal realization of human rights for all is to be achieved, [universally accepted] international human rights [law] instruments must be applied in a way that takes this fact into account.]" The Beijing Platform reversed the order of the Draft Beijing Platform's commitment to gender analysis within the field of human right. The Beijing Platform used the term human rights where the Draft Beijing Platform referred to human rights *law*. That is, the adopted Beijing Platform seems to yern for the separation of the notion of women's rights from the notion of women's human rights and especially from the notion of human rights law. In the aforementioned distinction, women's rights correspond to political goals, but the do not aim at altering the interpretation of human rights.

Follow-up to the Beijing Conference

The Beijing Platform should be implemented through the work of all the bodies and organizations of the UN system during the period 1995–2000.²⁴⁷ The Beijing Platform underlined that an enhanced framework for international cooperation on gender issues must be developed within the UN, including a coordinated follow-up to all UN world con-

²⁴⁶ See the Beijing Platform Art. 213 and UN doc. A/Conf.177/L.3 (Draft Beijing Platform), Art. 213.

²⁴⁷ Beijing Platform Art. 306. See also *From Beijing to Beijing+5* 2000.

ferences, and strengthening the UN institutional capacity for implementing the Beijing Platform and the gender mainstreaming strategy.²⁴⁸ The General Assembly decided that, together with the ECOSOC and the Commission on the Status of Women, it would form a three-tiered inter-governmental mechanism responsible for the policy-making and follow-up to the Beijing conference.²⁴⁹

The five-year review of the Beijing conference was organized as a General Assembly special session entitled, *Women 2000: Gender, Equality and Peace for the Twenty-First Century*, the so-called Beijing+5 session. The special session itself was marked by an increase in rightwing religious groups lobbying against many of the advances made at Beijing.²⁵⁰ The Beijing+5 session resulted in the adoption of the *Report of the Ad Hoc Committee of the Whole of the Twenty-third Special Session of the General Assembly* and the adoption of the General Assembly Resolution entitled, *Further Actions and Initiatives to Implement the Beijing Declaration and Platform for Action* (Beijing+5 document).²⁵¹ The Beijing+5 document reaffirmed

... the importance of mainstreaming a gender perspective in the process of implementation of the outcome of other major United Nations conferences and summits and the need for a coordinated follow-up to all major conferences and summits by Governments, regional organizations, and all of the bodies and organizations of the United Nations system within their respective mandates.²⁵²

That is, the Beijing+5 session contributes to the emphases on “gender” and “human rights” as crosscutting issues and on the importance of advancing

²⁴⁸ The intergovernmental institutions, the General Assembly, the ECOSOC and the Commission on the Status of Women, the Secretariat institutions, the Office of the Secretary-General and the Division for the Advancement of Women and specialized agencies, such as, INSTRAW and UNIFEM were emphasized as key institutions in the implementation process.

²⁴⁹ UN doc. A/Res/50/203, through E/Res/1996/6. The coordinated follow-up to world conferences and summits is established by the ECOSOC and the Administrative Committee on Coordination, see UN doc. E/Res/1997/61 and UN doc. E/1998/60. In accordance with the follow-up overview, the General Assembly is responsible for policy-making and it is the appraisal organ for the Beijing conference. The ECOSOC should oversee and make recommendations for the system-wide implementation of the Beijing Platform and devote its 1995 substantive session to the review and appraisal of the ECOSOC’s Agreed Conclusions 1997/2. The Commission on the Status of Women plays a central role in monitoring the implementation within the UN system by giving recommendations to the ECOSOC.

²⁵⁰ See Buss and Herman 2003 and Head 2000a–b.

²⁵¹ See UN doc. A/S-23/10/Rev.1 and A/Res/S-23/3.

²⁵² UN doc. A/S-23/10/Rev.1, Political declaration, Art. 7.

these intersecting agendas through a coordinated conference follow-up.

The analysis of the Vienna and Beijing processes and of the – as it seems – gradual shift of focus regarding both women’s human rights issues and the women’s advancement and gender equality agenda, however, has also demonstrated that while the 1990s opened up for women’s human rights and gender equality issues, they also changed the focus of these issues. The change of focus and the undermining of progressive agendas have led the international women’s non-governmental organization, *Development Alternatives with Women for a New Era* (DAWN) to criticize the current political climate and the negative effects of the Cairo and Beijing+5 conferences. DAWN published a statement at the outbreak of the war on Iraq, emphasizing the impact of the changing political climate on the international community’s engagement for the advancement and human rights of women.

Contrary to the relatively open environment for such advances that existed during the 1990s, the first decade of the 21st century confronts us with extreme social conservatism, aggressive unilateralism, and support for militarism of the Bush administration, and the worsening of fundamentalist trends elsewhere as well. In such a context, it is very important to protect the gains made for women’s human rights through careful and considered action.²⁵³

These drawbacks and reversals have led to DAWN proclaiming out of sheer exasperation: “For the sake of our hard won gains, no official negotiations of any kind!”²⁵⁴

3.5.3 A Short Note on the Integrated and Coordinated Follow-up to UN Conferences

The political significance of the UN world conferences and their impact on world politics are continually renegotiated. The early 1990s conferences, for example, were marked by a political openness and a willingness to discuss social and human rights issues. The world conferences

²⁵³ DAWN says *NO TO NEGOTIATIONS!* 2003. Sen and Corrêa (2000) argued that the 1990s world conferences have been perceived as favourable towards women and women’s issues, but that the gains won have constantly been compromised by conservative forces. The events of September 11 and the war against terrorism, however, has led proponents of informality to question whether informality is really the way to go. That is, in the struggle between the force of the argument or claim: *that’s not legal* and the force of the argument or claim: *that’s not fair*, the pendulum once again seems to be swinging towards the *that’s not legal* argument. See also Buss and Hermann 2003.

²⁵⁴ DAWN says *NO TO NEGOTIATIONS!* 2003.

held at the beginning of the new Millennium have been marked by the growing economic and political instability in the world. The Durban conference, for example, has been seen as the end of the world conferencing era. The Israeli-Palestine conflict, the conflict between the United States and the Arab world, the North-South conflict regarding largely environment-related and trade-related issues, however, did put a damp squid on the conference and its outcome. Feminist scholars have also increasingly begun to question the content, meaning and status of the advances made and whether the human and economic resources used in the preparations for the conferences, at the conferences and for sustaining the outcomes are worthwhile.²⁵⁵

The outcome documents of the world conferences are soft law documents. The distinction between soft and hard law was addressed in Chapter One and it was noted that during past few decades, the UN has developed a preference for soft law solutions, especially in economic and social fields. However, it was also noted that the distinction between legal and non-legal obligations remains relevant because using a soft law form may be a way for states to minimize commitment. Chinkin noted that “[a]t Beijing, states specifically rejected the Australian proposal that the conference be one of commitment”.²⁵⁶ Chinkin noted also that although issues regarding equality between the sexes and the human rights of women have certainly been advanced at the world conferences “... it must be asked whether the fruits of these conferences have become part of international law, binding upon states and other international players with an expectation of compliance”.²⁵⁷

One of the main possibilities *and* challenges with the programmes and platforms for action adopted at the world conferences is that they can be used to introduce new issues onto the UN and the world community agendas. Michael Banton calls this principle the “principle of ratchet”, i.e., a group of states wish to address a certain issue and they try together to secure agreement on a particular wording, which, thereafter, they use whenever they can. And as Banton noted “[o]nce a form of words has been accepted it can be used again or moved up a notch; this is the function of rhetoric in official conferences.”²⁵⁸ However, while it is easier to get an issue into a final document of a world conference, than it is to get the UN to take up the initiative to draft an international treaty, much

²⁵⁵ See for example Charlesworth 1996a, Chinkin 1996, Otto 1996a, 1996c and 1999 and Sen and Corrêa 2000.

²⁵⁶ Chinkin 1996, p. 210.

²⁵⁷ Chinkin 1996, p. 209.

²⁵⁸ Banton 2000, p. 68.

effort and energy is demanded, including, as well many human and financial resources. Moreover, with regard to controversial issues as much effort is needed to keep the issue on the agenda. To underscore both the magnitude and the futility of the effort expended Charlesworth calls this phenomenon, the Sisyphus phenomenon, after the character in Greek mythology condemned to roll a huge stone up a mountain. After the stone has rolled back down again, Sisyphus is doomed to begin all over again. He is never able to achieve any kind of permanent change and the constant work with the stone is a ceaseless heavy burden.²⁵⁹ That is, some of the advances made are accepted and become part of the international human rights framework, interpreted as law, politics and policy. The more controversial questions, however, tend to be reopened at every conference and re-formulated in order to breakdown the content and meaning of the advances.²⁶⁰ The DAWN statement refers to the Sisyphus phenomenon when noting that:

[c]ontrary to the beliefs of some, prior official statements that promise or undertake not to reopen previously agreed conference texts provide no guarantee whatsoever against the weakening of existing agreements. In fact this was exactly the agreed position of every delegation including the Holy See (Vatican delegation) at Cairo+5 and Beijing+5, but there was dreadful struggle anyway.²⁶¹

Charlesworth also argued that women are the sherpas of the global summits.²⁶² Sherpas are Tibetan carriers, i.e., diligent, wise and ever-persistent guides, who in the Tibetan mountains, carry the baggage of explorers and backpackers. Charlesworth suggests that “[w]omen are typically

²⁵⁹ Charlesworth 1996a.

²⁶⁰ Charlesworth (1996a) used the question of women’s reproductive health to exemplify the Sisyphus phenomenon. The Cairo Conference placed issues regarding women’s health, reproduction and sexuality within the human rights framework and addressed abortion as a public health issue. The Copenhagen Summit used a much weaker language and much lobbying from the Vatican and right-wing, religious groups have weakened the status of women’s reproductive rights, not so much at the Beijing conference as at the Beijing+5 process. It can be noted that most of the reservations and interpretive comments regarding the the Beijing Platform submitted by government delegations related to women’s bodily integrity and sexual and reproductive rights, see, for example, the reservations of Argentina, the Dominican Republic, Egypt and the Holy See, UN doc. A/Conf.177/20. Eriksson (2000, pp. 178–9) discusses the reservations in relationship to the persistent objector rule in international law.

²⁶¹ *DAWN says NO TO NEGOTIATIONS!* 2003. For a critical discussion of the five-year reviews, see also Sen and Corr ea 2000.

²⁶² Charlesworth (1996a), however, noted that, with the exception for the Beijing conference, women constitute only less than 10 % of the members of the delegations to the world summits.

the true sherpas or porters, having carried huge, unrecognised loads to allow the mountaineers their hour of glory at the summit".²⁶³

Nevertheless, the UN has, made efforts to ensure the follow-up and consolidation of the outcomes of the UN world conferences. Because many issues, including gender and women's human rights issues, are addressed at several conferences, the UN has taken steps to identify these crosscutting themes and to promote coordinated follow-ups of the conferences.²⁶⁴ The ECOSOC, its functional commissions and the General Assembly constitute the three-tiered system for reviewing the follow-up to UN conferences and summits.

Since 1995, the ECOCOC has taken upon itself the role of promoting integrated and coordinated follow-ups to UN conferences.²⁶⁵ The ECOSOC reviews progress made in the implementation of issues common to the conferences during its annual coordination segment and it addresses the crosscutting themes in its review of the work of its functional commissions. For example the ECOSOC has addressed mainstreaming a gender perspective as a crosscutting theme.²⁶⁶ In 2001 ECOSOC established a regular sub-item, *Mainstreaming a Gender Perspective in all Policies and Programmes of the UN System* under its regular agenda item on coordination issues.²⁶⁷ The Commission on the Status of Women is implied in the follow-up procedures through its responsibilities for the Beijing and Beijing+5 follow-ups and the Commission on Human Rights has been implied through its initiatives for the implementation of the Durban Conference.²⁶⁸ The General Assembly has also been implied in the follow-up procedures and, since the Millennium Summit and the adoption of the Millennium Declaration that is linked to key

²⁶³ Charlesworth 1996a.

²⁶⁴ See Secretary-General's reports UN doc. E/1995/86, UN doc. E/1998/19 and UN doc. A/57/75-E/2002/57.

²⁶⁵ See the ECOSOC's Agreed Conclusions 1995/1 and 2000/2, see also UN doc. E/Res/2001/21 and UN doc. E/2001/73, para. 15–23.

²⁶⁶ For further discussion, see Chapters 4.5 and 5.2.4.

²⁶⁷ See UN doc. E/Res/2001/41 and Chapter 5.2.4.

²⁶⁸ Since the Beijing Conference, the Commission on the Status of Women has reviewed the implementation of the critical areas of concern from the Beijing Platform at a number of its sessions and it has served as the preparatory body for the Beijing+5 session by reviewing the implementation of the Beijing+5 outcome document. The Commission on Human Rights decided through Resolution 2002/68 on *Racism, racial discrimination, xenophobia and related intolerance* to establish an intergovernmental working group on the effective implementation of the Durban Programme, to establish a special African working group and to establish a voluntary fund to ensure additional functions for the implementation of the Durban Programme. See UN doc. A/57/75-E/2002/57 for the work of the other functional commissions.

objectives from the conferences, the General Assembly does contribute to the integrated and coordinated follow-up through efforts to promote the implementation of the Millennium declaration.²⁶⁹

3.6 Conclusions

In this chapter, I have provided an outline of the histories of human rights and of the UN's human rights framework since the late 18th century up to the 1990s violence against women discourse. The purpose of this chapter has been to show the impact of sex or sexual difference as legal, political and symbolic markers throughout these histories. The gradual inclusion of women as rights' holders and the development of a transformative women's human rights framework are construed on the paradox of feminism and even reproduce it. De Gouges described her political activism for women's rights as based on paradoxes. She noted that many people might not support her because she had only paradoxes to offer. Scott argued that the paradox is at the heart of the history of women's rights advocacy: the goal of the advocacy is to eliminate sex as a principle of differentiation in politics and law and the main tool for doing so is to highlight that sex matters, i.e., to reproduce that difference.²⁷⁰ This paradox should not be reduced to or disregarded as a lapsus in women's rights advocacy. The construction of *human* rights in the late 18th century demanded the exclusion of *man's* others as rights holders and the exclusions based on sex, race, social origin, geopolitical location, sexuality, et cetera, have been so fundamental that they cannot be transcended without an emphasis on difference. The construction of the liberal rights regime has been so clever at exclusionary practices and so successful in hiding the traces of them, that it is those advocates, who argue for inclusion who seem to promote difference and category and identity politics and who also become the most vulnerable to attack by virtue of their exclusions. That is, Scott notes:

[t]he history of feminism can be understood as an interplay between a repetitious pattern of exclusion and a changing articulation of subjects. The terms of exclusion repeatedly produce 'sexual difference' as a fixed, natural boundary between the political and the domestic, or the self-representing

²⁶⁹ UN doc. A/Res/55/162 and 56/95, UN doc. A/56/326 and UN doc. A/57/75-E/2002/57, para. 10. The General Assembly has also through resolution 57/270 established an open-ended working group on the integrated and coordinated follow-up to UN conferences. See UN doc. A/res/57/270 and UN doc. A/Res/56/211. See also Secretary-General's reports UN doc. E/1995/86 and UN doc. E/1998/19.

²⁷⁰ Scott 1996, p. 4.

or the represented, or the autonomous and the dependent. But the terms of exclusion are also variable and contradictory, based in different epistemologies, and this variability and contradiction result in fundamentally different conceptions of the 'women' whose rights are being claimed.²⁷¹

The development of the UN human rights framework and the adoption of woman-centered human rights have resulted in a situation where the UN human rights framework includes the UN general human rights documents, as well as the large number of group-specific human rights frameworks, including women's human rights. The development of woman-centred equality strategies within the UN has also led to the development of the UN women's advancement schemes that include equal opportunities, development and women's human rights schemes. Hence, the UN women's human rights schemes "live double lives", of sorts. They belong both to the UN human rights scheme and to the UN women's advancement schemes, while, at the same time, not necessarily being core elements of either scheme. During the 1990s, the UN has made attempts to overcome similar distinctions between certain areas and to eliminate any duplication of work efforts. The dual strategies have been adopted as a means to counteract the marginalization of the so-called women's issues.

The dual strategies adopted at the Vienna and Beijing conferences are attempts to strengthen woman-centered initiatives by ending their marginalization by resorting to measures for integrating women's human rights and mainstreaming a gender perspective. The differences between the Vienna and Beijing strategies and the differences regarding how women's human rights are addressed on the Vienna Programme and on the Beijing Platform, however, are also results of the partial separation of human rights from women's human rights and the latter's *dual nature* as both a human rights issue and an issue of women's advancement. The two dual strategies seem compatible with each other and are so, to a certain degree. However, the first dual strategy has in large extent become specific to the UN human rights system, while the second dual strategy should affect the overall UN system, i.e., including the UN human rights system. In the overall UN system, the dual strategy, especially, the gender mainstreaming strategy co-exists with other overall policy strategies, such as, the strategy for mainstreaming human rights.

²⁷¹ Scott 1996, p. 14.

4 Mainstreaming a Gender Perspective and Integrating Women's Human Rights

In Chapter One, I outlined three objectives for this thesis. The first objective is to situate and analyze the development of the integrative parts of the Vienna and Beijing Strategies. The second objective is to unpack and analyze their content. The third objective is to analyze their implementation. In Chapter Three, I focused on the first objective. In this chapter, Chapter Four, I will focus on the second objective. This chapter is divided into seven parts. After a brief introduction, I will analyze the analytical tool and category of gender through its academic history in Chapters 4.2–4.3. In Chapter 4.4, I will direct my focus on the challenges posed by moving an analytical category and tool, such as gender, between and among different language contexts and institutional settings. In Chapter 4.5, I will analyze the UN strategy for mainstreaming a gender perspective. In Chapter 4.6, I will analyze the UN strategies for mainstreaming human rights and integrating women's human rights. Thereafter I will offer my conclusions.

4.1 Introduction

During the 1990s, the international community exhibited a growing interest in and concern for women's inequality. So, too, within the UN human rights framework, there has been a focus on women's inequality and on the alleged shortcomings of the sex neutral and separate woman-centred strategies for addressing inequalities. This focus has led to a shift within the UN human rights framework toward what I have referred to as integrative strategies, but, which can also be referred to as mainstreaming strategies.¹ The aims of these strategies include counteracting the

¹ In this thesis, I have used the term, integrative strategies, when referring to the parts of the Vienna and Beijing strategies that emphasize the integration of women's human

marginalization of women's human rights and other so-called women's issues within the UN system. However, the exclusion of women's concerns and, furthermore, the exclusion of women as rights holders are deeply rooted in dismissive strategies in the history of human rights. The portrayals of women as the exceptions, as deviances from the male norm are deleterious themes and ones, which have been reproduced time and again within the UN human rights framework. These themes have been perpetuated in the UN system by the very same techniques that the UN has applied in an effort to address wrongs against women, i.e, via its attempts to promote women's human rights by devising separate instruments and institutions for women.

In Chapter Three, I discussed some of the problems relating to "category-centred" approaches to discrimination and equal rights matters, emphasizing especially the creation of woman-centred human rights instruments. Moreover, I underlined that the *partial* separation between "human rights" and "women's human rights" and the creation of different institutional structures for the two sets of rights had led to a situation where women's human rights now seem to belong both on the UN human rights agenda and on its women's advancement agenda.

The aim of this chapter is to unpack and analyze the content of the strategies for integrating women's human rights and mainstreaming a gender perspective. The analysis is informed by the feminist, constructivist and discursive methodologies presented in Chapter Two. Feminist, constructivist and discursive methods provide means for questioning what is perceived as evident. Such methods, such as Bacchi's What is the problem? approach, provide means for unpacking strategies, for example, the aforementioned mainstreaming strategies. These methods also provide the apparatuses for analyzing how the strategies contribute to shaping problem representations and questioning whether they are adequate solutions to the problems. The core of the analysis is well captured by Haslanger's presentation of causal, constitutive and weak pragmatic con-

rights and the mainstreaming of a gender perspective. At the risk of creating some confusion, in this chapter, I will use the term, mainstreaming strategies. I prefer the term, integrative strategies, because it is translatable into the languages that I am familiar with, viz., Swedish, Finnish and French. However, in this chapter, Chapter 5.4.2, I, however, use a distinction common in the mainstreaming literature between integrative mainstreaming and transformative mainstreaming. I would like to avoid using the rather inconvenient term *integrative integrative* strategies when referring to a specific form of integrative strategies. Thus, I will in this chapter use the term mainstreaming instead of integrative strategies.

structions as intertwined. In other words, there is an intertwining of the three key elements of the analysis: the causal construction is what we wish to explain, the constitutive constructive is what we wish to explain it with and the third element is weak pragmatic construction or the feedback loop between the first two elements. I am convinced, as is Bacchi, that it is necessary to challenge the presumption that "... achieving social problem status for one's cause is in itself a sign of success [and] a commitment to important change".² Bacchi's What is the problem? approach develops ways to move beyond monocausal problem representation that implicitly suggests that simple solutions to social problems exist. That is, Bacchi suggests that *we* should not be seduced by what seems like equality advances. Just because it happened to be difficult and time consuming to move an issue onto the UN human rights agenda, does not necessarily ascertain the adequacy or the sufficiency of certain proposed solutions.

The focus of the first parts of this chapter, i.e., in Chapters 4.2–4.5, will be on the "travels" of the term gender and on the content of strategy for mainstreaming a gender perspective. The strategy for integrating women's human rights will be addressed in Chapter 4.6. The unequal emphases on the gender-based and women's human rights-based integrative strategies correspond to unequal emphases on the two strategies within the UN system. The strategy for mainstreaming a gender perspective has become the preferred strategy for equality between the sexes. To a certain extent it has also subsumed the strategy for integrating women's human rights.

4.2 Second-Wave Feminist Perspectives on the Sex/Gender Distinction

4.2.1 The Development of the Sex/Gender System

In the previous chapter, I noted that, while the Beijing Platform promoted a strategy for mainstreaming a gender perspective, the shift from the use of a language of sex to the use of a language of gender was one of the most controversial items during the negotiation process. The purpose of the following analysis of the academic history of the sex/gender distinction is twofold. On the one hand, the purpose of the analysis is to de-

² Bacchi 1999, p. 7.

scribe some of the difficulties tied to the gender turn in equality politics by way of the history of the terms. On the other hand, the purpose of the analysis is to destabilize the idea of a fixed content or meaning for the analytic category of gender.³

The term, sex, has traditionally been used within English language to describe whether a person is male or female. During the 1960s, a sex/gender distinction was developed by scholars, such as Robert Stoller, who were interested in analyzing and explaining the experiences of intersexual and transsexual persons.⁴ Stoller used the following definitions of sex and gender:

... the word *sex* [...] refer[s] to the male and female sex and the component of biological parts that determine whether one is a male or a female [...] This obviously leaves tremendous areas of behaviour, feelings, thoughts and fantasies that are related to the two sexes and yet do not have primarily biological connotations. It is for some of these psychological phenomena that the term *gender* will be used ...⁵

According to Stoller, an individual's sex could be either female or male and an individual's perception and representation of gender could be either feminine or masculine. His interest was in what he perceived as the non-conformity of an individual's sex and gender.⁶

David Glover and Cora Kaplan noted that “[a]s much as any single figure could, Stoller put the distinction between sex and gender on the map for writers and researchers in the humanities and in social sciences”, and as his ideas became common-place “... they were also soon being

³ This overview will evidently make considerable generalizations of the almost half a century old sex/gender distinction. For additional reviews of the sex/gender distinction, see Carlson 2001, Carlsson 1992, Glover and Kaplan 2000, Gothlin 1999, Haraway 1991, Moi 1997, Scott 1991, Svensson 2001, Thompson 1989 and Roth Walsh, ed. 1997.

⁴ Stoller 1968 and 1975. The term gender, however, had already been used in a similar context, see for example, Comfort 1963.

⁵ Stoller 1968, p. ix. See also Glover and Kaplan 2000, p. xxi.

⁶ Stoller (1968, p. viii) used the sex/gender distinction, and the notions gender and gender identity as working terms, noting that “[w]ith gender difficult to define and identity still a challenge for theoreticians, we need hardly insist on the holiness of the term ‘gender identity’”. According to Stoller (1968, pp. 9–10, 50), a normal child develops into a sexed and gendered being by first recognizing hers/his sex as either female or male and, then, in interaction with hers/his family and society finding hers/his sex-compatible gender. According to Stoller, intersexual and transsexual individuals suffered from a *mal fait* connection between sex and gender; they recognized the world as divided into two sexes, but had a “destructive hermaphrodite gender consciousness”. See also Glover and Kaplan 2000, p. xxi.

used in ways that he could not have anticipated”.⁷ What Glover and Kaplan refer to as the unexpected uses of the sex/gender distinction is the adoption by second-wave feminists of the 1970s of the distinction as their own.⁸ The American and European feminist movement, which re-awakened in the 1970s, the so-called second-wave of feminism, was interested in analyzing why women were oppressed by men and in figuring out strategies to end patriarchal oppression. Having analyzed what was perceived of as the failures of the first-wave of feminism, second-wave feminists *knew* that sex oppression ran deeper than state practices, laws and constitutions. For second-wave feminists, sex oppression became something that was structural (as described by Marxism), individual and symbolic (as described by psycho-analysis) and *very real* as learnt through the search for women’s experiences in the consciousness-raising groups of the women’s movement.⁹ The sex/gender distinction provided a useful analytical and political framework for why and how women were oppressed by men and for explaining that what seemed as women’s and men’s nature or sex was, in fact, a social construction or gender.

The development of the feminist sex/gender distinction is accredited to Gayle Rubin.¹⁰ Rubin used the conceptual framework of the sex/gender system “for lack of a more elegant term”.¹¹ She differentiated between the terms sex and gender in the following way. The term sex meant the male and female differences deriving from nature, i.e., bodily, genital and reproductive differences and the term gender meant the historically, culturally and socially contingent, transformative processes that turn the

⁷ Glover and Kaplan 2000, p. xxii.

⁸ Feminisms are often categorized in three waves. The liberal and cultural feminists of the 19th and early-20th centuries constituted the first-wave, to a large extent, the Marxist and radical feminisms of the post-1960s constituted the second-wave, and the third-wave was constituted by the post-1980s postmodern and poststructural feminist trends. Each new wave built upon the former, but was also a reaction against the epistemic and political shortcomings of the former. The approach of the three waves is largely based on an Anglo-American development within feminisms and fails to give credit to the diverse histories of European and global feminisms. See Jónasdóttir and Björk, eds. 1994, Segal 1999 and Weedon 1999.

⁹ As noted by Haraway (1991), early Anglo-American second-wave feminisms, as well as later variants, however, do “write from the belly of the monster”: They are a result of and dependent upon the paradigms and discourses that they criticize. Hence, when early Anglo-American second-wave feminists developed their fairly grand theories of women’s oppression, they did so, being influenced by neo-Marxism, neo-Freudianism and the knowledge *found* through consciousness-raising. For an introduction to Marxist influences on feminisms and consciousness-raising as a feminist method, see MacKinnon 1989.

¹⁰ See Haraway, 1991, Millett 1971, Moi 1997 and Scott 1991.

¹¹ Rubin 1975, p. 159.

“biological raw material” or what is male and female into what is a man and a woman.¹² According to Rubin, a sex/gender system exists in some form in every human society. However, these historically, culturally and socially produced systems can be matriarchal, egalitarian, patriarchal or other. That is, it is not inevitable that societies organize themselves into patriarchal sex/gender systems. The rationale behind the sex/gender systems is “... a taboo against the sameness of men and women, a taboo dividing the sexes into two mutually exclusive categories, a taboo, which exacerbates the biological differences between the sexes and thereby creates gender”.¹³ According to Rubin, males and females are as “biological raw material” different from each other “[b]ut they are not as different as day and night, earth and sky, yin and yang, life and death”.¹⁴ Being so alike, the gender creation process becomes a process by which natural similarities are suppressed.¹⁵ Rubin fails to explain conclusively why the sex/gender system results in the suppression of similarities and the promotion of differences. The main reason she offers in explanation of that phenomenon is that it is somehow connected to the creation of heterosexuality and the creation of heterosexual family units that can serve as a basis for production/reproduction in both kinship and capitalist systems. In the sex/gender system, opposites learn to attract. When these sex/gender systems are patriarchal, heterosexuality will ensure that women do not create “kinship systems” of their own organized by way of lesbian love, sisterhood or woman-centred political action.

Rubin is reluctant to define a possible way out of oppressive sex/gender systems. One suggestion that she puts forth is that the feminist movement must attempt “... to resolve the Oedipal crisis of culture by reorganizing the domain of sex and gender in such a way that each individual’s Oedipal experience would be less destructive”.¹⁶ Her attempt to re-organize the Oedipal crisis does not entail a return to nature. Sex might conceptually be defined as the biological raw material, but human beings are social, cultural and articulate. There is no nature without culture and there is no sex without gender and vice versa. There are only more or less oppressive, hierarchical and power-impregnated sex/gender systems. Rubin’s solution, however, would demand a thorough re-organization of

¹² Rubin 1975, pp. 159, 165.

¹³ Rubin 1975, p. 178.

¹⁴ Rubin 1975, p. 179.

¹⁵ Rubin 1975, p. 180. Note de Gouge’s claim that man has given himself rights over women, that exist nowhere else in nature, see Chapter 3.2.1 and Chapter 4.2.2.

¹⁶ Rubin 1975, p. 198. In a later text, Rubin (1984) criticizes her analysis in *The Traffic in Women* for having overlooked the importance of sexuality and lust in Western industrialized states. See Chapter 4.2.2.

society; it would demand political action that recognizes "... the mutual interdependence of sexuality, economics, and politics without underestimating the significance of each in human society".¹⁷

The sex/gender system, developed by Rubin, is radically different from Stoller's sex/gender distinction. As opposed to Stoller, Rubin does not, view the two sexes and their corresponding genders as natural. With her system approach, she moves the distinction from an individual to a structural level. That is, for Rubin the sex/gender system theory was an analytical framework that enabled her to analyze the relational construction of masculinities and femininities and men and women in different societies. For Stoller, the sex/gender distinction was an analytical framework that enabled him to analyze and work with individuals who did not fit into the dominant, interpreted as natural, man-woman frame.

4.2.2 Sameness/Difference and the Other Woman

While the emphasis on a sex/gender system was downplayed with the decline of Marxist influences on feminist scholarship, the sex/gender distinction became the favoured analytical framework among English language feminists during the 1970s and 80s. The distinction, however, also contributed to the heated debates about whether women were the same or different from men and, connected to this debate, the ongoing argument about whether all women are the same and share the same experiences of being oppressed by men.

While theoretical, these two debates are closely connected to the strategic reasons for the feminist adoption of the sex/gender distinction. The sex/gender distinction did provide a means in the struggle to remove women from "... the category of nature and to place them in culture as constructed and self-constructing social subjects of history".¹⁸ Rubin had been cautious when developing her sex/gender system theory; she emphasized that her system approach provided for a culturally contingent approach.¹⁹ Many feminists, following in her footsteps, but lacking an anthropological perspective, used the sex/gender distinction to establish a universal foundation for women's oppression by men. As Judith Butler noted, the need to strengthen feminism's own claims to be representative has occasionally motivated a shortcut to a categorical or fictive universality of the structure of domination, held to produce women's oppression by men.²⁰ Feminists were interested in understanding why and how gender

¹⁷ Rubin 1975, p. 210.

¹⁸ Haraway 1991, p. 134.

¹⁹ Butler 1990, pp. 3–4.

²⁰ Butler 1990, pp. 3–4.

was construed and how it mainly affected women's lives within their societies. These feminists were also interested in changing the oppressive system. In order to make their arguments catchy, it seemed an easy solution and, at the time not a huge sacrifice, to omit discussions about difference.

Within the sameness/difference debate, the proponents of the sameness position argued that women and men were essentially the same, give or take a few bodily differences, but that patriarchal societies produced and reproduced oppressive gender constructs, which made man into the norm and woman into the exception. These patriarchal societies accorded priority to the male spheres of life and empowered these spheres. At the same time, this patriarchal drive excluded women from these male-dominated and male-empowered and empowering spheres and relegated women to other, lesser, even tamer spheres.²¹ The proponents of the difference approach argued that women and men were essentially different

²¹ The so-called Gilligan-MacKinnon controversy exemplifies well the sameness/difference debate. In *In a Different Voice* (1982), Carol Gilligan set out to criticize Lawrence Kohlberg's analysis of moral development. According to Kohlberg, the highest stage of moral development was signified by an ethics of justice, which, in simplified terms, was signified by the ability to make detached and objective decisions about right and wrong. However, in accordance with Kohlberg's empirical analysis, only boys/men attain this highest level of responsible and ethical selfhood. Gilligan's response to Kohlberg was that he had omitted and devalued women and the specificities of women's development into responsible and ethical selves. According to Gilligan, the moral development of boys/men and girls/women differs because the formers' ethics of justice demand approaching moral dilemmas as math problems with humans, while the latter develops an ethics of care in which moral dilemmas are narratives of relationships that extend over time. Women's different moral/ethical voice perceives identity as defined by a context of relationships judged by a standard of responsibility and care. Gilligan perceives morality as arising from the experience of connection and conceived of as a problem of inclusion rather than one of balancing claims. Catharine MacKinnon has praised the strong and elegant sensitivity of Gilligan's work, but she and other radical and constructivist feminists opposed Gilligan's conceptualization of the ethics of care/responsibility as feminine. MacKinnon, who, as a post-Marxist, radical feminist, perceives women's and men's relationship as one of female victimization and male supremacy and who approaches all of societies institutions whether social, political or legal as being transgressed by a normalized ideology of men's sexual power over women, criticizes Gilligan for failing to acknowledge these societal and sexual power structures that make women into women and men into men. MacKinnon (1987, p. 39) recognizes the value of an ethics of care, but argues that an ethics of care is only feminine in the sense that it is the ethical/moral space that accorded to women by patriarchy: "[w]omen value care because men have valued us according to the care we give them [...]. Women think in relational terms because our existence is defined in relationship to men". Hence, as MacKinnon argues, it is impossible to hear women's voices as long as men have their feet on women's throats. For further analysis of the sameness/difference debate, see Carlson 2001, Fuss 1996 and de Laurentis 1993.

and the aim of feminist struggle should not be to make women into men, but to ensure the revalorization of the traditionally female spheres of life, viz., to add back the value that had been stripped from those spheres. In accordance with Diane Fuss, the definition of essentialism, in feminist theory, can be located:

... in appeals to a pure or original femininity, a female essence, outside the boundaries of the social and thereby untainted (though perhaps repressed) by patriarchal order. [...] Essentialism emerges perhaps most strongly within the very discourse of feminism, a discourse which presumes upon the unity of its object of inquiry (women) *even* when it is at pains to demonstrate the differences within the admittedly generalizing and imprecise category.²²

What Fuss points out is that although the anti-essentialists might be winning in the feminist sameness/difference debate, feminism becomes essentialist with its focus on women. In much of English language and Nordic feminist scholarship, the sameness/difference debate lost out in favor of a sameness approach. However, the early sameness/difference debate that was preoccupied with questions about women's and men's sameness/difference very soon gave way to a criticism of what Fuss defined as the essentialism intrinsic to the feminist discourse. That is, a criticism of the sameness of women, a sameness that is presupposed in questioning of sameness/difference between women and men.

In the United States, a black feminist critique of Anglo-American feminisms developed during the early 1980s, which was, then, closely followed by Lesbian, Latin and Asian feminist critiques. Similarly, feminists from other parts of the world began to criticize the hegemony of Western feminisms and the image of the other women in Western feminisms.

Black feminists in the United States argued that black equaled black men and women equaled white women and that black women's experiences and the specific forms of discrimination suffered by black women was excluded from the agenda of both the black liberation movement and the second wave feminist movement.²³ Adrian Wing argues:

[c]onstant overt and covert discrimination, both individual and institutional, augments the lifelong spirit injury of black women. [...] I am [] not the 'essential' (white) woman discussed by many white feminists. I am not a white woman 'leached of all color and irrelevant social circumstance – a process which leaves black women's selves fragmented beyond recognition'.

²² Fuss 1997, p. 251. Compare with Braidotti's analysis presented in Chapter 2.2.1 and the discussion about the paradox of feminism presented in Chapter 3.2.1 and Chapter 6.

²³ For an introduction to black feminism and critical race feminism, for example, see Wing, ed. 1997 and 2000.

My experience cannot be reduced to an addition problem: 'racism + sexism = straight black women's experience'. I am not a 'white woman plus'.²⁴

Similar arguments were put forth by lesbian women. Lesbian and other non-heterosexual feminists argued that while feminists criticized patriarchy they, still, supported the heterosexual, intrinsically patriarchal, norm, excluding lesbian women and the possibilities of lesbian relationships and all women sisterhoods from their analysis. For example, in her article, *Thinking Sex* (1984), Rubin argues that Western, industrialized societies are governed by a hetero-patriarchal norm that privileges heterosexual and monogamous sexuality and excludes or labels abnormal and unnatural all other forms of sexuality. In *Thinking Sex* Rubin revises her sex/gender system theory. When developing it had not realized the importance of sexuality as an organizing principle in Western, industrialized societies. She notes:

[f]eminist conceptual tools were developed to detect and analyse gender-based hierarchies. To the extent that these overlap with erotic stratification, feminist theory has some explanatory power. But as issues become less those of gender and more those of sexuality, feminist analysis becomes irrelevant and often misleading. Feminist thought simply lacks angles of vision which can encompass the social organization of sexuality.²⁵

Similar criticisms were produced by non-Western feminists. According to Chandra Mohanty, for example, Third World feminisms must be construed, on the one hand, via a critique of Western feminisms and, on the other hand, via the development of autonomous, geographically, historically and culturally grounded feminist epistemologies.²⁶ Mohanty acknowledged that neither Third World nor Western feminisms are singular and homogenous in their epistemologies and political goals. Further, she acknowledged that feminists, however, need to destabilize and reinterpret their analytic categories in order for feminisms to incorporate the difference, diversity and contradictions in the category of woman more efficiently.

The relationship between 'Woman' – a cultural and ideological composite
Other constructed through diverse representational discourses (scientific,

²⁴ Wing, ed. 1997, p. 30. See also the chapter on multi-dimensional discrimination under Chapters 3.3.1 and 5.4.2.

²⁵ Rubin 1984, p. 309. Note that the what I have called the Beijing gender controversy was, in part, a result of the potential of "gender" concepts being employed as a means for questioning the heterosexual norm, see Chapter 3.5.2.

²⁶ Mohanty 1991, p. 51. Compare with discussions relating to the UN world conferences on women in Chapters 3.5.1 and 3.5.2, and the discussion about international feminisms in Chapters 2.2.1 and 6.1.

literary, juridical, linguistic, cinematic, etc.) – and ‘women’ – real, material subjects of their collective histories – is one of the central questions the practice of feminist scholarship seeks to address. This connection between women as historical subjects and representations of Woman produced by hegemonic discourses is not a relationship of direct identity, or a relation of correspondence or simple implication. It is arbitrary [...] I would like to suggest that the feminist writings [...] discursively colonize the material and historical heterogeneities of the lives of women in the third world, thereby producing/re-presenting a composite, singular ‘third world woman’ ...²⁷

The diverse and well-founded critiques of racist, heterosexist and imperialist feminisms have led to de-stabilization and a lost impression of unity within the feminist epistemological and political projects. As noted by Audre Lorde:

[b]eing women together was not enough. We were different. Being gay-girls together was not enough. We were different. Being black together was not enough. We were different. Being Black women together was not enough. We were different. Being black dykes together was not enough. We were different ... It was a while before we came to realize that our place was the very house of difference rather than the security of any particular difference.²⁸

Evidently, the process of the destabilization of feminist analysis and of feminist political projects also affected feminism’s analytical framework because the sex/gender lens distorted the ability to see other differences. The feminist post-1980s *enjeu* with respect to what analytic categories to use is well described by Haraway:

[i]t has seemed very rare for feminist theory to hold race, sex/gender, and class analytically together – all the best intentions, hues of authors and remarks in prefaces notwithstanding. In addition, there is as much reason for feminists to argue for a race/gender system as for a sex/gender system, and the two are not the same *kind* of analytical move. And again, what happened to class? The evidence is building of a need for a theory of ‘difference’ whose geometries, paradigms, and logics break out of binaries, dialectics, and nature/culture models of any kind. Otherwise threes will always reduce to twos, which quickly become lonely ones in the vanguard. And no one learns to count to four. These things matter politically.²⁹

²⁷ Mohanty 1991.

²⁸ Haraway 1991, p. 139, citing Audre Lorde (1982).

²⁹ Haraway 1991, pp. 128–9. The problem of reductionism is also addressed by Bacchi (1999), see Chapter 2.3.3.

4.3 Third-Wave Feminist and Male-Centred Perspectives on the Sex/Gender Distinction

4.3.1 Post-Feminisms and Sexual Difference

The 1980s led to a destabilization of the idea of *one* feminism, fighting for a homogeneous and unified community of women and it resulted in a questioning of feminism's sex-centred and gender-centred analytical categories relationship to race, class, sexuality and other similar social categories. The increased postmodern and poststructural influences on feminism resulted in a questioning of the assumptions at the heart of the sex/gender distinction and whether an analytical framework is useful if it attempts to distinguish between women and men as material beings from their gender.³⁰ The postmodern and poststructural turns led to a questioning and reinterpretation by feminists notions, such as, absolute and binary categories, Marxist and socialist approaches to power, equality and emancipation and representations of the autonomous male subject. Feminism itself is criticized for being inherently modernist and non-adaptive to the emerging postworlds. *Peu en peu*, during the 1990s, the term feminist and women's studies was changed to gender studies in an attempt to design a more inclusive "feminist" agenda.

While many postmodern and poststructural feminist scholars use the sex/gender distinction as an example of binary categories at the heart of feminist theory, Judith Butler's work is the most direct poststructural feminist engagement with the sex/gender distinction and its dissolution.³¹ *Gender Trouble* (1990) became most known because of the notion of gender as performative and because of highlighting the subversiveness of "gender trouble", i.e., of performing the other's gender. Butler argued that "[g]ender is the repeated stylization of the body, a set of repeated acts within a highly rigid regulatory framework that congeal over time to produce the appearance of a substance, or a natural sort of being".³² And she noted that "[i]f gender is the cultural meanings that the sexed body assumes, then a gender cannot be said to follow from a sex in any one way. Taken to its logical limit, the sex/gender distinction suggests a radical discontinuity between sexed bodies and culturally constructed genders".³³

³⁰ For discussion, see Braithwaite 2002, Brooks 1997, Nicholson, ed. 1990 and Scott, Kaplan and Keates, eds. 1997.

³¹ See Butler 1990 and 1993, see also, for example, Braidotti 1991 and 1995, Carlson 2001, Haraway 1991, Moi 1997 and Nicholson 1994.

³² Butler 1990, p. 30.

³³ Butler 1990, p. 6.

Hence, what Butler argued is that sex and gender can be completely disentangled at least in theory. The consequence of this disentanglement is that man and masculine become free-floating artifices that can just as easily be taken to signify a female body as a male body and vice versa, with woman and feminine.³⁴ In *Gender Trouble*, however, sex is analytically secondary to gender. Butler only suggests that what is perceived as natural sex is also a product of gendered processes and as a result "... gender is not to culture as sex is to nature, gender is also the discursive/cultural means by which 'sexed nature', or 'natural sex' is produced and established as 'prediscursive', prior to culture, a politically neutral surface on which culture acts".³⁵ Hence, she mentions that sex appears in language as a substance, as something that exists before language, but this appearance is created through a performative twist of language and discourse. In *Bodies that Matter* (1993) Butler questioned what she calls the materiality of sex.³⁶ However, she acknowledged that "[t]o claim that the materiality of sex is constructed through a ritualized repetition of norms is hardly a self-evident claim".³⁷ In order to understand how the materiality of sex is constructed, it is necessary to reconstruct the common perception of construction.³⁸ Bodies eat, sleep, feel pain and pleasure and these *facts* are perceived as constructed only with difficulty, but the irrefutability of these experiences gives no indication of the meaning of affirming them or of the discursive means by which they are affirmed.³⁹ Hence, in *Bodies that Matter*, Butler has rethought some of the presumptions made in *Gender Trouble*, stating that "[i]t is not enough to argue that there is no prediscursive sex that acts as the stable point of reference on which, or in relation to which, the cultural construction of gender proceeds".⁴⁰ The politico-theoretical project that Butler attempts in *Bodies that Matter* is to abolish the idea that sex is apolitical and non-performative, sex here meaning, body, biological raw material, nature.⁴¹ She assumes that a successful reformulation of sex will make gender defined as a cultural construct superfluous, which will eliminate dualist assumptions of body/mind, nature/culture, woman/man, female/male, feminine/masculine, et cetera.

³⁴ Butler 1990, p. 6.

³⁵ Butler 1990, p. 7.

³⁶ Butler 1990, p. 19.

³⁷ Butler 1993, p. xi.

³⁸ Butler 1993, p. xi.

³⁹ Butler 1993, p. xi.

⁴⁰ Butler 1993, p. xi.

⁴¹ See the discussion about a critical language of sex and sexing in Davies 1997 and in Chapter 2.2.2.

Poststructural, postcolonial and queer feminists have contributed to the unpacking of the sex/gender distinction by showing that binaries, such as, the sex/gender distinction, are fundamentally flawed and that one cannot be essential, i.e., pre-discursive if the other is constructed, because the distinction itself is a construction. Rather than resulting in the development of a *new* preferred analytic category that could replace the fallen distinction, the criticism has led to the marginalization of the notion of sex in feminist discourses, while the notion of gender continues to be used, although outside the distinction. The marginalization of sex, on the one hand, has resulted in a dematerialization of the experience of being a woman or a man. The marginalization of sex, on the other hand, has also resulted in a stabilization of the notion of gender. That is, when relying on the sex/gender distinction, feminists perceived sex as stable and gender as flexible and culturally variable, but when sex is excluded, women as embodied, material, beings have to some extent become marginalized and some of the markers of sex seem to have leapt over onto the feminist understanding of gender. Feminists, such as, Braidotti, for example, have made attempts to introduce new understandings of bodily experiences into feminist analysis.⁴² Toril Moi, for example, has argued that, in their attempts to eliminate ontological sex and the sex/gender distinction, poststructural feminists have arrived at a gender that has become *almost as* ontological as sex.⁴³ This ongoing process of dematerialization and stabilization poses new demands on feminist analysis.

4.3.2 Unpacking Patriarchy and Integrating Men

The above brief overview of the theoretical and political history of the feminist sex/gender distinction focused on how feminists have approached the woman subject and women's oppression by men. In analyzing women's oppression, feminists have emphasized that the construction of the woman subject is relational and dependent upon its difference from the construction of the male subject. The feminist focus, however, has been on the construction of women's gender, and on how women are affected by the hierarchical and power-impregnated construction of sexual and other differences. Hence, although a dialectical notion of gender is intrinsic to Second-Wave and, especially, socialist and radical feminist theories, feminists have not paid equal attention to the construction of men's gender or on how men are affected by sexual difference. Until recently

⁴² For postcolonial feminist analysis, see Spivak 1999 and Trinh 1989 and 1991.

⁴³ Moi 1997.

feminist scholars have approached men, maleness and masculinities through abstractions such as the male objective standard or the masculine norm.⁴⁴ The male norm or men as the objective standard had no resemblance to *real* men, and did not acknowledge differences within the category of men.

The mounting criticism against Second-Wave feminisms' racism, sexism and imperialism and the deconstruction of the idea of women's shared experience has resulted in an increased attention on and deepened analysis of men, maleness and masculinities. The difference-oriented feminist discourses had a more complex relationship to men, maleness and masculinities because these feminisms emphasized the interconnections between different forms of oppression, some of which were shared with non-hegemonic men and masculinities.

With regard to the feminist approach to the notion of the male norm and to masculinities, the masculinity studies which emerged during the 1990s made their own contributions to the feminist approach in the form of new approaches and problematizations.⁴⁵ It is however important to note that the new found interest in men's experiences of maleness and masculinity does not necessarily contribute to the feminist project *per se*. The focus of much of the critical men's or masculinity studies remains on men's experiences of maleness and of masculinities, not on global scale sexual politics.⁴⁶

The postmodern and poststructural turn in feminism, and the shift of focus from feminist to gender studies, including masculinity studies, has eroded the idea and the analytical priority given to the structural, hierarchical and power-impregnated gender relationship. That is, the coming of gender studies led feminisms into an epistemological and conceptual dead end: how should feminists explain patriarchy, the hierarchical and power-impregnated gender relationship and the preference of the male

⁴⁴ For a discussion about the male norm, see, for example MacKinnon 1989.

⁴⁵ For an introduction to critical male or masculinity studies, see for example Connell 1995, Ekenstam, Frykman and Johansson 1998, Greig, Kimmel and Lang 2000, Seidler 1994 and Wetterberg 2002. For an analysis of the critical male or masculinity studies as part of gender studies, see, for example, Glover and Kaplan 2000.

⁴⁶ Connell (1995, pp. 76–81) for example attempted to understand the construction of masculinities and the relationship between different male identities or masculinities using the notions of hegemony/subordination and complicity/marginalization. Seidler (1994, p. 3) analyzes the construction of masculinities in relationship to the dichotomies of modernity and the aligning of masculinity with authority and reason. He notes that “[a]s men, we often taken it to be our particular task to know what is best. Since we speak with the authority of reason, it is easy for others to be silenced”.

norm if women did not share, at least to some extent, the experience of being oppressed by men, if power was not structural and if some men were as oppressed as women by the dominant male norm? To some extent, feminist theory is, still, stuck in that dead end. Preferred explanations of this paradox of feminist thought are: paradoxes are fruitful; women are different, but they are, still, oppressed by men; and analytical shortcomings do not change reality: women are discriminated against, oppressed, violated and killed because of their sex.

Braidotti has noted that the 1990s paradigm shift in feminist theory has served as a necessary criticism of dominant and hegemonic feminisms, but that the development gender studies has also contributed to the depolitization of feminism. That is, feminism's insecurities with its analytical categories has not only led to the development of vibrant feminist discourses, but has also watered down feminist analysis about hierarchies and power.⁴⁷ Braidotti argues that

[o]n a more theoretical level I think that the main assumption behind "gender studies" is a new symmetry between the sexes, which practically results in a renewal of interest for men and men's studies. Faced with this, I would like to state my disagreement with this illusion of symmetry ...⁴⁸

4.4 Translations and Travels

The above analysis of the changing content and contestations of the analytic category of gender refers only to the concept's English language academic history. In this history, gender, to use Haraway's words, has "cost blood in struggle in many social arenas".⁴⁹ Since the 1970s, the concept of gender, however, has not only developed within English language academia, but it has also been translated into other language contexts and it has traveled from within its academic context to public equality politics. In the attempts to translate the sex/gender distinction into other languages and other feminist contexts, some aspects of the struggle and its results have been lost. Instead, Nordic feminists, for example, have had to deal with not only how to translate the concept, but also how to relate to the dominance of English language within academia.⁵⁰ For example, Swedish

⁴⁷ Braidotti 1995, p. 150–1.

⁴⁸ Braidotti 1995, p. 151.

⁴⁹ Haraway 1991, p. 127.

⁵⁰ Widerberg 1998. In the main Nordic languages, i.e., Danish, Finnish, Norwegian and Swedish, different strategies have been chosen to translate the sex/gender distinction

feminist scholars have translated the sex/gender distinction into Swedish using the terms *kön* (sex) and the term *genus* (gender). While the term *genus* has traditionally only been used to define grammatical categories, the concept revolutionized Swedish equality politics through the so-called *genus* system theory posited by Swedish feminist historian Yvonne Hirdman, presented as part of *Maktutredningen* in 1990.⁵¹ Today, the concept of *genus* is as much part of Swedish language as gender is part of English language. The Swedish concept has, however, had more to do with state-centred policy measures, such as, the sex/gender equality politics, as well as the establishment, in 1998, of the National Secretariat for Gender Research (*Nationella Sekretariatet för Genusforskning*), than with grassroots politics.⁵²

Karin Widerberg discusses problems with translating Danish feminist research and a gender-related conceptual apparatus from Danish to English. Widerberg highlights that:

[b]ut when we go deeper, we see that translating understandings of gender from one culture and language to another also implies eliminating certain concepts and contextual understandings. “Going international”, wanting to participate and be understood in the international feminist debate, thus implies changing the *voice* as well as the *story*.⁵³

into the national languages. Danish, Finnish and Norwegian feminist scholars have continued to use the concept for sex, i.e., *kjønn* in Norwegian, *køn* in Danish and *sukupuoli* in Finnish for both sex and gender and to use add-ons such as *social sex* or to incorporate the English language concept of gender when specifically discussing *gender*. The European Women’s Studies network, ATHENA, has analyzed the diverse meanings of gender in different European languages, see Braidotti, ed. 2000, Braidotti, Vonk and van Wichelen, eds. 2000.

⁵¹ Hirdman 1990, see also Hirdman 1998. Hirdman defines *genus* as an on-going process with individual, structural and symbolic implications through which sexed individuals are formed feminine or masculine. Hirdman’s *genus* system is based on two logics: the separation of the sexes and the primacy of the masculine norm. Hirdman has been criticized for her static conception of gender and system theory. Lengthy debates have been held regarding whether the concepts of gender and *genus* are compatible. Nonetheless, Hirdman’s theory became the basis for much of Sweden’s public equality work during the 1990s. See Carlsson Wetterberg 1992, Hirdman 1993.

⁵² Svensson 1997 and 2001. See also Kouvo 2004 (forthcoming).

⁵³ Widerberg’s (1998, p. 133) reflections are caused by a translation of one of her Danish language articles into English. During the translation, she had noted the different meanings of gender in Danish and in English, but the English language editor had requested her to eliminate the Danish references in order to make the articles more general. Rævaara (2002, pp. 106–7) discusses problems with conceptual stretching and well-travelled English concepts, on the one hand, and non-travelling concepts, for example, Finnish language concepts, on the other hand.

The question of choice of language and the consequences of language have also been addressed, by comparative legal scholars, for instance.⁵⁴ Marianne Garre, for example, by linking cognitive linguistics to translation, has formulated two hypotheses regarding the translation of not gender, but human rights concepts:⁵⁵

First, given that comprehension depends on the linguistic basis on which cognitive models are activated, inconsistencies in [...] translations of international human rights texts will create confusion and uncertainty about how human rights texts are to be understood. Second, given that professional groups share professional traditions and backgrounds, individuals belonging to such a professional group will interpret contested conceptions a more consistent manner than lay people. And consequently legal professionals will interpret contested rights concepts in a more consistent manner than other professionals and lay people, including translators.⁵⁶

The implications of the choice of language and difficulties in translation are a part of both international feminist scholarship and UN everyday reality.⁵⁷ In the case of the UN gender mainstreaming strategy, travels and translations of concepts include both a change of context, i.e., from academia to public equality politics and a change in language, i.e., from English to as in the case of the UN Russian, French, Spanish, Chinese and Arabic. The English and French versions of the Beijing Platform's emphasis on gender analysis and the gender mainstreaming strategy exemplify difficulties in translating the term gender in a UN context.

⁵⁴ Zweigert and Kötz 1992, Chapter A, see also Garre 1999.

⁵⁵ According to Garre (1999, p. 53–4), cognitive linguistics assumes “... that the fundamental way in which we think, understand and operate is grounded in experience, culture and language and expressed through cognitive models such as metaphors, categories, prototypes, idealized cognitive models, contested concepts, etc., all of which constitute our cognitive abilities” and she notes that “[t]ranslation of human rights texts, on this assumption, will be similarly determined, i.e. complicated or facilitated, by human cognition”.

⁵⁶ Garre (1999, p. 168–71) cites three criteria that she views as distinct for the translation of contested concepts within the human rights field: if a concept is contested in one language it is likely to be contested in other languages as well; when contested concepts are translated from one language to another the whole debate about why a concept was contested in the first language does not have to be communicated, but it is important to communicate basic tenets in the ongoing discussion; it should be noted that professionals and lay people may have completely different understandings of why and how a concept is contested.

⁵⁷ The UN's main headquarters are located in French-speaking Geneva and in English-speaking New York. The UN originally started with five official languages, viz., English, French, Spanish, Russian, Chinese. Since the 1970s, when Arabic was added to the list, it has six official languages.

Art.	English	French
222	If the goal of full realization of human rights for all it to be achieved, international human rights instruments must be applied in such a way as to take more clearly into consideration the systematic and systemic nature of discrimination against women that gender analysis has clearly indicated.	Pour assurer la jouissance universelle des droits de la personne humaine, il faut tenir compte de la nature systématique des discriminations dont les femmes sont victimes, que l'analyse par sexe fait clairement apparaître, dans l'application des instruments internationaux relatifs aux droits de l'homme.
229	In addressing the enjoyment of human rights, Governments and other actors should promote an active and visible policy of mainstreaming a gender perspective in all policies and programmes so that, before decisions are taken an analysis is made of the effects on women and men, respectively.	Pour assurer la jouissance des droits de l'homme, les gouvernements et les autres intéressés devraient promouvoir des mesures concrètes et visibles afin d'intégrer la problématique hommes-femmes dans tous leurs programmes et politiques, de sorte que toute décision soit précédée d'une analyse de ses effets sexospécifiques.

Image: Comparison between English and French language versions of Beijing Platform arts. 222 and 229.

The official English and French versions of Beijing Platform Arts. 222 and 229 exemplify some of the difficulties. The English versions use the terms “gender analysis”, “mainstreaming a gender perspective” and “an analysis of the effects on women and men”. In the French version, these three terms are translated into “*l'analyse par sexe*”, “*intégration de la problématique hommes-femmes*” and “*analyse des effets sexospécifiques*”.⁵⁸ Hence, while the English version puts forth what seems to be a fairly unified strategy, this unity is broken already by the time the concepts are trans-

⁵⁸ The concept of sex is translatable in French with *sexe*, but the concept of gender is not as evidently translatable in French with the word, *genre*. According to Maria Puig de la Bellacasa (2000, p. 67) French-speaking feminists have been reluctant to translate gender with *genre*, but this hesitancy is slowly changing. The term *genre* is used in French translations of English language feminist texts; it is also used in French language publications by the European institutions and by other international institutions after the Beijing Conference. In the previous chapter, I noted that the Holy See had made reservations regarding the use of the term gender in the Beijing Platform. In the French version of the reservation, it regards the use of the term *sexe*. See also Bisilliat 2000.

lated into French. The gender mainstreaming strategy, which at least among women's advocates and gender experts, evokes ideas about change and social construction, does not *exist*, as such, in the French version.

The persuasiveness of the gender turn in UN equality politics has certainly led to the translation and travel of the concept of gender beyond its original English language context. Conceptual confusion, however, which includes both problems relating to translation and to the communication of the meaning of gender, remains among the constraints in the implementation of the gender mainstreaming strategy within the UN system.⁵⁹ The fact, that gender remains controversial was noted in Chapter 3.5.2 in conjunction to both the Commission on the Status of Women's preparatory session for the Beijing conference and the Beijing Platform.

Among the persons that I talked to at the UN, most, however, were in favour of the gender turn in UN equality politics. Only two persons questioned in any considerable extent the usefulness of the "gender industry".⁶⁰ None of those persons who found the sex/gender distinction to be a useful aid in thinking about women, men and equality and who were in favor of the gender turn in equality politics, however, were unaware of the difficulties with translating "gender" or with trying to understand and explain what "gender" stands for.⁶¹

Some of the interviewed persons stressed the importance of the sex/gender distinction within the framework of the UN gender turn. One person noted for example:

*[i]t is important for people to understand the distinction to understand that gender roles are not static. So, when we are confronted with issues of culture, tradition, violations of basic human rights usually of women and children, then we can go back to them and say, well this is tradition and things change! You cannot change sex as a biological thing, but you can change gender roles, you can change everything that has to do with social constructs.*⁶²

In one of the interviews, UN gender training and thinking in terms of the sex/gender distinction were highlighted as great learning experiences, but the same person confessed that, she had neither the time after the gender training nor the know-how to integrate a gender perspective into her work.⁶³ The focus on the sex/gender distinction during the gender

⁵⁹ *Gender Mainstreaming: An Overview* 2001.

⁶⁰ The critical perspectives were expressed during interviews Nos. 4 and 6.

⁶¹ Interviews Nos. 3, 9, 10, 13 and 15.

⁶² Interview No. 10. Similar points of views were presented in interviews Nos. 3, 9 and 13.

⁶³ Interview No. 7.

training, however, also came into question. One person argued that while making the difference might be important, actually working with the concept, i.e., implementing it, demands knowing *how* to make use of the difference and there had not been enough practical guidance explaining how to use the sex/gender distinction and a gender perspective.⁶⁴

The fact that the term gender is an English language concept, which is not necessarily translatable into other languages, was highlighted in some of the interviews.⁶⁵ For example, one of the interviewed persons noted that:

*[a]ctually, you have various translations in various languages. You can take the word in French, in Spanish and in Arabic, but it wouldn't ... it would be the same word, but not really with the same meaning ... Do you see what I mean? In French they have two different terminologies to deal with that. They would say "la question du genre" which is correct in French, but that does not mean a lot as "le genre" is the word you use to say that a table is feminine or masculine, or they use the question of "sexospécificité" [...] In Spanish it is "genero", which is masculine or feminine, and now I have forgotten how we say in Arabic ... but it doesn't really mean anything in Arabic either.*⁶⁶

The challenges faced when attempting to translate the concept, however, were not viewed as being very serious. One person noted that if the concept of gender was used in the wrong way, she corrected it, but this error was merely a technical flaw and not a fundamental flaw.⁶⁷ Another person noted that the difficulties in translating the concept had contributed to its success, and she stressed that "... it is good that we [the UN human rights framework] do not have a definition, as the more you need to explain it the more you try to understand it".⁶⁸ Another person, however, was critical about the claim that non-translatability can be an asset especially in relation to human rights. Noting that as the idea of human rights include "standardization of certain principles and ideas into something that everybody can understand and agree upon", gender as a fluid

⁶⁴ Interview No. 1. In the same interview it was noted that in the vast majority of cases there is, still, a need to think specifically about women.

⁶⁵ Interviews No. 2, 3 and 10.

⁶⁶ Interview No. 2. Translation was also addressed as a difficulty in interviews Nos. 3 and 10.

⁶⁷ Interview No. 10.

⁶⁸ Interview No. 2. Svensson (1997, pp. 52–3) notes that imprecise concepts can be used, stating that "[o]m utgångspunkten tas i språkets osäkerhet måste varje språkligt uttryck alltid motiveras och analyseras. Detta är givetvis omöjligt. Men trots denna omöjlighet kan strävan och medvetenheten om osäkerheten vara en bit på vägen. Det kan medföra att varje text, skriftlig eller muntlig, varje uttryck i andra former, alltid bör läsas ur flera aspekter".

concept can be useful for nothing except to “start a discussion of the fact that because of how people are they end up being treated differently”.⁶⁹

Another person highlighted that the gender concept is too complex and that “[w]e need to return to talk about more specific things”.⁷⁰

4.5 An Analysis of Gender Mainstreaming Strategies

4.5.1 The Gender Turn and the ECOSOC Agreed Conclusions on Gender Mainstreaming

The concept of gender and the idea of gender mainstreaming were introduced to a broader UN audience around the time of the Nairobi Conference (1985). The gender mainstreaming strategy had its breakthrough, however, at the Beijing conference in 1995.⁷¹ While different gender mainstreaming strategies have been developed for different sectors within the UN, the core of the strategy is captured in the *ECOSOC Agreed Conclusions 1997/2 on gender mainstreaming* (hereafter, *Agreed Conclusions*) adopted as part of the ECOSOC follow-up activities to the Beijing conference.⁷² The *Agreed Conclusions* contain a definition

⁶⁹ Interview No. 4.

⁷⁰ Interview No. 13, similar points of views were expressed in interview No. 10. In interview No. 4, it was noted that that just as the term gender is difficult to grasp, so is the gender mainstreaming strategy.

⁷¹ The strategy for mainstreaming a gender perspective has to a large extent been developed in the development and European contexts. Mazey (2001) argues that it is originally a Swedish strategy. The European Commission adopted a gender mainstreaming approach through the *Commission Communication on Incorporating Equal Opportunities for Women and Men into All Community Policies and Activities* (COM(96) 97 final). The decision was operationalized through the Community Framework Strategy on Gender Equality (2001–2005) (COM(2000) 335 final). See also *Gender Mainstreaming: Conceptual Framework, Methodology and Presentation of Good Practices* 1998. A decision to integrate a gender perspective into all Community activities is also included in the Treaty of Amsterdam Art. 2. For discussions, see Björk and Kouvo 2002 and Mazey 2000, 2001 and 2002. Sweden adopted a decision to integrate an equality perspective in all governmental politics in 1994. The decision to gender mainstream led to the adoption of the so-called *Jämtegrering* strategy developed for local governments; see, for example, www.z.lst.se/jamsthet/jamtegrering.php (28-09-2003), Lorentzi 2001 and Sandler 1997.

⁷² In the aftermath of the Beijing conference both the OSAGI and the IANGWE have been created. It is also at these web pages that a large number of UN guidelines and best practice examples regarding the implementation of the strategy for mainstreaming a gender perspective were found, see at www.un.org/womenwatch/osagi/ (16-01-2004) and www.un.org/womenwatch/ianwge/ (16-01-2004). Actions for gender mainstreaming

of gender mainstreaming, which is the most referred to within the UN. According to the Agreed Conclusions, mainstreaming a gender perspective” is

...the process of assessing the implications for woman and men of any planned action, including legislation, policies and programmes, in all areas and at all levels. It is a strategy for making women’s as well as men’s concerns and experiences an integral dimension of the design, implementation, monitoring and evaluation of policies and programmes in all political, economic and societal spheres so that women and men benefit equally and inequality is not perpetuated. The ultimate goal is to achieve gender equality.⁷³

In accordance with the ECOSOC definition of gender mainstreaming, the strategy of mainstreaming a gender perspective implies a shift of focus from women to women and men and moving what have been women’s issues (at the same time as transforming them into gender issues) from the margins to the mainstream. It is a process-oriented strategy aiming at the rather illusive goal of gender equality.

The term gender is not defined in the Agreed Conclusions. However, while many, still, struggle with understanding the content and differences between the terms, sex, and, gender, in equality politics, a dominant interpretation of the terms has developed, one that has been reproduced in many guidelines and manuals.⁷⁴ For example, the Division for the Advancement of Women defines gender and sex as:

[gender is] the socially constructed roles of women and men that are ascribed to them on the basis of their sex, in public and in private life. The term ‘sex’ refers to the biological and physical characteristics of women and men. Gender roles are contingent on a particular socio-economic, political and cultural context and are affected by other factors, including age, race, class and ethnicity. Gender roles are learned and vary widely within and

have been taken by UN programmes and funds, see for example www.undp.org/gender/ (28-09-2003), www.unifem.org/ (28-09-2003), www.unfpa.org/gender/ (28-09-2003), www.unicef.org/gender/index.html (28-09-2003), www.ilo.org/dyn/gender/gender.home (28-09-2003), www.who.int/health_topics/gender/en/ (28-09-2003) and www.worldbank.org/gender/ (28-09-2003).

⁷³ ECOSOC Agreed Conclusions 1997/2, Chapter 1, Art. A.

⁷⁴ Note, however, the definition of gender used by the International Criminal Court in its statute and the definition used in Durban Programme have more in common with the definition found in the Holy See’s interpretive comment about how gender should be understood in the context of the Beijing Platform, addressed in Chapters 3.5.2 and 6.3, than with the definition of gender used by the Division for the Advancement of Women.

between cultures. As social constructs they can change. Gender roles shape women's access to rights, resources and opportunities.⁷⁵

That is, the Division for the Advancement of Women's definition of the term gender is based on the sex/gender distinction as it was framed and promoted by early second-wave feminist scholars. It is doubtful whether the Division for the Advancement of Women's and the other UN woman-centred institutions' social constructivist approach to gender is at the core of the UN strategy for mainstreaming a gender perspective. It is doubtful as well whether the social constructivist approach has been well communicated. When addressing the Beijing gender controversy, I noted the criticism gained by the idea that gender is construed and can be reconstructed. This criticism was provoked apparently because the aforementioned idea brought into question a number of sensitive topics, one, for example, being the heterosexual norm.⁷⁶ In the chapter on translations and travels I, also, referred to insecurities regarding the meaning of gender existing within the UN system.⁷⁷

The aim of the UN gender mainstreaming strategy is defined in the Agreed Conclusions as "gender equality". The Agreed Conclusions, however, are also silent on the meaning of gender equality.⁷⁸ OSAGI has proposed the following definition of gender equality:

[g]ender equality implies that the interests, needs and priorities of both women and men are taken into consideration – recognizing the diversity of different groups of women and men. Gender equality is not a 'women's issue' but should concern and fully engage men as well as women.⁷⁹

The OSAGI definition picks up on the emphasis of the Agreed Conclusions that mainstreaming a gender perspective implies a focus on both women and men. The focus on both women and men has been promoted as one of the main aspects of the strategy for mainstreaming a gender perspective. The strategy does not frame inequalities between the sexes as a *women's issue*, but as a concern for both women and men. The focus on

⁷⁵ UN doc. HRI/MC/1998/6, Art. 16

⁷⁶ See Chapter 3.5.2.

⁷⁷ See Chapter 4.4.

⁷⁸ See, for example, the ECOSOC Agreed Conclusions 1997/2 on gender mainstreaming, Chinkin 2001 and Lorentzi 2001. The lack of definition might be partly due to the fact that with the inclusion of difference and diversity perspectives and the right to a subjective voice in conceptions about equality, perspectives that are supposed to be intrinsic to the idea of gender equality, the idea of a definition has become counter-productive. See Chapter 6.3.

⁷⁹ OSAGI, *Fact Sheet 1*, 2001. For further analysis of the goal of gender equality, see Chapter 1.3.1.

both women and men was supposed to enhance the strategy with a critical edge, i.e., to contribute to an analysis of how inequalities are produced and reproduced in the gender relationship. The OSAGI definition also emphasizes a shift away from a one-dimensional man-woman frame and suggests that the aim of gender equality should recognize the diversity of women and men.⁸⁰ There are, however, some tendencies suggesting that the strategy has been used presuming, as Braidotti noted, a symmetry between the sexes.⁸¹

Besides defining what mainstreaming a gender perspective means, the Agreed Conclusions also include general principles for gender mainstreaming, as well as specific recommendations to different UN institutions regarding how to implement the gender mainstreaming strategy. The six gender mainstreaming *principles* in the Agreed Conclusions are an attempt to ensure the institutional implementation of the gender mainstreaming strategy within the UN system. The gender mainstreaming principles highlight the importance of defining issues so that gender-neutrality is not presumed and gender differences may be detected. The principles also highlight high-level responsibility and system-wide implementation of the mainstreaming strategy, which include encouragement of a number of goals, viz., participation by women in UN decision-making and other activities; concrete programs and other mechanisms for gender mainstreaming; awareness of the importance of woman-centred initiatives; a clear political will; and sufficient human and financial resources. Essentially, there are three main emphases in the principles; first, the presumption that nothing is gender-neutral; secondly, that attempts to mainstream a gender perspective will not succeed without adequate highlevel support and concrete guidance and guidelines; thirdly, that mainstreaming does not replace the need for targeted action on behalf of women.

The *recommendations* in the Agreed Conclusions are an attempt to describe in greater detail how the institutional implementation should be ensured within different UN institutions. The recommendations are technical in nature and target five main areas; recommendations to the UN intergovernmental processes; recommendations regarding the institutional requirements for gender mainstreaming; recommendations regarding the role of gender units and focal points in gender mainstreaming; capacity-building for gender mainstreaming; and recommendations

⁸⁰ The cultural sensitivity of the gender mainstreaming strategy will be further addressed in Chapter 6.3.

⁸¹ Braidotti 1995, pp. 150–1. See Chapter 4.3.2.

regarding the role of gender mainstreaming in the follow-up to global UN conferences. The recommendations highlight the importance of the UN woman-centred institutions and of the gender units and focal points established within different UN institutions for the development and implementation of gender mainstreaming strategies.⁸² However, while the woman-centred institutions and gender units and focal points are given the mandate to develop gender mainstreaming strategies and to function as knowledge banks for UN institutions attempting to implement gender mainstreaming strategies, the responsibility for gender mainstreaming is system-wide. With the help of the woman-centred and gender-centred institutions, all UN institutions should develop for their own area of work, specific gender mainstreaming strategies.⁸³

Hence, the Agreed Conclusions on gender mainstreaming provide a general framework for how to ensure that the gender mainstreaming strategy is moved into and implemented within the UN system. Three main aspects crystallize themselves in the Agreed Conclusions as particularly important in the process of developing and subsequently implementing the strategy for gender mainstreaming: mainstreaming, gender analysis and targeted interventions. I will below analyze these three core components.

4.5.2 Core Components of the Gender Mainstreaming Strategy

The Mainstreaming Component

Mainstreaming strategies – both gender mainstreaming and other mainstreaming strategies – have traveled the world with great success during the 1990s. There is a growing amount of management-oriented literature about successful mainstreaming initiatives. International institutions seem to be competing in the publication of manuals and creation of web sites

⁸² The follow-up to UN conferences is also highlighted in the Agreed Conclusions 1997/2 in conjunction to capacity building for gender mainstreaming. In order to facilitate gender mainstreaming in the follow-up, review and appraisal of global UN conferences, the ECOSOC urges all entities of the UN system to apply a gender perspective to all follow-up activities and utilize a gender perspective effectively to identify the differential of implementation on women and men.

⁸³ The envisaged steps for implementing the Agreed Conclusions 1997/2 at the institutional level include the adoption of gender mainstreaming policies and the formulation of specific gender mainstreaming strategies; use of institutional directives for gender mainstreaming; improvement of gender mainstreaming tools; establishment of instruments and mechanisms for monitoring and evaluation; and creation of accountability mechanisms.

about the best mainstreaming practices.⁸⁴ While mainstreaming strategies seem fairly straightforward, they are not necessarily easy to use, they are rather “... strategies that everybody can understand, although no-one is sure what they require in practice”.⁸⁵ The basic idea behind mainstreaming strategies consists of moving an issue, for example gender, into a framework from which it had previously been excluded and allowing it to be integrated into or to transform that framework. That is, *at their best*, gender mainstreaming strategies have a two-fold aim: to move issues from the margins to the mainstream and to allow the issues to have an impact on and transform the mainstream. The mainstream includes both the core, i.e., for example, the high-level decision-making bodies within an institution, and the system-wide broad-based institution.⁸⁶ The two aims of mainstreaming, however, are not always highlighted interdependently, but within the mainstreaming literature, a distinction is made between integrative and agenda-setting or transformative mainstreaming

⁸⁴ As the gender mainstreaming strategy was first developed within the development field, there is a large amount development-oriented gender mainstreaming literature. For an overview, see, for example Bell 2001, Mikkelsen, Freeman, Keller et al. eds, 2001, Moser, Törnquist and van Bronkhorst 1998, Razavi and Miller 1995, Sandler 1999 and Schalywyk, Thomas and Woroniuk 1996. Since the gender mainstreaming strategy was adopted as the prioritized equality strategy within the European Union context, a considerable amount of literature has also been developed about gender mainstreaming and the European Union. For an overview, see Beveridge and Shaw 2002, see also *Feminist Legal Studies (Special Issue: Gender Mainstreaming)* vol. 10 (2002) *Journal of European Social Policy (Special Issue: Gender Mainstreaming)* vol. 7, No. 3 (2000), Kvinder, Køn & Forskning (Special Issue: Mainstreaming) No. 2 (2000). There is not as yet as much written about gender mainstreaming and international law. For further reading, see however Connors 1995, Gallagher 1997, Gear 2001, Hafner-Burton and Pollack 2002, Orford 2002 and Charlesworth and Wood 2001. Well developed gender mainstreaming web sites within the fore-mentioned sectors, for example, are: www.sdn.undp.org/gender/ (28-09-2003) and www.un.org/womenwatch/ianwge/gm_facts/ (28-09-2003).

⁸⁵ Beveridge and Nott (2002a, p. 308) note that mainstreaming has been defined as a “deceptively simple concept that is likely to be extremely difficult to operationalize” and as ‘an extraordinarily demanding concept, which requires the adoption of a gender perspective by all the central actors in the policy process’”

⁸⁶ ECOSOC Agreed Conclusions 1997/2. The UNDP information packs define the mainstream as an “[i]nter-related set of dominant ideas and development directions, and the decisions or actions taken in accordance with those”. The mainstream is defined as having two main components: ideas (theories and assumptions) and practices (decisions and actions). The mainstream’s ideas and practices determine who gets what and provide a rationale for allocation of resources. Being part of the mainstream means “having equitable access to society’s resources, including socially-valued goods, rewards and opportunities” and having “equal participation in influencing what is valued, shaping development directions, and distributing opportunities”, see *Gender Mainstreaming*, UNDP, 2000, p. 8.

approaches. *Integrative mainstreaming* includes moving a certain issue such as gender or human rights into a pre-existing framework, while *agenda-setting* or *transformative mainstreaming* includes the reorientation and transformation of a whole agenda.⁸⁷ Hence, the integrative approach is focused on moving issues into a framework, while the transformative approach is focused on getting everyone within that framework to *think gender* and ensuring that gender mainstreaming efforts have a substantial impact on a certain framework. Another distinction that is often brought out is the distinction between expert-driven and participatory mainstreaming.⁸⁸ *Expert-driven mainstreaming* strategies rely to a great extent on the work of either external or internal so-called gender experts, who design strategies for mainstreaming for the institution and who provide gender training. *Participatory mainstreaming* strategies, while certainly relying, to some extent on expert knowledge, are focused to a greater extent on allowing the persons working with the strategies to provide the content for the strategies.

According to Fiona Beveridge and Sue Nott, the mainstreaming strategy is *fuzzy* because it does not give enough information about how to mainstream or about what the expected results of mainstreaming should be.⁸⁹ This fuzziness, resulting from the lack of clear guidelines as to what should be mainstreamed and how it should be mainstreamed, can lead to lesser and less thought-through activities for mainstreaming a gender perspective. In other words, this lack of clarity may defeat the purpose and sabotage the aims of mainstreaming. What may even have happened is that this obfuscation might have contributed to the preference for integrative mainstreaming approaches within many public institutions, while feminist scholars have argued that the gender mainstreaming strategy cannot be successfully implemented without a transformative agenda.⁹⁰

OSAGI, in its conceptual clarification, promotes an agenda-setting or transformative approach to mainstreaming stating that:

[m]ainstreaming is not about adding a 'women's component', or even a 'gender equality component', to an existing activity. It involves more than increasing women's participation. Mainstreaming situates gender equality issues at the centre of policy decisions, medium-term plans, programme budgets, and institutional structures and processes. Mainstreaming entails bringing the perceptions, experience, knowledge and interests of women as well as men to bear on policy-making, planning and decision-making.

⁸⁷ Jahan 1995.

⁸⁸ Beveridge and Nott 2002, p. 301.

⁸⁹ Beveridge and Nott 2002a.

⁹⁰ Beveridge and Nott 2002a.

Mainstreaming can reveal a need for changes in goals, strategies and actions [...] It can require change in organizations [...] to create organizational environments which are conducive to the promotion of gender equality.⁹¹

In the *Gender Mainstreaming: An Overview*, it is noted that although there is "... no set formula [for gender mainstreaming] that can be applied in every context. [...] [W]hat is common to mainstreaming in all sectors or development issues is that a concern for gender equality is brought into the mainstream of activities rather than being dealt with as an add-on".⁹² A purely integrative approach to mainstreaming only moves women's or gender issues from specialized institutions to add-ons within the mainstream agendas. However, as will be shown in Chapter Five, UN human rights institutions have in practice come to implement an integrative mainstreaming strategy.

The preference for integrative, instead of agenda-setting or transformative mainstreaming strategies, is probably due to integration being easier than transformation. Transformative mainstreaming demands that everybody integrate a gender perspective into their own work. This demand is the tricky part of the gender mainstreaming strategy. That is, in case a transformative gender mainstreaming agenda is to be implemented, everybody working within an institution needs to understand what gender mainstreaming means, how it should be effectuated and what the implications would be of the use of a gender perspective in connection with their specific work. Introducing new analytical and policy frameworks into an institutional structure is always a tricky process. Even trickier is when the issues are controversial or are perceived as threatening by some people. Ideas which might be perceived as threatening may be the idea that how women and men actually are is socially construed, or that how women and men are can (and should) be changed in order to promote equality. It would be naïve to think that promoting mainstreaming of a gender perspective would not encounter any resistance or that attempts would not be made to downplay the potentially transformative elements in mainstreaming initiatives. The gender mainstreaming strategy

⁹¹ *Gender Mainstreaming: Strategy for Promoting Gender Equality* 2001.

⁹² *Gender Mainstreaming: An Overview* (2001, p. 2). According to the Commission on Human Rights, mainstreaming human rights involves: the adoption of a human rights-based approach to activities carried out in terms of the respective mandates and components of the United Nations system; the development of programmes or projects addressing specific human rights issues; the reorientation of existing programmes as a means of focusing adequate attention on human rights concerns; the inclusion of a human rights component in field operations of the United Nations; the presence of the human rights programme in all structural units of the Secretariat responsible for policy development and coordination, see UN doc. E/1998/60, para. 11.

is not a neutral strategy. In fact, most things which transform must be rather radical for the transformation to take place. Moreover, for a person who has not been interested in so-called women's issues and who might be convinced that women and men are equal, that feminism is passé and that feminists have gone too far, understanding why a gender perspective is important and how having a gender perspective might affect that person's work is an arduous process, an uphill battle. As a consequence, the gender mainstreaming strategy is often framed in non-threatening terms and it has been promoted as a strategy that will benefit everyone alike.⁹³

While the persons whom I interviewed were positive about a dual strategy, i.e., to having both woman-centred and mainstreaming measures for women's advancement and gender equality, they commented that mainstreaming efforts within the UN remained under development and that it was not always evident how to mainstream and how to substantiate the mainstreaming efforts. The mainstreaming efforts that had been undertaken were largely integrative, i.e., when gender was mainstreamed, it became an add-on, rather than an integrated part of the human rights agenda of a certain institution. The three main reasons for the lack of transformative mainstreaming initiatives were: lack of time, lack of high-level institutional support and a gender mainstreaming fatigue. That is, while a decision has been made vis-à-vis, a broad-based and system-wide approach to gender and while gender training programs have been organized, sufficient efforts have not been made to ensure that people with an interest in gender issues can work with gender issues or that everybody has the time to find out what a gender perspective might mean for them in their work. One of the persons interviewed outlined that while the gender training had been an eye opener, it was difficult to find the time to mainstream a gender perspective into everyday work.⁹⁴ The same person noted however that:

*... I don't think that it [gender] should be added. It should always be there. It should be part of my daily work. I shouldn't have to think: oh, I have to add gender. But that requires a huge mind set and personal responsibility. I need to realise in my brain that gender is another component it is not an add-on. If I think of gender as an add-on, I run the risk of forgetting it ... But the battle is in my own head, isn't it?*⁹⁵

⁹³ The idea of everybody's benefit will be further addressed in Chapter 6.3.

⁹⁴ Similar points of views were expressed in interviews Nos. 8 and 12.

⁹⁵ Interview No. 7. That the heavy workload hampered gender mainstreaming efforts and that gender mainstreaming remained something of an add-on was emphasized by most people that I interviewed.

In some of the other interviews, lack of mid-level and high-level institutional support was viewed as one of the main reasons for a lack of mainstreaming success.⁹⁶ That is, the policy-decision for a broad-based and system-wide approach to gender has provided the arguments or foundations upon which to build and has created the tools for building for persons within the UN system, persons who already have an interest in and a concern for women's issues.⁹⁷ The arguments and tools are undermined, however, by the dearth of both high-level and mid-level support for the strategy. Factors, such as, a lack of informed, knowledgeable people, trained in gender mainstreaming and the lack of adequate, enabling support for the mainstreaming of a gender perspective have contributed to gender mainstreaming fatigue.⁹⁸ It was also argued that the gender mainstreaming agenda had been accepted because it was politically correct to accept the agenda.⁹⁹ As one of the persons interviewed said, “[i]t’s an industry like everything else. It makes jobs for people. It produces a lot of paper.”¹⁰⁰

The Gender Analysis Component

The entry point in the ECOSOC gender mainstreaming definition is a presumption that *nothing* is gender-neutral or sex-neutral, but that we live in a gendered and sexed world where how and if we are women and men are factors or attributes which matter in all areas and in all aspects of our lives.¹⁰¹ Gender analysis is the tool for understanding how gender and sex matter. A gender analysis demands identification of the gender and the social roles of men and women and an assessment of how gender and especially gender inequitable power relations affect proposed decisions, policies, projects, et cetera.¹⁰² The analysis can contribute to a shifted focus from integrative to transformative mainstreaming strategies. As OSAGI has noted, gender analysis is “... the critical starting point for gender mainstreaming”. According to OSAGI, all gender analysis should

⁹⁶ Interviews Nos. 4, 7 and 13.

⁹⁷ Interviews Nos. 4, 7, 10 and 13.

⁹⁸ This point was especially focused on in interviews Nos. 10 and 13.

⁹⁹ Interviews Nos. 4 and 7. Similar critical perspectives were put forth in interview No. 6.

¹⁰⁰ Interview No. 4.

¹⁰¹ *Gender Mainstreaming: An Overview* (2001, p. 5) states that “[g]ender is an issue because of the fundamental differences and inequalities between women and men”.

¹⁰² Chinkin 2001, p. 12, Lorentzi 2001, pp. 10–1, *Gender Analysis*, UNDP 2001.

also be contextual, i.e., dependent upon and related to the specific problem area or issues analyzed.

Analysis of gender perspectives should be an integral part of all analysis undertaken, or should be undertaken as a separate analysis, if necessary. Such analysis is not something to be done solely by gender specialists but should be an essential element of all professional competence of all United Nations staff.¹⁰³

That is, while gender analysis is a sophisticated analytical framework that borrows much of its terminology and analytical tools from gender studies and other social sciences, within the UN human rights system, it should be transformed into an easily accessible format that everybody can adapt to hers or his problem area and can apply in hers or his work. However, as was noted at the beginning of this chapter, gender is a complex and contested analytical framework and it is difficult to communicate the meaning of gender to a very broad audience that might not be familiar with feminist and/or gender politics. The challenge is even greater vis-à-vis the gender analysis in conjunction with the gender mainstreaming strategy because, here, people should not only be able to understand the idea of gender analysis, but they should also be able to apply it in their work. Hence, when the analytical tool “gender” was introduced into public equality politics, there seemed to be a conviction that the mere shift from a focus on sex and women to gender would promote equality, i.e., there seemed to be a belief in the *magic of gender*. That is, early gender mainstreaming strategies tended to promote the concept of gender as a rather enigmatic conceptual framework from which, if we are lucky, will spur gender equality. The belief that the shift of wording itself would lead to an increased focus on *gender issues*, and subsequently to *gender equality* has withered away over the years. Later gender mainstreaming guidelines and manuals, such as, OSAGI’s *Gender Mainstreaming: An Overview* (2001) focused on designing an accessible gender analytical framework, highlighting concrete and practical steps for gender analysis in different sectors. That is, the difficulties in communicating the meaning of gender analysis and translating it into practice have led woman-centred institutions within the UN that should function as motors in the gender mainstreaming process to develop, what I have defined as, *grounded gender analytical frameworks*.

The OSAGI overview notes that while gender differences and inequalities “... manifest themselves in different ways in specific countries or

¹⁰³ *Gender Mainstreaming: An Overview* 2001, p. 27.

sectors [...] there are some broad patterns that point to questions that should always be considered”.¹⁰⁴ These questions include: inequalities in political power, i.e., access to decision-making, representation, et cetera; inequalities within households; differences in legal status and entitlements; gender division of labour within the economy; inequalities in the domestic/unpaid sector; violence against women; and discriminatory attitudes.¹⁰⁵

The analytical task in most areas demands asking questions relating to:

- *Responsibilities, activities, interests and priorities of women and men and how their experiences of problems may differ*, i.e., reflections upon the gender factors that could relate to the problem or issue.
- *Assumptions about “families”, “households” or “people” that may be implicit in the way a problem is posed or a policy is formulated*, i.e., reflections upon the common understanding of concepts and conceptual frameworks that build on gendered presumptions.
- *Obtaining data or information to allow the experiences and situations of both women and men to be analyzed*, i.e., seeking information that goes beyond, for example, the number of farmers and what they produce and that allow assessments of whether there are differences and inequalities between the crops produced and the work done by women farmers and men farmers.
- *Seeking the inputs and views of women as well as men about decisions that will affect the way we live*. Because there are often significant differences between the priorities of women and men, it is important to allow and to enable women and men to participate equally in decision-making processes.
- *Ensuring that activities where women are numerically dominant receive attention, areas including, for example, domestic work*. The productive input of domestic and caring work as well as, for example, women’s agricultural tasks are, still, overlooked and need to be recognized.
- *Avoiding assumptions that all women or all men share the same needs and perspectives*. There are often differences between women and men that relate to class, religion, age, ethnicity and other factors. It is important to refrain from generalizing across diverse populations. Instead, we must consider how individuals are influenced by a plethora of factors, including gender.

¹⁰⁴ *Gender Mainstreaming: An Overview 2001*, p. 5.

¹⁰⁵ *Gender Mainstreaming: An Overview 2001*, pp. 5–6.

- *Analyzing problems or issues from a gender perspective and seeking to identify means of formulating directions that support an equitable distribution of benefits and opportunities.* Given gender differences and inequalities within societies, it cannot be presumed that women and men will have equal opportunities for participation, but special attention is needed to ensure that all people benefit equally.

Gender analysis in its basic form, as detailed above, provide for a sophisticated analytical framework. There has been a noticeable shift from gender analytical approaches which rely on the magic of gender over to gender analytical approaches which are grounded. Though this shift has contributed to creating a more accessible analytical framework, gender analysis is, still, a demanding task.

Moreover, OSAGI's gender analysis framework cannot be used directly, but it needs to be adapted to the context of and subject matter dealt with by a specific institution. That is, in order for gender analytical approaches to be successful it is necessary not only to have a thorough understanding of gender and of how gender *generally* impacts on different issues. It is also necessary to contextualize the analysis and adapt it to the specific areas and issues dealt with within a specific institution.

The above referred to problems were also highlighted during the interviews. The persons that I interviewed voiced concern over, both the problems with understanding how to gender analyze and the problems with adapting gender analytical frameworks into specific contexts without losing, thereby, the analytical potential of the gender perspective. Most of the persons that I interviewed were positive not only about mainstreaming, but also about implementing a gender analytical framework. Nonetheless, it was noted that there have been tendencies to interpret the gender mainstreaming strategy with a woman-focus or a sex-focus and to interpret the term gender as another word for woman or sex and there remains a great deal of confusion about how gender should be understood.¹⁰⁶ One person, however, noted that it was important not to get caught up in the gender rhetoric, but to instead try to think about what a gender analysis would mean and what it would contribute. The person noted:

[i]here have been different stages in how we conceptualise gender, as sex and social construct. However, I think that more then the concept itself it is the analysis that you can do when you are looking at the differences between women and

¹⁰⁶ In Interviews Nos. 8 and 10, it was stressed that in practice work for mainstreaming, a gender perspective meant recognizing women.

*men. I don't use gender as such, but I say that let's do an analysis of what this means ... access to education ... power relations between women and men ... So, it is the analysis more than gender itself.*¹⁰⁷

Another person noted that the UN had tried to progress too rapidly when it was to mainstream gender, when it had not even integrated women's human rights.¹⁰⁸ And another person interviewed commented as follows:

*I don't know if it's true, but I think that we made a big jump ... I mean, before we had achieved something very solid in the area of promoting and protecting women's rights we started to talk about gender. And I think that if you don't have a solid understanding of the importance of bringing women into the work it is very difficult to start to talking about women and men.*¹⁰⁹

Some of the persons interviewed noted, however, that there was a growing awareness that "gender" did not only concern women, but that it was an issue that had impact for both women and men.¹¹⁰ Nevertheless, in practice gender, still, meant women.¹¹¹

Targeted Intervention

The strategy for gender mainstreaming forms a part of the UN dual strategy for women's advancement and gender equality, i.e., while the UN encourages the use of the strategy for mainstreaming a gender perspective, it also invites and wishes to strengthen woman-specific initiatives. Because the UN uses expert mainstreaming approaches, it is also the woman-centred institutions that are given the mandates to promote the gender mainstreaming strategy. That is, the decision to gender mainstream has added a new component to the work of the UN woman-centred institutions. The woman-centred institutions together with gender focal points and different gender networks initiate and develop strategies for gender mainstreaming. They also function as knowledge banks in the gender mainstreaming process.

Most gender mainstreaming strategies, however, do, within themselves include an emphasis on both gender mainstreaming and on woman-centred interventions or so-called targeted interventions.¹¹² It is recognized

¹⁰⁷ Interview No. 13.

¹⁰⁸ Interview No. 1.

¹⁰⁹ Interview No. 13.

¹¹⁰ Interviews Nos. 1, 4, 6, 10 and 13.

¹¹¹ Interviews Nos. 7, 8 and 13.

¹¹² *Gender Mainstreaming: An Overview 2001*, p. 2.

that the gender mainstreaming strategy cannot be implemented successfully without a continuing focus on women, as it is women who tend to be structurally disadvantaged vis-à-vis men. For example, in OSAGI's overview, targeted interventions are defined as complementary strategies

... that have as their primary goal the narrowing of gender gaps that disadvantage women. These interventions could include special research on the differential impact of trade patterns on women, support for a network of women's NGOs [non-governmental organizations] looking at women in the media, training to sensitize the judiciary on domestic violence and rape, or training for male politicians on discriminatory practices against women in politics. These types of targeted interventions do not in any way contradict the gender mainstreaming strategy.¹¹³

That is, while gender mainstreaming strategies are legitimated through their differences from woman-centred strategies, successful gender mainstreaming demands a continuing support for woman-centred targeted interventions. As was noted above the shift to applying gender perspectives from woman-centred equality strategies has also been only partial. In reality much of gender mainstreaming efforts are carried out by woman and with a focus on women.¹¹⁴ Gender work remains the responsibility of women who have an interest in women's or gender issues. Nevertheless, targeted interventions may be described as the reality check of the gender mainstreaming strategies. The targeted interventions may be described as the always necessary and, still, often annoying feminist questions, viz., Where are the women? Haven't we forgotten the women? What about the feminization of poverty, women's health issues, women's reproductive rights, violence against women, et cetera? Another key question might be: How can we ensure that we will not forget women?

¹¹³ *Gender Mainstreaming: An Overview* 2001, p. 2. Both the UNDP information packs and Chinkin's manual on gender mainstreaming in legal and constitutional affairs define the gender mainstreaming strategy partly through its difference from earlier woman-centred strategies and separate sex equality strategies. The UNDP information packs upgrades this difference into one of the core features of the gender mainstreaming strategy. Chinkin (2001, p. 12) is more moderate, noting that "... gender mainstreaming does not automatically remove the need for women-specific programmes or for projects targeting women. These will often remain necessary to redress particular instances of past discrimination or long-term, systemic discrimination".

¹¹⁴ This was highlighted in most interviews. For example in Interviews Nos. 1, 2, 3, 4, 6, 9, 10, and 13.

4.6 Mainstreaming Approaches to Women's Human Rights

4.6.1 The Vienna Strategy and Beyond

The idea of human rights is embedded in Western political and philosophical history: rights can be viewed as one of the more persuasive constructs of Western modernity. Intimately intertwined with this history and this construct are the exclusion of women as rights' holders and the creation and ever changing notion of sexual difference.¹¹⁵ Hence, while women have been recognized as rights' holders on an equal basis with men, within the UN human rights framework, human rights have not necessarily been designed to bridge the gap vis-à-vis the inequalities between women and men or to include protection against woman-specific violations. The UN women's human rights framework provided some tools against woman-specific violations. However, as was noted in Chapter Three the establishment of a women's human rights frameworks within the UN human rights framework has also contributed to the marginalization of women and of women's human rights within the UN human rights framework.¹¹⁶ The women's human rights framework, especially prior to the adoption of the CEDAW framework, only in a limited fashion change how human rights were conceptualized and what was considered to be human rights violations.

It was during the 1990s, and especially in relation to the Vienna, Cairo and Beijing processes, that people started to appreciate the importance of new ideas and understandings about human rights. The strategy for the promotion and integration of women's human rights, which included targeted intervention and mainstreaming initiatives for women's human rights was, as was noted in Chapter Three, developed during the Vienna conference. The integrative part of the Vienna strategy, however, was later reformulated, or blurred, in conjunction to the development of both the strategy for mainstreaming a gender perspective and the strategy for mainstreaming human rights. The Vienna strategy has been overshadowed by the Beijing strategy especially since the adoption of the ECOSOC Agreed Conclusions on gender mainstreaming and the proclamation of gender mainstreaming as the UN system-wide and broad-based strategy for equality. The Vienna strategy has been refocused in part on mainstreaming human rights since the Vienna+5 review and the

¹¹⁵ Nousiainen and Pylkkänen 2001, pp. 22–7.

¹¹⁶ Gallagher 1997.

50th anniversary of the Universal Declaration. The aim of this chapter, Chapter 5.3, is to analyze two items: first, the potential of rights-based mainstreaming approaches and, secondly, the strategy for integrating women's human rights.

4.6.2 Rights-based Approaches¹¹⁷

In the aftermath of the Vienna conference, the UN has begun to promote not only the integration of women's human rights, but also the mainstreaming of human rights. The latter strategy is of a later date and has largely been conceptualized within the framework of the five-year review of the Vienna conference, the UN's reform process and the UN's millennium activities.

Mainstreaming human rights crystallizes itself as a core theme in the five-year review of the Vienna conference. In the Secretary-General's report for the five-year review, mainstreaming human rights is not defined, but it is considered to include a number of specifically outlined objectives, viz., the adoption of rights-based approaches; the development of projects and programs with a human rights focus; the reorientation of existing programs towards according adequate attention to the human rights area or agenda; the adoption of a human rights component in UN field operations; and the presence of the human rights programme in all structural units of the Secretariat.¹¹⁸ According to the report, the purpose of the rights-based approach is:

... [to] ensure[] that human rights standards, as established in international law, are applied as a criterion for policy orientation and for the solution of problems in specific areas. It introduces a normative basis which is obligatory for State Parties, and thus requires a legislative response at the state level. A rights approach implies that "beneficiaries" of policies and activities are active subjects and "claim holders" and stipulates duties or obligations for those against whom such claims can be made (objects or "duty bearers").¹¹⁹

¹¹⁷ The UN reform programme was initiated by UN Secretary-General Kofi Annan in 1997. The aims of the reform programme included: establishing a new leadership culture and management structure; assuring financial solvency; instituting a thorough overhaul of human resources; restructuring the UN Secretariat; strengthening the Secretariat normative, policy- and knowledge-related functions and the Secretariat's ability to serve the inter-governmental bodies; making sustainable development a UN priority; and extending its human rights activities, www.un.org/reform/track2/hilights.htm (22-05-2002). See, also, Annan 1997 and www.un.org/reform/refdoc.htm (28-09-2003).

¹¹⁸ UN doc. E/1998/60, para. 11.

¹¹⁹ UN doc. E/1998/60, para. 12.

The UN Reform Programme launched in 1997 underlined the UN's "unique institutional framework to promote human rights", but noted that the increasing demands on the UN human rights programme had revealed a number of shortcomings that reduced the impact and efficiency of the UN human rights system.¹²⁰ The Reform Programme suggested a type of dual strategy in order to come to terms with the shortcomings. The Programme underlined the importance of both strengthening the UN's human rights framework integrating the human rights programme into a broad range of UN activities.¹²¹

The elevated position for human rights is continued in the *Millennium Declaration*, where human rights, democracy and good governance are chosen as target areas.¹²² The *Roadmap to the Implementation of the United Nations Millennium Declaration* refers to the Reform Programme and notes that "[t]he cross-cutting nature of human rights demands that whether we are working for peace and security, for humanitarian relief or for a common development approach and common development operations, the activities and programmes must be conducted with the principles of equality at their core".¹²³ The integration of human rights norms into UN policies and programmes is one of the strategies for implementing the Millennium Declaration goals.¹²⁴ The elevated position accorded to human rights particularly in the reform programme and in the Millennium Summit process is evidence of the new role given to human rights in the post-Cold War era.

¹²⁰ The human rights area was identified as one of the five core areas within the UN mandate. See UN doc. A/51/950, paras. 28 and 196–7.

¹²¹ In order to consolidate the UN human rights framework, the OHCHR and the Centre for Human Rights were consolidated into one OHCHR providing the High Commissioner for Human Rights with a "... solid institutional basis from which to lead the Organization's mission in the domain of human rights", see UN doc. A/51/950, para. 79. The High Commissioner for Human Rights was also asked to review the human rights machinery and to develop recommendations on possible ways to streamline and rationalize it, at the same time as the UN human rights programme was to be fully integrated into a broad range of UN activities, see UN doc. A/51/950, para. 206, action 16a, see also para. 79.

¹²² UN doc. A/Res/55/2. The Millennium Declaration emphasizes respect for a number of different sets of rights, viz., civil and political rights; economic, social and cultural rights; minority rights, women's rights and the rights of other disadvantaged groups, UN doc. A/Res/55/2, para. 25. See also UN doc. A/56/326, Chapter V.

¹²³ UN doc. A/56/326, para. 201.

¹²⁴ UN doc. A/56/326, para. 204. Regarding the implementation of the Millennium Declaration goals, see UN doc. A/57/270. The Secretary-General's report on implementation refers to the changes in world politics, noting that "[s]ecurity must not come at the expense of human rights", see UN doc. A/57/270, para. 89.

As was the case with the dual strategy for women's advancement and gender mainstreaming developed at the Beijing conference, the strategy for strengthening and mainstreaming human rights is easy enough to understand, but in accordance with some of the early evaluations, it has not been easy to apply. An example of how the strategy has been implemented and of problems encountered during the implementation process, is the *Human Rights Strengthening Programme* (HURIST), coauthored by the UNDP and the OHCHR, which aims at mainstreaming human rights into UNDP development programming.¹²⁵ In the UNDP policy document pre-dating the HURIST programme, the full realization of the rights to development were defined as the main areas where human rights could contribute to UNDP practices.¹²⁶ These rights to development were listed as including freedom from poverty, the integration of human rights into sustainable development through people-centred development and good governance. The HURIST programme aims at developing guidelines and methodologies in order to identify the best practices and learning opportunities for mainstreaming human rights into sustainable development.¹²⁷ The UNDP has a long history of mainstreaming strategies, and early evaluations of the HURIST programme has shown that there is also growing acceptance of human rights as standards. However, there is, still, much confusion about how to turn human rights into practically applicable tools, i.e., how to

¹²⁵ As a result of the Secretary-General's request that all UN institutions mainstream human rights, the UNDP adopted in 1998 a policy document on the integration of human rights. The UNDP policy document was based on an understanding of human rights as a cross-cutting theme within the UN system that would enable further cooperation between UN specialized agencies, including the UNDP and the OHCHR, see *Integrating Human Rights with Sustainable Development: A UNDP Policy Document* 1998. Efforts to implement the UNDP policy has been achieved through the HURIST programme, a joint programme between the OHCHR and the UNDP, launched in 1999 and ending in 2005. For further information about the HURIST programme and how to mainstream human rights in development programming, see van Weerelt 2000 and 2001 and the HURIST web site at www.undp.org/governance/hurist.htm (28-09-2003).

¹²⁶ *Integrating Human Rights with Sustainable Development: A UNDP Policy Document* 1998

¹²⁷ It is noteworthy that while the original HURIST programme did not include a focus on gender-related issues, a shift of focus was instigated after the mid-term review. The new focus areas include issues such as pro-poor human development policies; HIV/AIDS; environment management and energy use; inclusive decentralised governance and governing institutions; and indigenous peoples. The shifted focus will also include seeking to develop and field-test a number of specific tools for human rights-based programming, such as human rights and gender mainstreaming programme reviews; human rights-based participatory assessments; and human rights-based performance assessment procedures. See www.unhcr.ch/development/hurist.html (09-01-2004).

develop rights-based programming and how significant the added-value of mainstreaming human rights in practical terms really is.¹²⁸

The rhetoric of human rights has been accepted, but the substance, the concrete applications, the “operationalizing” has been lacking. [...] The key challenge now is to focus on actual practice: What does RBP [rights-based programming] mean, how does one do it, what difference does it make, what are good examples from other countries. The words “practical” and “concrete” cannot be overemphasised here.¹²⁹

The efforts to operationalize the strategy for mainstreaming human rights evoke a distinction between human rights as standards and human rights as tools.

When the strategy for mainstreaming human rights was developed, the rights-based approach seemed to rely, largely, on the anticipated benefits of using *human rights as standards* within different areas. Hence, when working for sustainable development and the eradication of poverty, the UNDP can rely on the language of legal obligation and can demand that State Parties to the ICESCR or another human rights-treaty fulfill their obligations under the treaties. Hence, the importance of being able to use the language of law and legal obligation in interaction with governments and the importance of using codified rights as benchmarks are accented as crucial aspects in the strategy for mainstreaming human rights.¹³⁰ Van Weerelt argues that the rights-based approach entails using international human rights standards as a prism when analyzing, developing and implementing development programmes.¹³¹ The systematic approach of human rights principles during all phases of pro-

¹²⁸ For an introduction to the mainstreaming of human rights in UNDP activities, see www.undp.org/governance/humanrights.htm (28-09-2003).

¹²⁹ O’Neill and Bye 2002, pp. 6–7. O’Neill and Bye, however, also note that there is “... no magic formula to mainstreaming; no silver bullet or checklist to complete that would somehow yield the desired result”.

¹³⁰ In their evaluation of the UNDP strategy for mainstreaming human rights, O’Neill and Bye (2002, p. 8) accentuate the importance of making governments directly accountable for the fulfilment of the rights their citizens are entitled to and the importance of supporting governments in their attempts to fulfil their legal obligations. Tomaševski, the UN Special Rapporteur on the right to education strongly supports “... a clear articulation of the requirements of the rule of law as the basis for human rights mainstreaming”, see UN doc. E/CN.4/2003/9, para. 4. According to Tomasevski, “[t]he grounding of human rights in the rule of law provides the outline of the accountability framework within which individual and collective government responsibilities can be translated into practice as the corollary of the universal right to education”, para. 4. See also UN doc. E/CN.4/2002/60, paras. 27–29. See, also, Van Weerelt 2000 and 2001.

¹³¹ Van Weerelt 2000.

gramme development and implementation can “... empower people to make decisions about issues that affect their lives, rather than treating them as passive objects of decisions made on their behalf by bureaucrats”.¹³² That is, because human rights codify important principles, human rights can serve as benchmarks for planning, policies and action in many areas.

There is little guidance as to how human rights should be transformed from human rights as standards into *human rights as tools*. That is, as of yet there is little guidance as to what human rights contribute beyond allowing institutions and organizations to put pressure on governments and beyond the use of human rights standards for self-evaluation. William O’Neill and Vegard Bye elaborate on a number of issues integral to rights-based programming. These issues range, on the one hand, from converting normative principles and legal obligations that governments are bound by into development programs to, on the other hand, establishing combined rights and development indicators and systematic monitoring mechanisms to determine compliance with these same norms.¹³³ In a training manual for economic, social and cultural rights, the focus on the individual is accentuated as one of the core aspects of a rights-based approach. While all areas do not necessarily benefit from a rights-based approach, human rights – as tools – may contribute to the changing of values and attitudes on a long-term basis. One such change might be the shift in emphasis from problems to individuals and from needs to individual rights. As noted in the training material, “... a rights-based approach involves not charity or simple economic development, but a process of enabling and empowering those not enjoying ESC [economic, social and cultural] rights to *claim* their rights”.¹³⁴ In the training material, a human rights activist gives the following definition of a rights-based approach:

[w]hat does a “rights approach” mean? First, it means clearly understanding the difference between a right and a need. A right is something to which I am entitled to solely by virtue of being a person. It is that which enables me to live with dignity. Moreover, a right can be enforced before the government and entails an obligation on the part of the government to honor it.

Second, and as a consequence of the foregoing, a right is defined on the basis of dignity, that is to say on the basis of “being”, not “having” or the

¹³² Van Weerelt 2000.

¹³³ O’Neill and Bye 2002, pp. 8–9.

¹³⁴ *Circle of Rights* 2002, Module 1.

social or economic program of a party or a government. A political program can-and-should-be negotiated, where dignity is non-negotiable.¹³⁵

In other words, a part of the strategy for mainstreaming human rights includes taking rights seriously, underscoring the necessity of ratifying human rights documents and profiting from both the fact that human rights are codified norms and the fact that they are perceived of as empowering. Another part of the strategy for mainstreaming human rights includes figuring out, how human rights can be used as operational tools and what the added value of a rights-based approach is.

The emphasis on the strategy for mainstreaming human rights as conceived in the aforementioned processes seems to promote mainly the mainstreaming of the core human rights agenda. That is, while the Vienna process' emphasis on the indivisibility, interdependence and interrelatedness of all human rights is implicit in the strategy for mainstreaming human rights, the elevated position accorded by the Vienna Platform to women's, children's, minorities' and indigenous peoples' rights has not as of yet been integrated in the strategy for mainstreaming human rights. Similarly, there have been few efforts made to analyze how different mainstreaming strategies interact. Although probably a problem in UN practice, there have been very few references in UN documentation as to how the strategies for mainstreaming human rights and a gender perspective might actually co-exist.¹³⁶

The fact that human rights *can* serve as important benchmarks or trumps, however, does not mean that they are useful or add a *necessary* dimension to *all* areas of policy, planning or activity. In order to avoid human rights sloganism – that a simplified human rights dimension be added everywhere – it is necessary to be careful and selective when translating human rights standards into human rights tools. In the process of designing human rights-based approaches it is also necessary to keep in mind, that adding a new perspective, for example, to the development framework, will probably also result in an exclusion of some other perspective.¹³⁷

¹³⁵ *Circle of Rights* 2002, Module 1.

¹³⁶ The interaction between different mainstreaming strategies was also highlighted by the Special Rapporteur on Education, see Chapter 5.3.2.

¹³⁷ See Chapter 2.3.2.

4.6.3 Integrating women's Human Rights-based Approaches

As was noted above the strategy for integrating women's human rights has been overshadowed by both the strategy for mainstreaming a gender perspective and the strategy for mainstreaming human rights. One might argue that in the light of the tasks of moving a gender perspective into the UN system, including into its human rights framework, and moving human rights beyond the human rights framework, the integration of women's human rights into the mainstream of the UN and its human rights framework seems as such an easy task. Moreover, the strategy for integrating women's human rights is closely interlinked with the 1990s women's-rights-are-human-rights claim and movement.¹³⁸ The adoption of the strategy for strengthening and integrating women's human rights at the Vienna conference was a result of persistent lobbying by women's movements. Hence, the focus of the strategy has been affected by the dominant mainstreaming strategies, i.e., by the strategies for mainstreaming a gender perspective and human rights, but also by what women's and human rights advocates have focused on *as* women's human rights.

The strategy for mainstreaming women's human rights is not an especially *simple* strategy. Both in conjunction with the other mainstreaming strategies and by itself, it poses considerable challenges. Nevertheless, as the strategy for mainstreaming women's human rights has been by-passed by the other mainstreaming strategies and as the strategy has been blurred by the overall emphasis on women's-rights-as-human-rights, no substantial guidelines for mainstreaming women's human rights have evolved within the UN system. What is lacking are guidelines that unpack the meaning and ideas behind mainstreaming women's human rights, equivalent to, for example, the ECOSOC Agreed Conclusions on gender mainstreaming.¹³⁹ Hence, the content of the strategy for mainstreaming women's human rights is best analyzed by how it has been approached by the different UN human rights institutions and by what

¹³⁸ See Chapters 2.3.2, 3.4.2 and 3.5.2.

¹³⁹ Most expert group meetings and workshops coorganized by the UN human rights and women's advancement institutions, such as the 1995 Expert Group Meeting on the development of guidelines for the integration of gender perspectives into the UN human rights activities and programmes or the 1999 workshop on gender integration into the human rights system, have targeted, as noted, integration of a gender perspective and have eschewed the integration of women's human rights. For further discussion, see Chapter 5.5.

kind of focus it has been given by the women's human rights movement.¹⁴⁰

The strategy for integrating women's human rights is dependent upon *what* meaning and content are given to the notion of women's human rights and on *where* it is suggested that women's human rights are to be integrated. When attempting to define *what* women's human rights are in order to be able to implement the strategy for integrating women's human rights a tension hinders the process. This tension pertains to a number of perceptions, viz., what the UN has codified and what has been promoted in soft law instruments as women's human rights and what women's advocates and others perceive women's human rights to be. As was noted in Chapter Three, from an international human rights law perspective *all* human rights per definition are also women's human rights as women are humans. At the same time, beyond the human rights framework there is a constantly transforming body of specialized hard law-based and soft law-based *women's* human rights.¹⁴¹ The latter have developed in order to give increased attention to violations suffered by women and to "women's human rights". These different perceptions about what women's human rights are have an impact on what is actually integrated. When addressing feminist perspectives on international human rights, I noted that the feminist approaches ranged from a liberal defense of rights to a radical reclaiming of rights.¹⁴²

There are currently four different approaches to women's human rights promoted within the UN as part of the strategy for mainstreaming women's human rights: a CEDAW-centred approach, an institutional approach, a woman- or subject-centred approach and a thematic approach. In the UN context women's human rights have largely been defined through the *CEDAW*, i.e., the dominant interpretation of what women's human rights are is viewed as having been included in the *CEDAW*. Hence, the strategy for integrating women's human rights has been interpreted as a strategy for integrating the *CEDAW*, either by bringing the *CEDAW* closer to the *human* human rights framework, or by including references to the importance of ratifying *CEDAW*, withdrawing reserva-

¹⁴⁰ The mainstreaming measures undertaken, for example, by the Commission on Human Rights, analysed in Chapter 5.3.2, the Human Rights Committee, analyzed in Chapter 5.4.3, and the *CEDAW* Committee, analyzed in Chapter 5.4.6, provide good examples of how the strategy for integrating women's human rights can be approached.

¹⁴¹ See Chapter 3.3.2.

¹⁴² See Chapters 2.3.1–2.3.2.

tions from CEDAW and reporting to the CEDAW Committee.¹⁴³ While, to a large extent, the CEDAW-centred approach is focused on what per definition has been codified as women's human rights, the approach has also much in common with the institutional approach. When addressing the Vienna strategy, I noted that the Vienna Programme accented the creation of mechanisms for *institutional integration*. That is, besides emphasizing that the CEDAW is an integral part and should be brought closer to the rest of the human rights framework, additional institutional changes have been proposed to bridge the gap between women's human rights and human rights.¹⁴⁴ Some of the mechanisms for institutional integration that have been proposed and that are being implemented, are the joint workplans between the OHCHR and the Division for the Advancement of Women, the increased cooperation between the Commission on Human Rights and the Commission on the Status of Women and the increased cooperation between the human rights treaty bodies.

The *woman- or subject-centred* approach to the integrating of women's human rights is the least intrusive interpretation of integration of women's human rights. The woman-centred approach is not focused on specific human rights or on how these human rights have been defined, but on the individual whose rights are being violated. That is, the focus is on the *individual women* whose rights have been violated. Integrating women's human rights through the woman-centred approach can be interpreted as giving attention to the cases addressed where the victim is a woman and viewing these cases as efforts to integrate women's human rights. Integrating women's human rights through a woman-centred approach, however, can be pushed a bit further to include a recognition that women have been marginalized and that, therefore, specific attention has to be given to women as rights' holders, so as not to reproduce the marginalization. That is, the woman-centred approach can include conscious efforts to address cases where the victims are women.

The *thematic approach* is closely tied to the 1990s women's-rights-are-human-rights movement, not the least of which was the global campaign against violence against women initiated in conjunction to the Vienna process. That is, during the 1990s women's human rights, to some extent,

¹⁴³ The General Assembly and many of the treaty bodies have, for example, chosen to at times apply the CEDAW-centred approach to the integration of women's human rights. See Chapters 5.2.3 and 5.4. This approach is, however, not applied exclusively.

¹⁴⁴ For an overview of the institutional mechanisms proposed in the Vienna Programme, see Chapter 3.4.2. For an overview of different mechanisms for institutional mechanisms adopted within the UN human rights framework, see Chapter 5.

have been approached through specific violations, such as violence against women.¹⁴⁵ The thematic approach has contributed to the strategy for integrating women's human rights in two ways, first by shedding light on issues that have previously been excluded from the human rights sphere, and, secondly, by pushing the notion of human rights further. The thematic approach, however, can also lead to the marginalization of overarching (less medializable) issues, such as women's economic, social and cultural rights, and not the least poverty and under-development as factors impeding women's human rights.¹⁴⁶

I noted above that how the strategy for integrating women's human rights is interpreted is also dependent on *where* it is suggested that women's human rights should be integrated. The strategy for integrating women's human rights is often promoted as a system-wide and broad-based strategy equivalent to the strategy for mainstreaming a gender perspective. In reality, however, the strategy has come to be approached as a strategy specific for the UN human rights framework, i.e., the focus of the strategy is to overcome the marginalization of women's human rights within the UN human rights framework.

The above text referred to definitions of how women's human rights have been approached, definitions which are largely deduced from how women's human rights have been approached within the UN human rights framework. The strategy for integrating women's human rights, however, can also be perceived of as an add-on and an integral part of both the strategies for mainstreaming a gender perspective and of mainstreaming human rights. That is, the strategy can be perceived of as part of the targeted interventions needed for mainstreaming a gender perspective within the UN human rights framework, and because the UN has emphasized a holistic perspective toward human rights "women's human rights" are integral to those rights that should be mainstreamed when "human rights" are mainstreamed. Within the World Health Organization, for example, efforts have been made, on the one hand, to mainstream a gender perspective and, on the other hand, to mainstream human rights.¹⁴⁷ While it is difficult to assess the overall success of these main-

¹⁴⁵ The thematic approach has been used by, for example, the General Assembly, the Commission on Human Rights and the Commission on the Status of Women. See Chapters 5.2.3, 5.3.2 and 5.3.3.

¹⁴⁶ See Otto 1999, and Chapter 3.5.2.

¹⁴⁷ *Advancing Safe Motherhood through Human Rights*, see at www.who.int/reproductive-health/gender/tools.html (28-09-2003). See also *Transforming Health Systems*, Goonsekere 1998 and Lovecy 2002.

streaming efforts, the Department of Reproductive Health and Research at the World Health Organization has developed gender-based and rights-based approaches to reproductive health. These approaches have been implemented through gender and reproductive rights training.¹⁴⁸ The Department of Reproductive Health and Research's early work was conducted under the title of *Women's Perspectives and Reproductive Health*. According to one of the persons interviewed, the World Health Organization began focusing on women's human rights as a spin off from gender mainstreaming work. It was argued that "... the fact that it [human rights] is a legal framework and that there is this whole UN system developing and elaborating on conventions et cetera gives a kind of weight to the work [for women and gender equality] something that just gender mainstreaming doesn't".¹⁴⁹

4.7 Conclusions

The aim of this chapter has been to analyze the strategies for mainstreaming a gender perspective and for integrating women's human rights. Implicit in the analysis has been Haslanger's claim regarding the link between what we wish to explain and what we wish to explain it with and Bacchi's proposals that social problems are not necessarily solved with the development of policy strategies and her emphasis that we should shift our focus from viewing policies as evident solutions to viewing a policy solution as one among many possible problem representations. Both Haslanger and Bacchi question truths which have been taken for granted about gender and equality issues. That is, they acknowledge that although inequalities between the sexes are an everyday reality for women and men around the world the strategies for mainstreaming a gender perspective or women's human rights do not necessarily capture these realities or provide tools against inequalities. The excessive focus on one or two strategies might even be counterproductive. The process of developing the strategies, which involves the very politicized process of integrating the strategies within the UN human rights framework, might

¹⁴⁸ For an overview of the *Transforming Health Systems: Gender and Rights in Reproductive Health* training material see at www.who.int/reproductive-health/gender/modules.html (28-09-2003), World Health Organization has also conducted a pilot programme in Mozambique regarding the use of a human rights-based approach to make pregnancies safer, see at www.who.int/reproductive-health/mps/index.htm (28-09-2003).

¹⁴⁹ Interview No. 9.

have unintended consequences for and lead to unexpected inclusions and exclusions in connection with the proposed strategies.

I have now analyzed the development of the Vienna and Beijing strategies in Chapter Three, and I have analyzed the content of the strategies, which was the focus of this chapter. I would argue now that the aim of the strategies has changed during the strategy development process. It has been demonstrated that both the idea of mainstreaming a gender perspective and the idea of mainstreaming women's human rights have lost some of their transformative content during the process of grounding the policies, all the while the policies remain difficult. In one of the interviews, although the importance of promoting a strategy was brought to light, it was also mentioned how important it was to remain attentive to any presumptions which might lie behind or beneath a particular strategy – to stay alert as to any possible secondary effects the strategy might cause.¹⁵⁰ The lack of definitions and discussion, due to factors, such as, the lack of time, the lack of resources, the lack of interest or the fear of conflict, will only lead to a replication of the relative failure and marginalization of the woman-centred strategies. As argued by Beveridge and Nott:

... it must be recognised that the rhetoric of mainstreaming, like the rhetoric of equality of opportunity or the rhetoric of positive action, can be 'twisted and deployed to diffuse its transformative potential [or to be used] against feminist goals.'¹⁵¹

OSAGI has analyzed many of the difficulties encountered with the mainstreaming of a gender perspective. The persistent constraints to mainstreaming have been identified as including "... conceptual confusion, inadequate understanding of the linkages between gender perspectives in different areas of the work of the United Nations and gaps in capacity to address gender perspectives once identified". These persistent constraints could be translated into three questions regarding gender mainstreaming: what does it mean? What does it do? And how should it be done?

¹⁵⁰ Interview No. 1. For example, due to the success enjoyed by the mainstreaming strategies during the 1990s and due to the fact that today, within the UN system, there are a number of overlapping mainstreaming initiatives, viz., gender, human rights, women's human rights, et cetera, it is unavoidable that questions emerge regarding multiple mainstreaming strategies or how exactly to mainstream within a mainstreaming strategy. For further discussion about multiple mainstreaming approaches, see Chapters 5.3.2 and 6.5.

¹⁵¹ Beveridge and Nott 2002a, p. 308.

The persistent constraints, which contribute to the danger that the mainstreaming strategies are being or will be misused, stem partly from the insufficient dissemination of the knowledge developed within the woman-centred institutions regarding mainstreaming strategies, partly from difficulties in adapting the strategies to specific contexts. While the woman-centred institutions have promoted transformative approaches to mainstreaming, including social constructivist conceptions of gender and far-reaching interpretations of women's human rights, these approaches have not yet been well communicated to the overall UN human rights framework – or during the process of communication, the content of the strategies might have changed. The insufficient communication and the altered content of the strategies may be partly blamed on the problems generally intrinsic to mainstreaming strategies. That is, whether expert or participatory mainstreaming strategies are used, it is necessary for the experts or the architects of the strategies to let go of the mainstreaming strategy once it has been introduced, and to let it evolve by means of discussion or review sessions and operationalizations so as to adapt it to the needs of a specific context. Hence, certain amounts of both fluidity and openness are essential to the process of mainstreaming. Mainstreaming strategies are unsuccessful if they are carried out with a top-down approach. In order to encourage everyone, every member of staff, to integrate a gender perspective, women's human rights or human rights, as many people as possible ought to participate in the identification of the actual needs of a specific context. Each staff member should discover how they could best integrate women's human rights or a gender perspective into their work. It would be naïve, however, to assume that every staff member at the OHCHR, for example, felt passionately about gender or women's human rights, that they would be ready to take the necessary time and effort to analyze how they and their work could benefit from the integration of women's human rights or a gender perspective – and, thereafter, be willing to make the requisite changes in their work flow. It might very well be worthwhile to ponder whether in the absence of a nourishing environment, and in the absence of extensive, participatory and well-guided discussion and feedback, the integrative strategies can be successful?

5 The Institutional Implementation of the Integrative Strategies

In the previous chapters, Chapters Three and Four, I analyzed the development and content of the strategies for integrating women's human rights and mainstreaming a gender perspective. In this chapter, Chapter Five, I will focus on the third objective of this thesis i.e., I will focus on how different institutions within the UN human rights system have approached and chosen to implement the integrative strategies. Chapter Five is divided into five main parts, parts in which I will analyze the implementation within the Charter-based, treaty-based and extra-ordinary human rights mechanisms.

5.1 Introduction

In the previous chapter, I suggested that, while, the strategies for mainstreaming a gender perspective and integrating women's human rights, seem, *prima facie*, to be straightforward concepts, there is scant information or knowledge about them, in particular, how to mainstream, what to mainstream or what the short-term or long-term results of mainstreaming would and should be. While mainstreaming strategies may contribute to and even may transform an integrated and critical approach to women's inequality within the UN system, the very fuzziness of both strategies makes them easy to bypass or ignore and even abuse.

In this chapter, I will analyze the institutional implementation of the integrative strategies for mainstreaming a gender perspective and integrating women's human rights within the UN human rights framework.¹

¹ The Secretary-General's reports to the Commission on Human Rights on the integration of the human rights of women and the gender perspective, in addition to information from the specific institutions, have been used when developing this chapter. See UN doc. E/CN.4/1997/40, UN doc. E/CN.4/1998/49, UN doc. E/CN.4/1999/67, UN doc. E/CN.4/2000/67, UN doc. E/CN.4/2001/71 and UN doc. E/CN.4/2002/81, UN doc. E/2003 (early version) and E/CN.4/2003/72.

I am interested in how the different institutions have approached issues regarding equality between the sexes and women's human rights, and how these approaches have changed during the last decade.

Charter-based, Intergovernmental Institutions	Extra-conventional, Expert Institutions (i.e. the Commission on Human Rights special procedures)	Treaty-based, Institutions	Charter-based, Administrative Institutions (i.e. the Secretariat)
Security Council	Special Rapporteur on Extrajudicial, Summary of Arbitrary Executions	Committee on the Elimination of All Forms of Racial Discrimination (CERD Committee)	Division for the Advancement of Woman
General Assembly	Special Rapporteur on the Situation of Human Rights in Afghanistan	Human Rights Committee	Office of the UN Special Adviser on to the Secretary-General on Gender Issues and Advancement of Women (OSAGI)
Economic and Social Council (ECOSOC)	Special Rapporteur on the Right to Education	Committee against Torture (CAT Committee)	Office of the High Commissioner on Human Rights (OHCHR)
– Commission on the Status of Women	Special Rapporteur on Violence Against Women, Its Causes and Consequences	Committee on the Elimination of All Forms of Discrimination against Women (CEDAW Committee)	
– Commission on Human Rights		Committee on the Rights of the Child (CRC Committee)	
		Committee on Economic, Social and Cultural Rights (CESCR Committee)	

Image: Overview of the institutions within the UN Human Rights system addressed in the thesis.

The above matrix offers an overview of the Charter-based, treaty-based and extra-conventional mechanisms that are referred to in this thesis.² I have identified key documents or processes within each institution that address or can be perceived as addressing the mainstreaming of a gender perspective or the integration of women's human rights. The focus of the analysis is on the period 1992–2002, i.e., on the period during which the aforementioned strategies have been developed. I have included initiatives undertaken during 2003 when such actions seem to indicate a shift or an important step in the approach of the institution with regard to the implementation of the integrative strategies. Given the limitations as concerns the institutions and the documents referred to, this chapter can only indicate some tendencies in how the integrative strategies have been approached by the UN human rights system and it should not be read as a substantial analysis of the activities of each of the above-mentioned institutions vis-à-vis the strategies. The sum of the analysis, however, does provide insights into changes within the UN human rights framework and within the specific institutions vis-à-vis issues regarding equality between the sexes and women's human rights.

5.2 The Charter-based Intergovernmental Institutions and the Integrative Strategies

5.2.1 Introduction

The UN Charter established the mandates for the Charter-based institutions. Among the Charter-based institutions, the ones that work with issues relating to the UN human rights and women's advancement agendas are primarily the General Assembly, the ECOSOC and some of its functional commissions and some of the Secretariat institutions. The Charter-based intergovernmental institutions that I will address below include the Security Council, the General Assembly and the ECOSOC.³

² The image on the previous page gives an overview of only a small part of the UN human rights framework and institutional structure. I have chosen to concentrate the analysis on core Charter-based, treaty-based and extraordinary human rights institutions, which have been implied in the development of the UN human rights and women's human rights discourses, not the least in the conjunction to the world conference processes. For more substantive overviews of the Human rights framework, see, for example, Alston 1996, ed. and Alston and Crawford, eds. 2000.

³ The ECOSOC's functional commissions, viz., the Commission on Human Rights and the Commission on the Status of Women, will be addressed separately. See Chapters 5.3.2 and 5.3.3.

The Security Council has been included, because during the last decade, it has begun to address human rights and the humanitarian law dimensions of peace and security issues. The General Assembly is, still, an important intergovernmental institution with regard to human rights, while the ECOSOC has come to delegate many of its functions in the field of human rights to the Commission on Human Rights. The Security Council is not implied in the follow-up to the Vienna and Beijing conferences. The General Assembly and the ECOSOC play key roles in the follow-up processes.

5.2.2 The Security Council

It was not envisaged at the San Francisco conference that the Security Council would be dealing with human rights matters.⁴ Up until the 1960s, the Security Council's human rights record remained sporadic. Since the 1960s, however, the Security Council has occasionally addressed human rights when gross and persistent human rights violations have consisted a threat to peace and security.⁵ Since the late 1980s, the Security Council, in line with the general trend within the UN, has begun to use not only country-specific approaches, but also thematic approaches. It is within the framework of the thematic approaches that the Security Council has developed a broader approach to human rights.⁶ In the aftermath of the Cold War, the Security Council has increasingly come to interpret the absence of democratic governance and the failure to protect human rights as either symptoms of or causes of threats to peace and security.⁷ During the Security Council meeting of the Heads of State in 1992, the Security Council stated that "[t]he absence of war and military conflicts does not in itself ensure international peace and security. The non-military sources of instability in the economic, social, humanitarian and ecological fields have become threats to peace and security".⁸ Orford notes that the conception of human rights used in the discourses of the new interventionism is "... radically circumscribed to fit [the] vision of procedural demo-

⁴ The Security Council can investigate and recommend solutions when international peace and security are threatened. It also can decide on the use of economic sanctions or military action against an aggressor. The Security Council has fifteen members of which, the only permanent members are China, France, the Russian Federation, the United Kingdom and the United States. The Security Council resolutions are considered legally binding for UN Member States. See, UN Charter Chapter V and Bailey 1995.

⁵ Bailey 1996, p. 306.

⁶ Orford 1997, p. 445.

⁷ Orford 1997, p. 445.

⁸ *The Security Council Summit Statement concerning the Council's Responsibility in the Maintenance of International Peace and Security*, cited in Orford 1997, footnote 3.

cracy as the end of intervention”.⁹ While the Security Council’s approach to human rights remains focused on civil and political rights, the Security Council has come to address, albeit marginally, women’s human rights and the gendered dimensions of peace and security through these acknowledgements and through the increased inclusion of thematic issues on the Security Council agenda.

The Security Council’s sensitivity to questions regarding women’s inequality began during the early 1990s information campaign about violence against women in the context of the conflicts in former Yugoslavia and Rwanda, as is the case for many UN institutions.¹⁰ The sensitivity process continued through the discussions about the situation in Afghanistan and the Taliban’s mistreatment of women.¹¹ As part of its thematic approaches the Security Council did come to address, the situations of women and children during the armed conflicts once having addressed the situation of civilians generally.¹² In March 2000, the Security Council considered the thematic topic, *Maintaining Peace and Security: Humanitarian Aspects of Issues before the Security Council*. The experiences of women and children in armed conflicts and the necessity of protecting women and children were topics that were emphasized in the Security Council’s discussions. In his statement, the President of the Council declared that “... in some instances the integration of humanitarian components into peacekeeping operations would contribute effectively to their carrying out their mandate” and, in this regard, he emphasized the importance of adequate training for peacekeeping personnel in international humanitarian law and human rights with regard to the special situations of women and children as well as vulnerable population groups.¹³ Seven months later, in October 2000, the Security Council

⁹ Orford 1997, pp. 463–4.

¹⁰ Charlesworth and Chinkin 2000, p. 254.

¹¹ See, for example, UN doc. S/Res/1333 (2000), UN doc. S/res/1383 (2001) and UN doc. S/Res/1419 (2002) on the situation in Afghanistan.

¹² Women, children and indigenous peoples are among the topics, which could be called traditional thematic topics on different UN agendas. See, Security Council Resolutions UN doc. S/Res/1261 (1999) on Children and Armed Conflict, UN doc. S/Res/1265 (1999) on the Protection of Civilians in Armed Conflict, UN doc. S/Res/1296 (2000) on the Protection of Civilians in Armed Conflict and UN doc. S/Res/1314 (2000) on Children and Armed Conflict, UN doc. S/Res/1325 (2000) on Women and Peace and Security, and UN doc. S/Res/1379 (2001) on Children and Armed Conflict. See, also Pratt and Fletcher 1994.

¹³ UN doc. S/PRST/2000/7. The importance of recognizing violations of women’s and children’s rights was also emphasized by some of the other speakers. The Security Council discussion, however, failed to lead to any action, see, <http://www.un.org/Depts/dhl/resguide/scact2000.htm> (15-10-2002).

considered the thematic topic *Women and Peace and Security*.¹⁴ The UN Secretary-General, Kofi Annan, opened the discussion, commenting on how the nature of conflict had changed during the second half of the 20th century and that civilians, including women and children, are increasingly the victims of and targets in conflict and war. Annan emphasized, and this focus has become constitutive for the Security Council approach to women, that women are not only victims, but that they are also often better equipped than men to prevent and resolve conflict and war.¹⁵ A similar perspective was espoused by the Special Advisor on Gender Issues, Angela King. King highlighted several benefits emanating from the focus on women and the presence of women, viz., that the focus is legitimized with respect to achieving equality between the sexes, that female peace-keepers have a proven ability to recruit local women onto peace committees and other peace and reconstructive work and, further, that women are also “... less hierarchical in dealing with local communities and [they] listen more ...”.¹⁶

The Security Council session on *Women and Peace and Security* resulted in the adoption of Resolution 1325 (2000) on Women and Peace and Security. Corresponding to the discussion prior to its adoption, the resolution expresses concern, on the one hand, “... that civilians, particularly women and children, account for the vast majority of those adversely affected by armed conflicts” and, reaffirms, on the other hand, “... the important role of women in the prevention and resolution of conflicts and in peace-building”.¹⁷ The resolution also refers to both the need to “... implement fully international humanitarian and human rights law that protects the rights of women and children during and after conflicts” and to the “... urgent need to mainstream a gender perspective into peace-

¹⁴ There were only eight women speakers out of a total of about forty speakers at the meeting on women and peace and security. See UN doc. S/PV. 4208 (2000).

¹⁵ UN doc. S/PV.4208, p. 3.

¹⁶ UN doc. S/PV.4208, p. 4. Mr. Listre (Argentina) noted that “[a]rmed conflict has a special and disproportionate impact on women, and it is thus right to conclude that women have their own views which must be heeded in discussions of the best ways to avoid or settle conflicts or how to organize the future of communities that have been affected by such conflicts”, see UN doc. S/PV.4208, p. 16. Mr. Shen Guofong (China) noted similarly that women are the direct and principal victims of armed conflict and war and because “women hold up half the sky”, efforts to maintain international peace cannot be lasting if women are not allowed to participate in building it, see UN doc. S/PV.4208, p. 17. Similar comments were made by Mr. Lavrov (Russia), who noted that women are “... not merely helpless victims”, but they are also resources and they can provide “... invaluable assistance in reconciling belligerents and tending the wounds of war”, UN doc. S/PV.4208, p. 21.

¹⁷ UN doc. S/Res/1325 (2000), preamble.

keeping operations”.¹⁸ The substantial articles of the resolution focus on the following goals: the necessity of increasing the representation of women on all decision-making levels, in both national and international contexts, including as UN special representatives and envoys, and in field-operations; the Security Council’s willingness to integrate a gender perspective into peacekeeping operations and the need for training on all levels in this regard, as well as with regard to women’s human rights; and the necessity to protect women from violence and from other forms of violations of their human rights.¹⁹ The Security Council decided to “... remain actively seized on the matter [of women and peace and security]”.²⁰

The Security Council’s resolution has received quite a lot of attention by women’s advocates and organizations, but the Security Council, itself, has failed to “remain actively seized on the matter”, especially after the events of September 11. The Security Council has not adopted any follow-up resolution that specifically addresses women and peace and security. Moreover, while the Security Council has reasserted its commitment to issues regarding women and peace and security in some of its other thematic and country-specific resolutions, these reassertions remain vague.²¹

The approach chosen in the Security Council resolution, however, was “progressive” in the sense that it emphasized a focus on women in situations of risk or danger, i.e., in conflict-torn areas and also within UN peacekeeping and peace-building operations. This approach was a new one for the Security Council. The approach chosen by the Security Council leaves, however, very little room for women’s roles to move beyond the conservative images of women as either victims or caregivers. The approach

¹⁸ UN doc. S/Res/1325 (2000), preamble.

¹⁹ UN doc. S/Res/1325 (2000), Arts. 1–17

²⁰ UN doc. S/Res/1325 (2000), Art. 18.

²¹ Sexual violence and the situation of girl children, however, was emphasized in UN doc. S/Res/1379 (2001) on Children and Armed Conflict where the Security Council reiterated its recognition of the role of women in conflict prevention and requested the Secretary-General to give more attention to gender perspective in peacekeeping and peace-building missions in its UN doc. S/Res/1366 (2001) on the role of the Security Council in the Prevention of Armed Conflict. In its recommendations to the General Assembly, the Security Council included only three women among the 23 candidates on its list for candidates for judges to sit on the International Tribunal for Rwanda, see UN doc. S/Res/1431 (2002) and UN doc. S/Res/1449 (2002). The Resolutions on Threats to International Peace and Security caused by Terrorist Attacks do not generally include any references to women’s human rights or gender issues. See UN doc. S/Res/1368 (2001), UN doc. S/Res/1438 (2002), UN doc. S/Res/1440 (2002) and UN doc. S/Res/1450 (2002).

emphasizing women as victims in need of protection, in fact, reproduces the sexual logics of war, which, according to Charlesworth and Chinkin, "... is connected to ideas of male soldiers' privileges, to the power of military's lines of command, as well as [to] class and ethnic differences among women".²² The sexual logics of war not only produce women as victims, but also as property that should be protected.²³ The protector/protected imagery is one of inequality because it gives the protector the right to protect and the freedom to choose the means for protection, at the same time as it denies those persons who are to be protected, i.e., *certain* women "... agency or ability to provide for their protection".²⁴ Orford shows that protector/protected and man/woman frames to issues regarding women and peace and security also obscure the bigger picture, i.e., these frames obscure many of the issues that feminists have raised, such as the relationship between insecurity and economic liberalization.²⁵

The Security Council's approach to women as assets in peacekeeping and peace-building processes provides women with *some* agency, but only because, as Orford notes, women are viewed as "innately peaceful".²⁶ Orford queries whether it is even possible to talk about conflict in the context of globalization "... without suggesting that some women may perhaps not see taking 'their rightful and equal place at the decision-making table in questions of peace and security' as the key issue facing them today?".²⁷ That is, women's participation in peacekeeping and peace-building processes is conditioned on the premise that, women will want to participate without challenging the dominant peacekeeping and peace-building processes to which they are supposed to lend a *feminine touch*.

Hence, the Security Council discussion and resolution are responses to the UN's demands for the mainstreaming of a gender perspective and of human rights and to the recognition of the harsh realities that women face in conflict situations. This chosen approach, however, avoids any contact with any in-depth notions of gender. What is more, this chosen line also averts its eyes from the possibility of a bulkier, non-conformist image of a woman, one which might even force the Security Council to address, first of all, the gender relationship in peace and security matters and, secondly, the sexed and racial elements embodied in the "... construct

²² Charlesworth and Chinkin 2000, p. 254.

²³ Charlesworth and Chinkin 2000, p. 254.

²⁴ Charlesworth and Chinkin 2000, p. 254.

²⁵ Orford 2002, p. 282.

²⁶ See also Svensson 2003.

²⁷ Orford 2002, p. 282.

of the virile white male defender of women and children, upholding Western values against a racial inferior".²⁸ The approach also reinforces ideas about the kinds of jobs that can be delegated to women and men respectively within the UN.²⁹

When discussing the history of the World Conferences on Women, I referred to Fraser's experiences from the Copenhagen conference where women had dominated most sessions, except those sessions where items painted by Fraser as troublesome international issues were discussed.³⁰ Björk provides a similar insight from the Commission on the Status of Women session in March 2003, held "in the caves of the UN", while at the same time, three floors above the Security Council or "... the men were deciding on different degrees of militarism or war".³¹ She notes that the women activists had no access to the floor where the Security Council held its meetings. She described the session of the Commission on the Status of Women or as she called it: the "cave world" as a "surrealist place" where "... we [the women] through little adjustments in an official document try to remain sane, try to make sense".³² Björk asked, with respect to the current context, whether women should abandon the UN and the global arena because there does not seem to be any place left for human rights, let alone for women's rights.³³ In this respect, King's assertion voiced during the Security Council discussion on women and peace and security that "... the most important lesson learned is that lessons are not always learned" seems especially apt for the UN framework.³⁴

5.2.3 The General Assembly

As opposed to the Security Council, the General Assembly has a broad mandate regarding both human rights and the advancement of women.³⁵ Largely through the work of its Third Committee, which works with so-

²⁸ Charlesworth and Chinkin 2000, p. 254.

²⁹ Charlesworth and Chinkin (2000, p. 294) note that "... between 1957 and 1989 there were only twenty women (mainly) nurses in the approximately 20.000 military personnel who served on UN missions". By the year 2000, the number had increased to around 4 %.

³⁰ See Chapter 3.5.1.

³¹ Björk 2003, p. 14.

³² Björk 2003, p. 14.

³³ Björk 2003, p. 14.

³⁴ UN doc. S/PV.4208 (2000), p. 6.

³⁵ During its annual sessions, which are held in New York, the General Assembly carries out its work by subdividing into six main committees. The main committees correspond to the major fields of responsibility of the General Assembly. It is the Third Committee – the Social, Humanitarian and Cultural Committee – that deals with most of the human rights and women's rights issues. Decisions by the General Assembly are not

cial, humanitarian and cultural affairs and the follow-up to UN world conferences regarding human rights and socioeconomic issues, the General Assembly develops the long-term and short term goals of the UN human rights and women's advancement agendas. Quinn argues that the cohabitation of human rights and social issues, including the advancement of women, on the Third Committee's agenda, should not be seen exclusively through an optic of mutually exclusive competition for resources and attention.³⁶ Instead, the two sets of issues are interlinked. It is this very linkage that has contributed to the dual nature of the women's human rights and women's advancement agendas.³⁷

According to Cassese, "[i]t would be erroneous to speak of an Assembly philosophy or strategy of human rights. In actual fact, the views of the Assembly are those injected into its resolutions by the various groups of states prevailing at any specific time within that body (and consequently in the Organization as a whole)".³⁸ Hence, the position of human rights on the General Assembly agenda has changed considerably during the history of the UN.³⁹ Until the late-1950s, the General Assembly was dominated by Western states and by Western conceptions of human rights. Thereafter, up to the mid-1970s, the General Assembly's approach was increasingly affected by the Socialist states, which, supported by some developing countries, promoted an economic and social rights agenda that the Western states were obliged not to ignore. Later, again, up to the late-1980s, the General Assembly's approach was increasingly affected by the developing world; Group and development rights' frameworks emerged. It is during this third phase that the UN's women's human rights framework developed by the adoption of the CEDAW. During the post-Cold War period, the General Assembly evinced a growing openness toward alternative human rights frameworks and discussed more and more frequently, for example, the topic of the human rights of the disabled and the elderly.

The General Assembly's approach to human rights and its methods of working for human rights have been criticized. Quinn notes that while

binding upon Member States' governments, but the decisions do "... carry the weight of world opinion on major international issues, as well as the moral authority of the world community", see www.un.org/ga/57/about.htm (23-09-2003).

³⁶ Quinn 1996, pp. 60–1.

³⁷ The dual nature of the women's human rights agenda has been discussed in Chapters 3.3.2 and 4.7.

³⁸ Cassese 1996, p. 29.

³⁹ Cassese 1996, p. 29. The different approaches and how they change over time are not necessarily unique for the General Assembly, but bear resemblance to the trends within the other institutions of the UN.

the contributions to the international human rights framework made by the General Assembly often constitute nothing more than replications of what has already been done by the Commission on Human Rights and what has already been replicated by the ECOSOC, supporters of UN human rights activities tend to take the “empirical” view that “more is better”.⁴⁰ Cassese argued that the General Assembly has abused its unique position regarding human rights by indulging in the practice of passing a large number of resolutions knowing that these would amount to nothing but “paper solutions to serious problems”.⁴¹

It seemed that the more impotent the Assembly felt in the face of difficult problems, the more often it resorted to paper solutions. One is reminded of the Queen of Hearts in *Alice in Wonderland*, who had only one way of settling all difficulties, great or small, namely to order ‘off with his head’, but nobody paid any attention to her commands and no beheading was ever carried out.⁴²

Quinn notes that the criticism against the General Assembly is especially persistent for thematic and other non-specific resolutions that tend to be procedural and declaratory in character.

Despite its supervisory and priority setting mandate, the Assembly has no effective method for follow-up or evaluation of implementation of its resolutions. The Secretary-General’s reports, all too often requested by delegations semi-automatically, without regard to purpose or resource implications, are by and large bureaucratic set-pieces which do little to advance understanding of the issues.⁴³

However, both Quinn and Cassese underline that the criticism directed towards the General Assembly is often based on how the critical voices would want the General Assembly to act rather than on how the General Assembly actually can act.⁴⁴ Cassese notes that the Assembly together with other UN bodies succeeded in shifting from a static concept of human rights to a dynamic concept of human rights conceived as a means of realizing international peace.⁴⁵

The General Assembly is part of the three-tiered intergovernmental mechanism specifically responsible for follow-up to the Beijing conference. The General Assembly also works for the integrated and coordinated

⁴⁰ Quinn 1996, p. 57.

⁴¹ Cassese 1996, p. 51.

⁴² Cassese 1996, p. 51 and Quinn 1996, p. 71.

⁴³ Quinn 1996, p. 96.

⁴⁴ Cassese 1996, p. 50.

⁴⁵ Cassese 1996, p. 47.

follow-ups to UN conferences.⁴⁶ The General Assembly organized the Beijing+5 review as a special session. The Beijing+5 session and its outcome document, however, were affirmative rather than transformative with regard to the Beijing Platform's gender mainstreaming and women's human rights agendas.⁴⁷ As was noted in Chapter Three, the Beijing+5 session has been perceived as undermining some of the advances made during the Vienna, Cairo and Beijing conferences. In the aftermath of the Beijing+5 session, the General Assembly organized a Millennium Assembly, which also led to the adoption of the Millennium Declaration.⁴⁸ The declaration listed freedom, equality, solidarity, tolerance and respect for nature and shared responsibility as the main values essential to international relations in the 21st century. The declaration proclaims women's and men's equal rights to freedom and equality in development as part of two of the main values, freedom and equality.⁴⁹ The declaration also identifies gender equality and the empowerment of women throughout the declaration as a means for poverty eradication; human rights are mentioned as a means for democracy.⁵⁰

The General Assembly's affirmative rather than transformative role and its approach to women's advancement and gender equality as special issues can also be exemplified through a review of the General Assembly's resolutions on the topics. During its 56th session (2001), for example, the General Assembly adopted four main types of resolutions regarding human and women's human rights. I have chosen to define these resolutions as institutional and implementation resolutions, thematic resolutions, country-specific resolutions and resolutions on emerging issues.

The resolutions that I have defined as *institutional and implementation resolutions* adopted under the human rights agenda, dealt with matters relating to the promotion and implementation of international human rights treaties, declarations and other instruments.⁵¹ Among the general,

⁴⁶ See UN doc. A/Res/50/203 and UN doc. A/Res/56/211.

⁴⁷ See, for example, UN doc. A/S-23/10/Rev.1, UN doc. A/Res/S-23/3, UN doc. A/Res/51/69, UN doc. A/Res/52/100, UN doc. A/Res/54/141, UN doc. A/Res/55/71, UN doc. A/Res/56/132 and UN doc. A/Res/53/120.

⁴⁸ See UN doc. A/Res/55/2 and UN doc. A/Res/55/162.

⁴⁹ UN doc. A/Res/55/2, Art. 6.

⁵⁰ In the Secretary-General's Report, *The Roadmap to Implementation* addresses women along with children and disabled persons are grouped under the heading *Protecting the Vulnerable*. See UN doc. A/56/326.

⁵¹ The resolutions focused especially on the International Convention on the Protection of the Rights of all Migrant Workers, the Declaration on Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities, the Declaration on the Right and Responsibility to Promote Human Rights, the comprehensive implementation and follow-up to the World Conference against Racism, the Special Session of the General

i.e., *non-woman-specific institutional and implementation resolutions*, only very few made substantive references to women's human rights or to gender-related issues. Exceptions were the Resolution on the International Convention on the Protection of the Rights of all Migrant Workers, which includes references to CEDAW. The Resolution on the Promotion of the Declaration on Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities includes a reference to the necessity of applying a gender perspective. The Resolution on Human Rights in the Administration of Justice mentions CEDAW. The Resolution on National Institutions for the Protection of Human Rights makes references to the Beijing Platform and the Resolution on Human Rights Education includes references to women's human rights. The *woman-centred institutional and implementation resolutions* addressed, for example, the improvement of the status of women within the UN system, the status of institutions such as the CEDAW Committee and UNIFEM, the implementation of the CEDAW, its Optional Protocol, and the Beijing Platform and the Beijing+5 final document.⁵²

The *thematic resolutions* adopted under the human rights agenda dealt with issues relating to specific human rights issues falling within the framework of the *International Bill of Rights* or some of the other human rights treaties and declarations.⁵³ Most of these resolutions made some references to women's human rights or gender-related issues. The Resolution on Religious Intolerance included references to discrimination against women and practices that violate the human rights of women. The Resolution on the Right to Food includes references to the human

Assembly on Children, on the integrated and coordinated follow-up to UN conferences in the economic and social fields, on human rights in the administration of justice, on the strengthening UN action in the field of human rights, on the enhancement of international cooperation in the field of human rights, on national institutions for the protection of human rights and on human rights education. See UN doc. A/Res/56/144, UN doc. A/Res/56/145, UN doc. A/Res/56/147, UN doc. A/Res/56/149, UN doc. A/Res/56/153, UN doc. A/Res/56/158, UN doc. A/Res/56/161, UN doc. A/Res/56/162, UN doc. A/Res/56/163, UN doc. A/Res/56/211, UN doc. A/Res/56/222 and UN doc. A/Res/56/267.

⁵² See UN doc. A/56/576. See also resolutions UN doc. A/Res/56/127, UN doc. A/Res/56/130, UN doc. A/Res/56/125, UN doc. A/Res/56/132.

⁵³ Resolutions were adopted regarding the elimination of all forms of religious intolerance, on the right to food, on the right to development, and on the eradication of poverty, measures to combat contemporary forms of racism and racial discrimination, xenophobia and related intolerance, on the third decade to combat racism and racial discrimination, on torture, and on human rights and cultural diversity, see UN doc. A/Res/56/143, UN doc. A/Res/56/150, UN doc. A/Res/56/155, UN doc. A/Res/56/156, UN doc. A/Res/56/157, UN doc. A/Res/56/265 and UN doc. A/Res/56/266.

rights of women and to the importance of mainstreaming a gender perspective and the Resolution on the Right to Development included references to women's rights and the importance of a gender perspective. The Resolution on the Eradication of Poverty acknowledged women's need for better control over resources and noted the importance of a visible policy of mainstreaming a gender perspective. The Resolution on Torture included references to gender-specific forms of torture, such as sexual violence and the Resolution on Cultural Diversity included references to gender equality. The *woman-centred thematic resolutions* included resolutions on issues, such as, women in development, violence against women migrant workers, improvement of the situation of women in rural areas, traditional or customary practices affecting the health of women and girls and the situation of older women in society.⁵⁴

Country-specific resolutions dealt with the human rights situation in specific countries.⁵⁵ Among these resolutions, the Resolution on Myanmar included rape in its list of human rights violations committed towards persons belonging to ethnic and religious minorities. The resolution referred to specific violations of the human rights of women, such as forced labour, trafficking and sexual violence and exploitation. The Government of Myanmar is also urged to take the CEDAW Committee's recommendations into account and to carry out human rights education and gender-sensitization training for military personnel and others. The Resolution on Afghanistan included references to CEDAW and to the Security Council's Resolution on Women and Peace and Security. The resolution demanded that the new Government of Afghanistan should respect human rights 'regardless of gender, ethnicity or religion' and condemns gross violations committed against women and girls.⁵⁶

⁵⁴ Women in development is addressed in UN doc. A/Res/56/188. The girl-child is addressed in UN doc. A/Res/55/78. Violence against women migrant worker is addressed in UN doc. A/Res/56/131, improvement of women's status in rural areas is addressed in UN doc. A/Res/56/129, harmful traditional practices is addressed in UN doc. A/Res/56/128 and the situation of older women is addressed in UN doc. A/Res/56/126.

⁵⁵ Resolutions were adopted regarding the situation of human rights in Myanmar, on the subregional center for human rights and democracy in Central Africa, on the question of human rights in Afghanistan, on the situation of human rights in Sudan, on the situation of human rights in Iraq, on the situation of human rights in the Democratic Republic of the Congo, on the situation of human rights in parts of South-Eastern Europe, on the situation of human rights in the Islamic Republic of Iran, and on the situation of human rights in Cambodia. See UN doc. A/Res/56/231, UN doc. A/Res/56/230, UN doc. A/Res/56/176, UN doc. A/Res/56/175, UN doc. A/Res/56/173, UN doc. A/Res/56/174, UN doc. A/Res/56/172, UN doc. A/Res/56/171 and UN doc. A/Res/56/169.

⁵⁶ UN doc. A/Res/56/176, preamble and Arts. 2, 12 and 13.

The Resolution on the Sudan included references to women's situation in armed conflict, to action taken against women's participating in civil society gatherings and it called on the Sudan to sign and ratify CEDAW. The Resolution on Iraq referred to the concluding comments of the CEDAW Committee regarding Iraq and called on the Government of Iraq to ensure human rights for all individuals irrespective of origin, ethnicity, gender or religion. The Resolution on the Republic of Congo included references to CEDAW, expressed concern for the numerous cases of rape and other sexual violences, urged the parties to the conflict to protect human rights, including the human rights of women. The Resolution on the Islamic Republic of Iran included references to the systematic violations of the human rights of women and the girl child. The Resolution on Cambodia included substantial reference to the human rights of women and different types of violations of the human rights of women.

The resolutions that I have defined as resolutions on *emerging issues* are resolutions that address matters that have only quite recently been included on the human rights agenda. During the General Assembly 56th session, resolutions were adopted, for example, on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination, protection of migrants, on the rights of people with disabilities, on the UN decade for human rights education, on human rights and mass exodus, protection and assistance to internally displaced persons and on human rights and terrorism.⁵⁷ These resolutions included very scarce references to women's human rights or gender issues. The Resolution on the Protection of Migrants included references to CEDAW and women's human rights, the resolution on the rights of people with disabilities included references to non-discrimination, the Resolution on the Decade for Human Rights Education included references to women and women's human rights, the resolution on internally displaced persons included references to the needs of internally displaced women and the Resolution on Human Rights and Terrorism included references to the killing of innocent people such as women.

The General Assembly has a very broad mandate regarding human rights and the advancement of women. As implied in the follow-up to the Beijing conference and the integrated follow-up to UN conferences, it should also promote the integrative strategies. In its approach, the Gen-

⁵⁷ UN doc. A/Res/56/160, UN doc. A/Res/56/164, UN doc. A/Res/56/166, UN doc. A/Res/56/167, UN doc. A/Res/56/168, UN doc. A/Res/56/170 and UN doc. A/Res/56/232.

eral Assembly has been affirming rather than transformative. It might be possible to characterize the General Assembly's work for the integration of women's human rights or a gender perspective with the catchphrases *do as I say and not as I do* and *more is better*. That is, while the General Assembly has come to integrate references to woman- and gender-centred issues in many of its general as well as woman-centred resolutions, there is very little coherence in any of these references. There is very little that indicates that the General Assembly has chosen a specific strategy to include women's human rights or gender concerns into its human rights-related work. The references to women's human rights or gender concerns also appear more frequently in resolutions that address traditional human rights issues than in the resolutions on emerging issues, which might indicate that the General Assembly has learnt to express its concern for women's human rights or gender issues where considered appropriate, but that it has not necessarily learned to add woman-related and/or gender-related issues to new issues. Many of the references also seem to be add-ons, i.e., the General Assembly has not chosen a transformative mainstreaming approach. To a certain extent, the *more is better* approach to integrating women's human rights or a gender perspective, i.e., to make as many references as possible, but without necessarily worrying about substance, can be a useful tool. The approach can be used in expressing concern for women and the situation of women, where such concern has not earlier been offered, thus contributing to an increased attention accorded to women and women's issues. However, in case equal attention is not given to the substance behind the emphasis on women's human rights or a gender perspective, the results are likely to be comparable to the outcome addressed earlier, vis-à-vis the Security Council, in other words, well-meaning attempts to advance women and gender equality are conditioned, forcing women into old, stereotypical roles.

5.2.4 The Economic and Social Council

The drafters of the UN Charter envisaged the ECOSOC as playing an important role in the development of the UN's human rights and economic and social, including women's advancement agendas.⁵⁸ The

⁵⁸ The ECOSOC annually holds two regular sessions, alternating between Geneva and New York. During its sessions, the ECOSOC meets in three regular committees. The Second Committee deals with human rights issues. The geographical distribution within ECOSOC should be as follows: 14 members should be from African states, 11 from Asian states, 6 from Eastern European states, 10 from Latin American and Caribbean states, and 13 from Western European and other states. Originally, the ECOSOC had

ECOSOC, however, has come to delegate much of its human rights mandate to the Commission on Human Rights, at the same time as, it has become a leading body with respect to the follow-up to the Beijing conference and with respect to the integrated and coordinated follow-up to UN conferences. The contemporary ECOSOC plays an important role as it coordinates the work of fourteen UN agencies, ten functional commissions and five regional commissions, and coordinates the UN and non-governmental organization relations.⁵⁹ During the early decades, when the Commission on Human Rights was preoccupied with the drafting of the International Bill of Rights, the ECOSOC had a more outspoken human rights profile. The cooperation and interlinkages created between the Commission on Human Rights and the General Assembly during the drafting of the International Bill of Rights, however, partly contributed to the diminishing importance of ECOSOC's human rights work.⁶⁰ Declan O'Donovan criticizes the ECOSOC for its conservative approach to human rights and argues that the ECOSOC has failed its human rights mandate both by failing to engage substantially in human rights issues and by failing to relate human rights issues to the wider economic and social field.⁶¹ O'Donovan concludes, arguing that "[i]t is doubtful if the Council will ever achieve the prompting, guiding, and coordinating role which has been mapped out for it in countless plans by delegates and secretariat officials over the years. It has all the characteristics of a holding operation. It has already been joined or superseded in status by bodies which are its offshoots, and the same may happen with others such as the Commission on Human Rights".⁶²

The ECOSOC's continuing close relationship with the Commission on the Status of Women, as well as its work regarding the follow-up to UN world conferences have, however, contributed to the ECOSOC's playing a distinguished role, particularly, in the development of the Beijing strategy for the advancement of women and gender equality. The ECOSOC's main initiatives for the strategy for mainstreaming a gender perspective have developed within ECOSOC's own initiatives for the follow-up to the Beijing conference and the integrated follow-up to the UN conferences. In 1995, ECOSOC devoted its coordination segment

only 18 members, but the membership was increased to 27 in 1963 and to 54 in 1971. See UN doc. General Assembly resolution 1991B (XVIII) (1963), UN doc. General Assembly Resolution 2847 (XXVI) (1971).

⁵⁹ www.un.org/esa/coordination/ecosoc/about.htm (23-09-2003).

⁶⁰ O'Donovan 1996, p. 115.

⁶¹ O'Donovan 1996, p. 122.

⁶² O'Donovan 1996, p. 125.

to the follow-up to the UN conference and, since 1996, at each session it has dealt with different crosscutting issues relating to the conferences. The 1996 coordination segment was devoted to the crosscutting theme of poverty eradication and, as a result of the Beijing conference, with the subtheme, gender mainstreaming in poverty eradication.⁶³ According to the Secretary-General's report relating to the topic, mainstreaming a gender perspective in poverty eradication requires "... a conscious effort to ensure that gender is taken into consideration in activities on poverty eradication on a routine basis to avoid either marginalisation or indivisibility of women".⁶⁴ The ECOSOC resolutions relating to gender mainstreaming in the field of poverty eradication showed a need for more in depth discussion about gender mainstreaming. Hence, it was decided that mainstreaming a gender perspective would be addressed as the cross-cutting theme for the year 1997.⁶⁵

The ECOSOC discussion preceding the adoption of the draft agreed conclusions related mainly to conceptual definitions for and the content of the strategy for gender mainstreaming.⁶⁶ Some Member State delegations seized the opportunity to explain how their governments advanced women and equality between the sexes. Mr. Young-Sikh Hwang of the Republic of Korea, for example, noted that his government continued to work on mainstreaming the gender perspective in its national policies in accordance with its commitments under the Beijing Platform. Mr. Hussein of Kenya emphasized the positive actions taken by his government to increased education for girls and training for women.⁶⁷

The discussions relating to the *conceptual framework* for the strategy of mainstreaming a gender perspective indicates that as late as 1997, there

⁶³ ECOSOC Agreed Conclusion 1996/1 and UN doc. E/1996/61, Part II. The ECOSOC devotes a segment of each of its sessions to the coordination of the policies and activities of the specialized agencies, organs, organizations and bodies of the UN system relating to the achievement of the economic and social objectives of the UN. The outcome and the adopted recommendations should be communicated to the General Assembly and other relevant bodies in the UN system.

⁶⁴ UN doc. E/1996/61, Chapter II, Art. 83.

⁶⁵ ECOSOC 1997 report Chapter IV, Art. 1.

⁶⁶ The ECOSOC decided that as a follow-up measure to the Beijing Conference that the Secretary-General should submit yearly reviews to the Commission on the Status of Women and to the ECOSOC on progress made in mainstreaming a gender perspective into the UN system. The General Assembly requested through UN doc. A/Res/50/203 and UN doc. A/Res/51/69 both the report of the Secretary-General via the Commission on the Status of Women and the report of the ECOSOC on the follow-up to the Beijing conference. For example, the reports UN doc. E/CN.6/1997/2 and UN doc. A/51/322 are responses to those two mandates.

⁶⁷ UN doc. E/1997/SR.21, p. 5 and UN doc. E/1997/SR.22, pp. 9–10.

was a lack of a common understanding regarding the conceptual content of mainstreaming a gender perspective. Most speakers did reflect on the meaning of gender or of mainstreaming a gender perspective in their statements. These reflections, however, varied between equating the term, gender mainstreaming, with the advancement of women, without questioning why the change in terminology had come about, on the one hand, and questioning the lack of definitions, or elaborating on potential definitions, on the other hand.⁶⁸ Mr. Hynes of Canada argued that mainstreaming a gender perspective was a straightforward strategy, according to which "... all policies and programmes throughout the system should be designed, implemented and evaluated with the constant and conscious view to their relative implications for women and men".⁶⁹ Mr. Parshnikov summarized the strategy for mainstreaming a gender perspective as a strategy for continually bearing in mind the goal of equality between men and women in the planning, implementation and evaluation of its activities. Ms. McNish stressed the tendencies to define "... gender mainstreaming as concentration in women-specific issues must be eliminated" and noted that there had been a shift away from seeing women "... as a vulner-

⁶⁸ See, for example, the statements by Mr. Mwakawago of the United Republic of Tanzania, Mr. Young-Sikh Hwang of the Republic of Korea in UN doc. E/1997/SR.21 and the statements by Ms. Dowdeswell, Executive Director of the UN Environmental Programme and Ms. Barbero-Baconnier of the International Organization for Migration in UN doc. E/1997/SR.22. Ms. Kirsch of Luxembourg, speaking on behalf of the European Union opened the discussion at the 21st session by noting that mainstreaming a gender perspective within the UN system could serve as an example for gender mainstreaming on national levels, but also that "[i]t would be useful if the Council's agreed conclusions were preceded by a definition of the concept itself, since a degree of misunderstanding persisted throughout the system ...", see UN doc. E/1997/SR.21, p. 2. Ms. Kirsch does not propose any definition for the concept of gender mainstreaming, but goes on to note the importance of gender analysis, gender training for UN staff and high-level accountability for gender mainstreaming action. The point made by Ms. Kirsch is not elaborated upon any further during the 21st meeting, but similar concerns were voiced by the Finnish and Russian representatives during the 22nd meeting. Ms. Korpi of Finland wonders "... whether Governments and organizations really understood the idea of mainstreaming and whether they all interpreted it in the same way". She also notes that while there had been much discussion about women's projects and the number of women in higher positions "... much less had been said concerning policies to be followed and ways of mainstreaming a gender perspective into those policies". Mr. Parshnikov of the Russian Federation stated that he supported most of the initial actions taken by the UN to mainstream a gender perspective "... he had the impression that there was not yet a common interpretation of mainstreaming" and he notes that "[t]he tendency towards excessive theorizing and the use of a language which was clear only to the initiated had doubtless contributed to that situation", see UN doc. E/1997/SR.22, pp. 6-7.

⁶⁹ UN doc. E/1997/SR.21, p. 6.

able group and women's issues as marginal to the national and global agenda towards an approach that emphasized that the roles and responsibilities of both women and men needed to be factored into programmes and policy decision-making".⁷⁰ Ms. Williams noted that:

The gender approach involved giving: more consideration to non-biological factors affecting women's health [...] more attention to the roles and responsibilities of men in relation to women's health concerns, more involvement of men in bringing about change, and greater recognition and support for women as participants in the development of health care for themselves, their families, and their communities.⁷¹

The discussion relating to the *content and practical applicability* of the strategy for mainstreaming a gender perspective was focused on ways and means for implementation. According to Mr. Hynes, the necessary steps for implementation included: high-level commitment to the implementation of the gender mainstreaming strategy; promotion of Commission on the Status of Women as a catalyst in the implementation process; attention to the role played by UN human rights institutions; increased coordination within the UN; and the allocation of sufficient financial and other resources.⁷² Mr. Mwakawamo of Tanzania, who spoke on behalf of the Group of 77, raised issues about the UN's responsibility for ensuring gender mainstreaming not only within the UN and the developed world, but also in Africa and in least-developed countries. He called for special attention to areas such as "... capacity-building, resource flows, and transfer of technology in support of activities aimed at the empowerment of women ...".⁷³ Ms. Hernandez Quesada of Cuba noted that, while contemporary statistics seemed to suggest a growing level of women's participation, the ideas that had marginalized women for centuries remained unchanged.⁷⁴ Ms. Wilhelmsen of Norway noted the im-

⁷⁰ UN doc. E/1997/SR.21, pp. 7–8.

⁷¹ UN doc. E/1997/SR.21, p. 11. Ms. Wilhelmsen, an observer for Norway, also noted that "[e]veryone concerned must realize that societies and organizations needed the knowledge and experience of both women and men".

⁷² UN doc. E/1997/SR.21, pp. 6–7. Similar points were made by, inter alia, Ms. McNish of Jamaica, Mr. Dlamini of Swaziland and Ms. Wilhelmsen of Norway.

⁷³ UN doc. E/1997/SR.21, p. 4. Similar points of view were raised by, inter alia, Ms. McNish of Jamaica, Mr. Somavia of Chile, Mr. von Beckh Widmanstetter of Argentina and Ms. Hernandez Quesada of Cuba.

⁷⁴ UN doc. E/1997/SR.22, pp. 8, 14–5. Moreover, Quesada noted that "[m]any of the world's inhabitants were still subject to the daily scourge of poverty. Of the 1.3 billion people living in extreme poverty 70 per cent were women and girls. That was a disaster that could only be aggravated by neo-liberal prescriptions, and the number of women who had no job, home or right to a decent life was bound to increase. She was struck by the fact the word poverty appeared only once in the draft agreed conclusions, although

portance of creating a UN database on gender mainstreaming.⁷⁵ Ms. Zhang of the International Labour Organization made a disparate, but important comment noting that although many concrete measures were needed to implement the gender mainstreaming strategy equally important was the changing of mentalities and attitudes.⁷⁶

The ECOSOC has adopted a number of follow-up resolutions to the Agreed Conclusions.⁷⁷ The importance of the ECOSOC Agreed Conclusions was reaffirmed in 1998 and a decision was taken to monitor the implementation of the agreed conclusions, annually, under the agenda item on *Integrated and Coordinated Implementation of and follow-up to all major United Nations Conferences and Summits*.⁷⁸

In 2001, after a request by the Commission on the Status of Women, the ECOSOC created a regular subitem regarding mainstreaming a gender perspective under its regular agenda item on coordination. The subitem was created in order to "... monitor and evaluate achievements made and obstacles encountered by the United Nations system, and to consider further measures to strengthen the implementation and monitoring of gender mainstreaming within the United Nations system".⁷⁹ According to the resolutions 2001/41, the regular subitem on gender mainstreaming will enable the ECOSOC to monitor more efficiently any advances made by the ECOSOC, by its functional commissions and by other entities within the UN system with respect to mainstreaming a gender perspective. The ECOSOC has also decided, after a request by the Commission on the Status of Women, to devote one of its substantive sessions before 2005 to the review and appraisal of the system-wide implementation of the agreed conclusions 1997/2.⁸⁰

the Secretary-General's report mentioned the adoption of a gender perspective in the struggle against poverty. The International Organization for Migration noted the vulnerable situation of women migrant workers and victims of trafficking and the need to create support structures for these women so that they would not only be able to return home, but also be able to create a new life for themselves. Similar points of view were raised by Ms. Brandstrup of the Food and Agricultural Organization and Ms. Pavlic of UNESCO.

⁷⁵ UN doc. E/1997/SR.21, pp. 13–4. Ms. Acuner of Turkey raised a similar point, but by referring to the importance of the Womenwatch database managed by the Division for the Advancement of Women.

⁷⁶ UN doc. E/1997/SR.22, p. 5.

⁷⁷ UN doc. E/Res/1998/43, 2001/41 and 2002/23.

⁷⁸ UN doc. E/Res/1998/43. The Coordination Segment of the 1998 session was devoted to the coordinated follow-up and implementation of the Vienna conference. See also UN doc. E/1998/60 and UN doc. E/1998/64.

⁷⁹ UN doc. E/Res/2001/41.

⁸⁰ UN doc. E/Res/2001/41, see also UN doc. E/CN.6/2002/2, Art. 94.

In 2002, the ECOSOC adopted a resolution on gender mainstreaming, according to which, the ECOSOC has decided to intensify efforts to ensure that gender mainstreaming is an integral part of all activities in its work and the work of the subsidiary bodies. Further, the ECOSOC has also, therefore, decided to give appropriate attention to gender perspectives and the particular obstacles that women face in all its segments and agenda items".⁸¹ The resolution identifies a number of different ways in which its subsidiary bodies have successfully paid attention to situations that are specific to women and to the mainstreaming of gender perspectives into their work.⁸² These results include: identifying gender equality as an essential element for the realization of social, people-centered and sustainable development and approaching gender as an issue that cuts across all areas of policy; stressing the need to include women in planning, decision-making and implementation processes at all levels; emphasizing the link between human rights and gender equality; recognizing that men and women are often affected differently by political, economic, social and environmental factors and the consequent need to develop gender-sensitive policies that address the different experiences of men and women; and continuing to use and call for data disaggregated on the basis of sex and using indicators that provide separate analysis by sex.⁸³

As I did with the General Assembly, I will exemplify how the ECOSOC has come to mainstream a gender perspective or to integrate women's human rights through an overview of the relevant resolutions adopted by ECOSOC during its 2001 session.⁸⁴ Among these resolutions the

⁸¹ UN doc. E/Res/2002/23, Art. 3

⁸² UN doc. E/Res/2002/23, Art. 4.

⁸³ In 2002, the ECOSOC also endorsed the UN doc. E/CN.4/Res/2002/50 in which the Commission on Human Rights decided to request all special procedures and other human rights mechanisms of the Commission on Human Rights and the Sub-Commission to regularly and systematically take a gender perspective into account in the implementation of their mandates and to include in their reports information on the qualitative analysis of human rights of women and girls. See UN doc. E/2002/23-E/CN.4/2002/200, pp. 26–7.

⁸⁴ The general human rights and human rights-related resolutions adopted by ECOSOC in 2001 dealt with the implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples by the specialized agencies and the international institutions associated with the UN, with a global code for ethics for tourism, with human rights education and with the global campaign for poverty eradication. See UN doc. E/Res/2001/28, references to UN doc. E/2001/L.21 and UN doc. E/2001/SR.43, UN doc. E/Res/2001/37, references to UN doc. E/2001/L.32, UN doc. E/Res/2001/38, references to UN doc. E/2001/L.33 and UN doc. E/2001/L.24/Rev.1, UN doc. E/Res/2001/42, references to UN doc. E/2001/L.42.

Resolution on Human Rights Education refers to the dignity of men and women in its preamble, but, otherwise, the resolutions contain no mention of material, which could be called either women's human rights or gender issues. The woman-centered human rights and human rights-related resolutions adopted by the ECOSOC in 2001 dealt with the situation and assistance to Palestinian women and with the discrimination leveled against women and girls in Afghanistan.⁸⁵ A number of resolutions dealt with the work of woman-centered institutions, viz., the resolutions on the proposal for a multi-year programme for the Commission on the Status of Women for 2002–2006 and on the agreed conclusions of the Commission on the Status of Women on the thematic issues.⁸⁶

The resolutions dealing specifically with the follow-up to UN conferences or with mainstreaming included resolutions on the integrated and coordinated follow-up to the major UN conferences and summits, coordinated implementation of the Habitat agenda and the resolution on mainstreaming a gender perspective.⁸⁷ Among these items, it is only the resolution that specifically addresses mainstreaming a gender perspective that refers to the mainstreaming of a gender perspective.

As opposed to the Security Council and the General Assembly, the ECOSOC has come to promote a strategy for mainstreaming a gender perspective more than integrating women's human rights. The discussions preceding the adoption of the ECOSOC Agreed Conclusions 1997/2, however, do show, more or less, that the same issues that were put on the table during the discussion, i.e., conceptual content and practical applicability and consequences, still remain persistent constraints for mainstreaming a gender perspective within the UN. The ECOSOC's mainstreaming strategy has, nevertheless, developed. The recent ECOSOC analysis shows that it changes and is substantiated in the process of the institutional implementation of the mainstreaming strategy.

5.2.5 Conclusions

The differences in the mandates of the Security Council, the General Assembly and the ECOSOC are reflected in the extent to which the different institutions have come to integrate women's human rights or a gender perspective. The Security Council has done so occasionally as part of

⁸⁵ UN doc. E/Res/2001/2 and E/Res/2001/3, references to UN doc. E/2001/27.

⁸⁶ UN doc. E/Res/2001/4 and UN doc. E/Res/2001/5.

⁸⁷ UN doc. E/Res/2001/21, references to UN doc. E/2001/L.41 and UN doc. E/2001/SR.43, UN doc. E/Res/2001/22, references to UN doc. E/2001/L.28 and UN doc. E/Res/2001/41, references to UN doc. E/2001/L.29.

its thematic approaches and it has only marginally integrated a concern for women's situation in its country-specific approaches. The General Assembly and the ECOSOC have been better at developing women's human rights or gender initiatives. The General Assembly, especially, has been fairly successful in integrating a concern for women's situation into its Third Committee work and human rights-related resolutions. The ECOSOC has promoted the strategy for mainstreaming a gender perspective.

The above-referenced concept, integration of *a concern for women's situation*, is supposed to capture the common approach of all three institutions. In other words, women are, still, singled out as a group possessing needs that differ from the norm and that make them susceptible to becoming more vulnerable than *other* human beings. As was shown earlier, in the section detailing the Security Council, the singling out of women can lead to the reproduction of stereotypical ideas of women either as in need of protection or as inherently peaceful and, therefore, adapted to peacekeeping and peace-building work. While this approach might lead to more attention directed toward women who fit into and who are willing to fit into the *woman model* dominant within the UN, this approach is not transformative. That is, it does not open itself up to new interpretations of women's human rights or the potential of gender-based approaches.

5.3 The Commissions on Human Rights and on the Status of Women and the Integrative Strategies

5.3.1 Introduction

The ECOSOC has been active in establishing functional commissions within its areas of activity. While many of the functional commissions of the ECOSOC work with or at times evoke human rights or women's or gender-related issues, the Commission on Human Rights, and the Commission on the Status of Women remain the most important commissions with respect to these issues. The Commission on Human Rights, working with human rights, is implied in the follow-up to the Vienna and Durban conferences, while the Commission on the Status of Women, working with the UN women's advancement and gender agenda, is implied in the follow-up to the Beijing conference. Since 1967, the Commission on Human Rights has also established special procedures mandates when wishing to examine more closely and monitor specific

human rights or the human rights situations in specific countries. The thematic or country-specific special rapporteurs, representatives, independent experts of the working group members are not paid for their work and the quality of their work may vary considerably. Nevertheless, the special procedures have become an increasingly important part of the UN human rights framework, and mainstreaming of a gender perspective have contributed to bringing the Commission on Human Rights and the Commission on the Status of Women closer to each other.

With regard to the question of equal representation of the sexes no comparable strategy to the one for promoting an equitable geographical distribution among the Commission on Human Rights Member States exists to enhance an even representation of men and women. Alston notes that “[r]epresentation of women as heads of delegations has been strikingly poor, despite the Commission’s own rhetoric of equality”.⁸⁸ According to the Secretary-General’s report on the integration of the human rights of women and a gender perspective, during the 57th and 58th sessions, women, however, did represent around 40 % of the participants, though the figure did decline at the 59th session.⁸⁹ The Commission on the Status of Women also utilizes the principle of equitable geographical distribution, but, because it addresses issues relating to the women’s advancement agenda of the UN, its members have mostly been women.⁹⁰

⁸⁸ Alston 1996c, p. 194. The Commission on Human Rights web site does not disclose the names or sexes of the Commission’s country representatives, see www.unhcr.ch/html/menu2/2/chrmem.htm (28-09-2003). The web site, however, does list the names, sexes and nationalities of the Commission’s bureau since 1946 up to 2003. According to the listing, the annual presidency has been held by five women and 46 men. Note that the five first sessions of the Commission were chaired by Mrs. Eleanor Roosevelt. Nine women and 44 men have functioned as rapporteurs to the Commission and, of the other members, about 2–3 persons, only around a dozen of 59 sessions have included women members. There is no indication of a change happening over time, see www.unhcr.ch/html/menu2/2/chrbur.htm (28-09-2003).

⁸⁹ UN doc. E/CN.4/2003/72, para. 28.

⁹⁰ The bureau of the last Commission on the Status of Women session was an all women bureau, see www.un.org/womenwatch/daw/csw/members (28-09-2003).

5.3.2 The Commission on Human Rights and Its Special Procedures

The Commission on Human Rights

The Commission on Human Rights was established by the ECOSOC in 1946.⁹¹ Among its early tasks was the drafting of the International Bill of Rights, but it was also given an overarching mandate within the UN to develop and promote human rights. Since its establishment, the Commission on Human Rights has progressively re-articulated its role as an actor in its own right. While preoccupied with the drafting of the International Bill of Rights, the Commission on Human Rights interpreted its mandate narrowly or, as Alston puts it, "... struggled valiantly and successfully to avoid becoming an overtly political organ".⁹² During its first decades, the Commission on Human Rights did operate under a conservative approach to rights, drafting the core human rights documents, but being disengaged vis-à-vis women's or other alternative rights' frameworks. The Commission on the Status of Women drafted the early women's human rights conventions.⁹³ Since the late-1960s, largely spurred on by the increased number of newly independent African and Asian states as members of the UN, the Commission on Human Rights has slowly abandoned its strategy of inaction. It has even begun to assume a proactive role both with regard to the implementation of human rights and with regard to the response to human rights violations. Alston notes that the Commission on Human Rights has "... succeeded in transforming itself over the decades from an almost exclusively standard-setting body

⁹¹ UN doc. ECOSOC Res. 5 (I) (1946). The Commission on Human Rights meets annually in Geneva. It can address any human rights issues on the UN agenda and under the authority of the ECOSOC, it can establish extra-conventional human rights mandates. Originally, the Commission on Human Rights had only 18 members, but the membership was increased to 21 in 1961, to 32 in 1966, to 43 in 1979 and to 53 in 1990 (ECOSOC Res. 845 (XXXII) (1961), 1147 (XLI) (1966), 1979/36 and 1990/48). The geographical distribution is as follows: 15 members should be from African states, 12 from Asian states, 5 from Eastern European states, 11 from Latin American and Caribbean states and 10 from Western European and other states, see *United Nations Handbook* 2001, p. 95.

⁹² Alston 1996c, p. 129.

⁹³ Alston 1996c, p. 132. According to Alston (1996c, pp. 138–43), one of the reasons for the early inaction of the Commission on Human Rights was the Western domination of the UN and the anxiety experienced by some Western states that a pro-active Commission with a mandate to deal with complaints regarding human rights violations would lead to a plethora of criticism and complaints regarding human rights violations committed by these states.

into one which is capable of responding more or less effectively to violations, while at the same time pursuing a wide range of other initiatives designed to strengthen the rule of law and respect for human rights”.⁹⁴ Today, the Commission on Human Rights functions in its own right regarding human rights issues.⁹⁵ Alston notes, however, that the developments have been “... spasmodic rather than gradual and has been fuelled more by confrontation than by rational debate”.⁹⁶ The reasons behind the spasmodic developments are seldom either evident or one-dimensional.⁹⁷

All the special procedures, now in existence, were established after 1980. The early special procedures had all country-specific mandates. The first thematic mandates dealt with the core issues of the civil and political rights agenda. In recent years, an increasing number of thematic mandates dealing with economic and social rights, as well as with so-called third generation rights and group rights have been established. When it establishes a special procedure, the Commission on Human Rights is guided by the human rights agenda; the establishment of a special procedure seems to have become a way for the Commission on Human Rights to get information about current human rights topics.⁹⁸ The Commission on Human Rights can also redefine the mandates in its resolutions renewing mandates and it can define priorities for the mandates. During the 1990s, the Commission on Human Rights asked the special rapporteurs to include information on the violations of the human rights of women in their reports and to apply a gender perspective in their work.⁹⁹

The Commission on Human Rights began its emphasis on the integration of the human rights of women in 1993, when it adopted a resolution on *Integrating the Rights of Women into the Human Rights Mechanisms of the United Nations*, inspired by the Sub-Commission resolution addressing women’s rights as an inalienable part of human rights and a

⁹⁴ Alston 1996c, p. 197.

⁹⁵ Alston 1996c, pp. 205–6.

⁹⁶ Alston 1996c, p. 197.

⁹⁷ Alston 1996c, pp. 127–8. Some of the major changes, such as, the adoption of the independent complaints procedures under ECOSOC Resolution 1235 (XLII) and ECOSOC Resolution 1503 (XLVIII) and the subsequent establishment of the special procedures correspond to the increased influence of African and Asian member states within the UN. See Alston 1996c, p. 194.

⁹⁸ Alston 1995c, pp. 167–8 and Lempinen 2001, p. 13.

⁹⁹ UN doc. E/CN.4/1997/3 and Lempinen 2001, p. 244–5.

Secretary-General report on violence against women.¹⁰⁰ Since 1993, the Commission on Human Rights has annually adopted a resolution regarding the integration of the rights of women into the human rights mechanisms. Since 1999, the Commission on Human Rights agenda includes a regular agenda item on the *Integration of the Human Rights of Women and the Gender Perspective*.¹⁰¹

The preamble of the 1993 resolution on integrating the rights of women into the human rights mechanisms of the UN states that women are susceptible to particular sorts of human rights abuses and that the Commission on Human Rights needs to be aware of these at an early stage. As was fairly common around the time of the Vienna conference, the 1993 resolution addresses both the question of the integration of women's human rights and the question of violence against women. With regard to the question of the integration of women's human rights, the Commission emphasizes substantial and institutional integration, i.e., the Commission on Human Rights wishes to "... ensure that information regarding the rights of women is integrated regularly and systematically into all United Nations mechanisms for the promotion, protection and implementation for human rights".¹⁰² The substantial changes

¹⁰⁰ See UN doc. E/CN.4/Res/1993/46 and for further information, see UN doc. E/CN.4/1993/122. In 1993, the Commission on Human Rights also adopted resolution 1993/8 regarding rape and the abuse of women in the territory of the former Yugoslavia.

¹⁰¹ See UN doc. E/CN.4/Res/1994/45, UN doc. E/CN.4/Res/1995/86, UN doc. E/CN.4/Res/1996/48, UN doc. E/CN.4/Res/1997/43, UN doc. E/CN.4/Res/1998/51, UN doc. E/CN.4/Res/1999/41, UN doc. E/CN.4/Res/2000/46, UN doc. E/CN.4/Res/2001/50, UN doc. E/CN.4/Res/2002/50 and UN doc. E/CN.4/2003/44. The early resolutions were intimately tied to the resolutions adopted regarding different forms of violence against women. In 1994, for example, the resolution includes references to both the integration of the human rights of women and to violence against women, while, during later years, these issues have been dealt with in separate resolutions. The Commission on Human Rights has also begun to address new woman-centred issues in its resolutions, such as, trafficking in women and women's equal ownership of, access to and control over land and the equal rights to own property and to adequate housing. In 1998, the agenda item on the Integration of the Human Rights of Women into the Human Rights Mechanisms of the United Nations was a subitem under the agenda item on the further promotion and encouragement of human rights and fundamental freedoms, including the questions of the programme and methods of work of the Commission, see UN doc. E/CN.4/1998/1/Add.1. In 1999, an agenda item on the integration of the human rights of women and the gender perspective with the subitem, violence against women, had been integrated into the Commission agenda. A similar agenda item is included on the Commission on Human Rights agendas the following years. See UN doc. E/CN.4/2000/1, UN doc. E/CN.4/2001/1 and UN doc. E/CN.4/2002/1.

¹⁰² UN doc. E/CN.4/Res/1993/46, preamble.

should be enabled through conscious decisions being made, for example, by the Commission on Human Rights special procedures to integrate women's human rights and through increased institutional cooperation between, for example, the Commission on Human Rights and the Commission on the Status of Women and among the different human rights treaty bodies. Regarding the question of violence against women, the Commission on Human Rights condemns all acts of violence against women and has decided to consider the appointment of a Special Rapporteur on violence against women during its next session. The mandate of the Special Rapporteur is established through the 1994 resolution.¹⁰³

In the 1994 resolution, the questions of the integration of women's human rights and violence against women are, still, addressed together. Since 1995, however, the two issues are largely addressed in separate resolutions. The resolutions on the integration of the human rights of women, however, do not change considerably during the 1990s, although the focus of the annual resolution tends to vary slightly depending on what issue is currently high on the agenda. The 1995 resolution, for example, focuses on the newly established High-Commissioner for Human Rights, as well as on the upcoming Beijing conference.¹⁰⁴ The 1996 resolution, which was adopted after the Beijing conference and after the 1995 expert group meeting on the integration of the human rights of women, shows a slight shift towards a gender language.¹⁰⁵ The 1997 resolution draws on the conclusions from the expert group meeting on the integration of women's human rights and emphasizes the need for the

¹⁰³ See UN doc. E/CN.4/Res/1994/45, Art. 6. The resolution also refers to the newly adopted UN Declaration on the Elimination of Violence against Women. In the 1994 resolution, no new aspects were added to the question of the integration of women's human rights, see UN doc E/CN.4/Res/1994/45, paras. 12–9. Note, however, that the resolution suggests that the Beijing conference "... may consider the question of means of integrating the human rights of women into the mainstream of United Nations system-wide activities", see UN doc. E/CN.4/Res 1994/45, Art. 20.

¹⁰⁴ The resolution recommends that the Beijing conference consider the question of means of integration of human rights of women into the mainstream of United Nations system-wide activity and that different UN institutions contribute to the conference and to the successful achievement of the goals of the Conference, see UN doc. E/CN.4/Res/1995/86.

¹⁰⁵ The resolution welcomes the recommendation by the chairpersons of the human rights treaty bodies that each treaty body should consider how to integrate a gender perspective most effectively into their work. It also invites the High-Commissioner for Human Rights to consider assigning to a high-level post within his Office the task of providing advice on integrating the human rights of women, see UN doc. E/CN.4/Res/1996/48, Arts. 6 and 12. For information on the expert group meeting, see UN doc. E/CN.4/1996/105, annex.

development of methodologies for the integration of women's human rights and for joint work plans between the Centre for Human Rights and the Division for the Advancement of Women.¹⁰⁶ The 1998 resolution was adopted in fairly close connection to the adoption of the ECOSOC Agreed Conclusions 1997/2 on gender mainstreaming. The resolution addresses both the integration of women's human rights and the mainstreaming of a gender perspective, emphasizing that:

... the goal of mainstreaming a gender perspective is to achieve gender equality and that this includes ensuring that all United Nations activities integrate the human rights of women and to this end calls upon all relevant actors to implement agreed conclusions 1997/2 of the Economic and Social Council ...¹⁰⁷

The trend to apply an integrated approach to the two integrative strategies is continued in the 1999 resolution, which emphasizes the need for expertise regarding women's human rights and gender impact analysis, recognizing that:

... gender mainstreaming will strongly benefit the enhanced and full participation of women, including at the higher levels of decision-making in the United Nations system, and in this regard strongly encourages Member States to promote gender balance by, *inter alia*, regularly nominating more women candidates for election to the human rights treaty bodies and for appointment to United Nations bodies, the specialized agencies and other organs.¹⁰⁸

The following resolutions all take a similar approach and attempt, increasingly, to tie the Vienna and Beijing strategies to each other. The 2001 resolution, for example, emphasizes the support of the Commission on Human Rights for the request of the Commission on the Status of Women's request that before 2005, the ECOSOC devote another

¹⁰⁶ UN doc. E/CN.4/Res/1997/43, Arts. 6–7 recognizes that the “... success of mainstreaming women's rights will depend on the formalizing, at the highest levels, of a clear policy and guidelines on the integration of a gender perspective into the United Nations human rights system, and draws attention to the need to develop practical strategies to implement the recommendations contained in the report of the expert group meeting on the development of guidelines for the integration of a gender perspective into human rights activities and programmes”.

¹⁰⁷ UN doc. E/CN.4/Res/1998/51, Art. 3. The resolution welcomes the joint work plan that has been adopted to enhance the cooperation and coordination between the OHCHR and the Division for the Advancement of Women and encourages relevant UN institutions to keep in mind, when recruiting staff, the need for expertise regarding women's and girls' human rights.

¹⁰⁸ UN doc. E/CN.4/Res/1999/41, Art. 8.

coordination segment to gender mainstreaming in order to review the system-wide implementation of the agreed conclusions 1997/2.¹⁰⁹

The preamble of the 2003 resolution distinguishes between acknowledging the need to "... further integrate a gender perspective into all aspects of the work of the United Nations system", on the one hand, and the need for a "... comprehensive and integrated approach to the promotion and protection of the human rights of women, which includes the integration of the human rights of women into the mainstream of United Nations activities system-wide", on the other hand.¹¹⁰ The different strategies are clarified in paragraphs 1 and 2.¹¹¹ The Commission on Human Rights emphasizes, in para. 1, that

... the goal of mainstreaming a gender perspective is to achieve gender equality and that includes ensuring that all United Nations activities, including United Nations conferences, special sessions and summits, integrate the human rights of women.

The Commission on Human Rights, in para. 2, recognizes

... the importance of examining the intersection of multiple forms of discrimination, including their root causes, from a gender perspective, and their impact on the advancement of women and the enjoyment by women of their human rights, in order to develop and implement strategies, policies and programmes aimed at the elimination of all forms of discrimination against women and to increase the role that women play in the design, implementation and monitoring of gender-sensitive anti-discrimination policies.¹¹²

Throughout the 1990s, the Commission on Human Rights continued to address women's human rights under specific agenda items and in

¹⁰⁹ UN doc. E/CN.4/Res/2001/50, Art. 5. The resolution also refers to the importance of mainstreaming a gender perspective into the preparations, work and the outcome of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance. The year 2002 resolution includes references to the adoption of the Security Council resolution on women and peace.

¹¹⁰ UN doc. E/CN.4/Res/2003/44. The Commission on Human Rights also decided in the resolution to integrate a gender perspective into all of its agenda items, see para. 36. In its resolution 2003/45 on the elimination of violence against women, the Commission emphasized the final report of the Special Rapporteur on Violence against Women, in which she stressed that, while the last decade has contributed to worldwide normative recognition of violence against women, the efforts to implement the legislative changes are lagging behind.

¹¹¹ UN doc. E/CN.4/Res/2003/44, Art. 1 defines the integration of women's human rights as a step towards mainstreaming a gender perspective.

¹¹² The paragraph on multiple forms of discrimination was first presented in UN doc. E/CN.4/Res/2001/50.

separate resolutions.¹¹³ An exception is Resolution 2001/34 on women's equal ownership of, access to and control over land and the equal rights to own property and to adequate housing, which was adopted in 2001 under the agenda item on economic, social and cultural rights. Also, in 2001, the Commission on Human Rights addressed women's human

¹¹³ In 1995, the Commission on Human Rights, for example, adopted Resolution 1995/86 on the question of integrating the human rights of women into the human rights mechanisms of the UN, Resolution 1995/20 on violence against women migrant workers, Resolution 1995/25 on trafficking and Resolution 1995/85 on the elimination on violence against women. For further information, see UN doc. E/CN.4/1995/176-E/1995/23. In 1996, after the Beijing conference, the Commission on Human Rights adopted Resolution 1996/48 on integrating the human rights of women throughout the United Nations system, Resolution 1996/17 on violence against women migrant workers, Resolution 1996/24 on traffic in women and girls and Resolution 1996/49 on the elimination of violence against women. For further information, see UN doc. E/CN.4/1996/177-E/1996/23. In 1997, the Commission on Human Rights adopted Resolution 1997/43 on integrating the human rights of women throughout the UN system, Resolution 1997/13 on violence against women migrant workers, Resolution 1997/19 on traffic in women and girls and Resolution 1997/44 violence against women. For further information, see UN doc. E/CN.4/1997/150-E/1997/23. In 1998, the Commission on Human Rights adopted Resolution 1998/51 on integrating the human rights of women and Resolution 1998/17 on violence against women migrant workers. For further information, see UN doc. E/CN.4/1998/177-E/1998/23. In 1999, the Commission on Human Rights adopted Resolution 1999/41 on integrating the human rights of women throughout the UN system, Resolution 1999/40 on traffic in women and girls and Resolution 1999/42 on elimination of violence against women. For further information, see UN doc. E/CN.4/1999/167-E/1999/23. In 2000, the Commission on Human Rights adopted Resolution 2000/46 on the integration of the human rights of women throughout the United Nations system, Resolution 2000/13 on women's equal ownership of, access to and control over land and the equal rights to own property and to adequate housing, Resolution 2000/44 on traffic in women and girls and Resolution 2000/45 on the elimination of violence against women. For further information see UN doc. E/CN.4/2000/167-E/2000/23. In 2001, the Commission on Human Rights adopted Resolution 2001/50 on integrating the human rights of women throughout the UN system, Resolution 2001/34 women's equal ownership of, access to and control over land and the equal rights to own property and to adequate housing, Resolution 2001/48 on traffic in women and girls and Resolution 2001/49 on the elimination of violence against women. For further information see UN doc. E/CN.4/2001/167-E/2001/23. In 2002, the Commission on Human Rights adopted Resolution 2002/50 on integrating the human rights of women throughout the United Nations system, Resolution 2002/49 on women's equal ownership, access to and control over land and the equal rights to own property and to adequate housing, Resolution 2002/51 traffic in women and girls and Resolution 2002/52 on elimination of violence against women. For further information, see UN doc. E/CN.4/2002/200-E/2002/23. In 2003, the Commission on Human Rights adopted Resolution 2003/22 on women's equal ownership, access to and control over land and the equal rights to own property and to adequate housing, Resolution 2003/44 on integrating the human rights of women throughout the United Nations system and Resolution 2003/45 on violence against women.

rights issues in some of its other thematic and country-specific resolutions.¹¹⁴ During its 58th session (2002), the Commission on Human Rights however, because of a lack of time, addressed agenda items 12 on gender and women's human rights and 13 on child rights, at the same time consequently reducing the focus of the debate on women's rights.¹¹⁵

The Commission on Human Rights resolutions on the integration of women's human rights provide good overviews of how the UN's discourse about women's human rights has changed during the 1990s and early 2000s. Around the time of the Vienna conference, the women's rights are the human rights discourse promoted under the wings of the violence against women discourse. After the Beijing conference, the language of gender becomes increasingly dominant. The adoption of the ECOSOC Agreed Conclusions 1997/2 on gender mainstreaming resulted in an increased emphasis on the strategy for the mainstreaming of a gender perspective, while the five-year review of the Vienna conference and the 50th anniversary of the Universal Declaration in 1998 strengthened the focus on human rights. As noted earlier, however, the strategies for the integration of women's human rights and the mainstreaming of a gender perspective have only been separated from each other in the 2003 resolution. The overview of the other Commission on Human Rights resolutions, however, showed that women's human rights issues continue to be addressed as a separate issue within the Commission on Human Rights. That is, while in some respects, the Commission on Human Rights has been a forerunner with regard to the strategy for integrating women's human rights, it, still, has failed to *integrate* women's human rights into its operations.

The Commission on Human Rights' Special Procedures

Introduction

Since the 1970s, the Commission on Human Rights has established special procedures mandates, consisting mainly of expert special rapporteurs and working group mandates and forming an important part of the new

¹¹⁴ In 2001, during its 57th session, the Commission on Human Rights made references women's human rights or gender in the resolutions on migrants, torture, extrajudicial, summary or arbitrary executions, racism, extreme poverty, freedom of opinion and expression, the right to food and the right to education, see UN doc. E/CN.4/2002/81, Art. 62. In 2001, during its 57th session, the Commission voiced particular concerns over the violations of women's rights in Afghanistan, Rwanda, Myanmar, Sierra Leone and the Sudan, see UN doc. E/CN.4/2002/81, Art. 63.

¹¹⁵ UN doc. E/CN.4/2003/72, Art. 6.

active Commission on Human Rights.¹¹⁶ The special procedures have been described as one of the contemporary cornerstones of the UN-based international human rights system.¹¹⁷ In the 1980s, there was very little interaction between or among the different special procedures mandates. The Vienna Conference did stress the need for increased cooperation and for the streamlining of the different parts of the UN human rights system; this proposal included increased cooperation among the special procedures and between the special procedures and the treaty bodies.¹¹⁸ An informal meeting of the special procedures was held in April 1993. On the basis of the Vienna Programme recommendation, annual official meetings of the special procedures have been held at the OHCHR in Geneva since 1994.¹¹⁹

Since 1993, the Commission on Human Rights has demanded that the special procedures regularly and systematically include information on violations affecting women in their reports.¹²⁰ The Commission on Human Rights has specifically demanded the inclusion of a gender perspective vis-à-vis some special procedures.¹²¹ During their annual meetings, the special procedures have occasionally addressed issues relating to the integration of women's human rights and/or the mainstreaming of a gender perspective; they have also had the possibility of participating and, to a great extent, have participated in the gender training organized by the OHCHR.¹²² While the Commission on Human Rights, the annual

¹¹⁶ For introductions to the work of the UN Sub-Commission on the protection and promotion of human rights and the Commission on Human Rights special procedures, see www.unhchr.ch/html/menu2/2/sc.htm (16-01-2004) and www.unhchr.ch/html/menu2/2/chr.htm (16-01-2004). For an overview of the special procedures, see Lempinen 2001.

¹¹⁷ Lempinen 2001, p. 11.

¹¹⁸ Vienna Programme, Part II, Art. 95.

¹¹⁹ The aim of the annual meetings was to increase cooperation among the special procedures and within the UN human rights system. Hence, the focus of the meetings has been on administrative and practical matters, as well as on problems relating to the realization of the objectives of the mandates.

¹²⁰ UN doc. E/CN.4/1993/46.

¹²¹ UN doc. E/CN.4/2000/67, Art. 37.

¹²² In 1995, the annual meeting agenda included an agenda item on the integration of the human rights of women, but the discussion under the agenda item dealt mostly with the *raison d'être* of such an agenda item. In 1996, a similar agenda item was included and UNIFEM was invited to comment on gender-specific analysis and reporting on human rights violations. During the discussion, the special procedures emphasized the need for developed conceptual and legal frameworks. The Special Representative on Internally Displaced Persons, the Special Representative on the Situation of Human Rights in Cambodia, and the Special Rapporteur on the Human Rights Situation in Sudan were mentioned as good examples vis-à-vis the integration of women's human rights, see UN doc. E/CN.4/1997/3, Art. 49 and Lempinen 2001, p. 245–6. During the ensuing

meetings and the different occasions for gender training have all served to increase the attention paid by the special procedures to the integration of women's human rights and/or the mainstreaming of a gender perspective, these factors have not led to consistent approaches to these issues by the special procedures, as it will be shown below. Or, as noted by Sullivan:

Review of the reports of the special mechanisms since the 1993 World Conference on Human Rights indicates that significant progress has been achieved toward broader and more consistent attention to, and analysis of women's human rights. [...] Nonetheless, substantial inconsistencies and gaps remain. The application of general human rights guarantees to the gender-specific experiences of women and the content of emerging rights of particular significance to women, such as sexual rights, are, still, relatively underdeveloped.¹²³

While the special procedures have been established by the Commission on Human Rights and are guided by the normative framework of human rights, they enjoy considerable freedom; mandate holders, when feeling brave, may interpret their mandates quite broadly.¹²⁴ The special procedures perceive themselves as independent of both governments and the Commission on Human Rights. They have proclaimed themselves to be guided by the principles of neutrality, non-selectivity and objectivity. The special procedures, however, suffer from similar constraints as does, for example, the UN treaty body system: a far-reaching special procedures mandate can be circumscribed by a mandate holder's inaction; active mandate holders are constrained by a lack of human and economic resources and a lack of responsiveness on the part of governments.¹²⁵

years, no attention was paid to the integration of women's human rights, see UN doc. E/CN.4/1998/45 and UN doc. E/CN.4/1999/3. In 1999, an agenda item on the integration of a gender perspective was included, but mostly only for the purpose of informing about the gender workshop organized by the OHCHR and the Division for the Advancement of Women, see UN doc. E/CN.4/2000/5.

¹²³ Sullivan 1997, pp. 2–3. See also Sullivan 1999.

¹²⁴ The UN special rapporteur on extrajudicial, summary and arbitrary executions, Asma Jahangir, noted that while she is bound by the normative framework relating to extrajudicial, summary and arbitrary executions and by the Commission resolutions she is left with a great deal of liberty with respect to choices of focus and priorities. That is, little by little, by resorting to sound legal arguments, she has been able to sensitize the Commission on Human Rights to the fact that issues regarding for example so-called honor crimes fall within her mandate. Seminar presentation by Asma Jahangir on *Cultural Constraints to Women's Human Rights* (November 2001), Institute for Human Rights, Åbo Akademi University, Finland. For further information, see Luopajarvi 2001.

¹²⁵ Non-responsive governments and other political constraints facing the special procedures are discussed in Lempinen 2001, Chapter 5. The non-action of the special procedures is discussed in Alston 1996c, pp. 161–71.

Below, I will analyze the post-1993 reports of the Special Rapporteur on extra-judicial, summary or arbitrary executions, the Special Rapporteur on violence against women, the Special Rapporteur on the right to education and the Special Rapporteur on the human rights situation in Afghanistan. These mandates have been chosen in order to have a civil and political rights mandate, an economic, social and cultural rights mandate, a women's human rights mandate and a country-specific mandate. The chosen mandates actually misrepresent the true sex ratio among the Commission on Human Rights special procedures mandate holders, because the three first mandate holders are women, while only the Special Rapporteur on the human rights situation in Afghanistan is a man. Currently, seven of the thematic special procedures mandates holders are women, while sixteen are men; only two of the country-specific special procedures mandates holders are women, while nine are men.¹²⁶

The Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions

The mandate of the Special Rapporteur on summary and arbitrary executions was established in 1982. Ten years later, in 1992, the mandate was widened to include extrajudicial executions.¹²⁷ The Special Rapporteur's mandate is one of the Commission on Human Rights special procedures' mandates that has explicitly been requested to "... apply a gender perspective in his work".¹²⁸ The mandate has been held by Bakre Waly Ndiaye (Senegal) during the years 1993 till 1998 and, from 1998 onwards, by Asma Jahangir (Pakistan).

¹²⁶ According to the Secretary-General's report, 25 % of the 48 experts of the special procedures in November 2002 were women, see UN doc. E/CN.4/2003/72, para. 28. It is also noted that the only regional group that had nominated more women than men was the Eastern European Group (three or five experts), the African, Asian, Latin American and Caribbean groups included 25 % women and less than 10 % of the nominees of Western European and other states were women (one out of eleven experts), see UN doc. E/CN.4/2003/72, para. 28 and UN doc. E/CN.4/2003/1/Add.1.

¹²⁷ UN doc. E/CN.4/1982/29 and UN doc. E/CN.4/1992/72. Until 1992, the mandate of the Special Rapporteur was held by Mr. Wako. Because its focus is largely on the right to life and fair trial, the mandate on summary and arbitrary executions is one of the core civil and political rights mandates. The legal normative framework for the mandate is based on the Universal Declaration Art. 3 on the right to life, liberty and the security of person, ICCPR Art. 6 on the right to life and the death penalty, Arts. 14 and 15 on fair trial and CRC Art. 6 on children's right to life.

¹²⁸ UN doc. E/CN.4/Res/1996/74, para. 7(g). See, also UN doc. E/CN.4/Res/1997/61, UN doc. E/CN.4/Res/1998/68, UN doc. E/CN.4/Res/1999/35, UN doc. E/CN.4/Res/2000/31, UN doc. E/CN.4/Res/2001/45 and UN doc. E/CN.4/Res/2002/36.

Ndiaye's reports are extensive, but he only marginally addressed women's human rights issues; the request of the Commission on Human Rights that he apply a gender perspective to his work only led to a slight increase in the attention he paid to violations committed against women. Ndiaye's approach to issues relating to women's human rights included counting the number of the cases he handled which did involve women and noting that such instances were few and far between. Ndiaye then concluded that "[w]omen appear not to be particularly targeted for reasons of their sex". Further, he added that, in cases where a woman does hold a position of influence, her situation does not diverge from the situations of her male counterparts.¹²⁹ In the subsequent report, Ndiaye explained the reason for the underrepresentation of cases involving women, noting that "... the under-representation of women in positions of influence means that they are less exposed to acts of violence, as they are not regarded as so much a threat".¹³⁰ The following report again is slightly different. In this report, Ndiaye paid slightly more attention to women, but he noted that, because of a lack of resources, he could not perform an in-depth gender analysis.¹³¹

In her early reports, Jahangir used an approach similar to Ndiaya's, but she also used her mandate to transform dominant ideas about what constitutes violations of the right to life, by addressing, for example,

¹²⁹ For example, in the report UN doc. E/CN.4/1994/7 pursuant UN doc. E/CN.4/Res/1993/71 Ndiaye notes that he has dealt with only 168 cases in which the victims were women. This low number, argued Ndiaya, might be due to the relatively small role played by women in economic and public life. Similar references are made in the report UN doc. E/CN.4/1995/61. In his report to the General Assembly, he made similar references, noting that he took action on behalf of at least 590 women, but that women constitute only a relatively low percentage of the victims of violations of the right to life reported to him, claiming that "[t]he under-representation of women in the political and economic life of many countries implies that they are less perceived as a threat and therefore less exposed to acts of violence by Governments". He also noted that "... owing to a lack of human resources, an in-depth analysis of gender issues has not been feasible" and he urged the UN to recruit more experts on women's human rights, see UN doc. A/51/457, Arts. 80–82.

¹³⁰ UN doc. E/CN.4/1995/61, Art. 415.

¹³¹ UN doc. E/CN.4/1997/60, Art. 55. Issues that he refers to include, persecution of women because of their relationship to men and indiscriminate killings of women in armed conflict, civil unrest and insurgency operations, see UN doc. E/CN.4/1997/60, Arts. 53–4. The report UN doc. E/CN.4/1998/68 pursuant UN doc. E/CN.4/Res/1997/61 is similar to the previous report. However, in this report, Ndiaye also referred to Sri Lankan cases where women had "... allegedly been gang-raped before being killed", "... deliberate targeting of women and children by groups of killers in Algeria" and the killing of a pregnant woman accused of theft in Chad.

so-called honour killings.¹³² In Jahangir's first report, she, like Ndiaye, counted how many cases she dealt with in which the victims have been women.¹³³ However, she also noted that she cannot know exactly how many of her cases constituted cases where women have been violated, as she often, when addressing violations committed towards groups, does not know whether the victims are female or male. She introduced a change in wording with respect to Ndiaya's reports, stressing that "[i]t is a fact that women and children are the main victims of armed conflict and civil unrest".¹³⁴ Jahangir included a special heading on the traditional practices and customs affecting the right to life, under which she noted that traditional practices, such as, so-called honour killings can, when condoned or ignored by governments, constitute violations of the right to life.¹³⁵ Jahangir was disturbed over the reports of honour killings committed in the Middle East, Latin America and South Asia, cases where "... husbands, fathers and brothers have gone unpunished after having murdered their wives, daughters or sisters in order to defend the honour of the family".¹³⁶ In the subsequent report, Jahangir noted that while there is an increased discussion within the UN and internationally about harmful traditional practices and so-called honor killings, there remains a considerable gap between words and action.¹³⁷ In her recommendations, she notes that the "... main reason for the perpetuation of

¹³² The report UN doc. E/CN.4/1999/39 submitted pursuant UN doc. E/CN.4/Res/1998/68 is the first report submitted by Asma Jahangir. Jahangir also addresses in her reports other violations bypassed or overlooked by Ndiaye, such as, violations of the right to life on the basis of sexual orientation, see for example doc. E/CN.4/1999/39, Arts. 74–5 and the use of death penalty when women have committed adultery, see UN doc. E/CN.4/2003/3.

¹³³ UN doc. E/CN.4/1999/39, Art. 34–5.

¹³⁴ UN doc. E/CN.4/1999/39, Art. 34–5.

¹³⁵ UN doc. E/CN.4/1999/39, Arts. 76–7.

¹³⁶ UN doc. E/CN.4/1999/39, Arts. 74, 76–7. Jahangir does cooperate with the Special Rapporteur on violence against women and the Special Rapporteur on the independence of judges and lawyers regarding issues that fall within all of their mandates, such as, honour killings. In the report UN doc. E/CN.4/2000/3 pursuant UN doc. E/CN.4/Res/1999/35, Jahangir provides an overview of different types of so-called honour killings and of the different countries and cultural contexts in which honour killings exist. She stressed that a "... comprehensive policy has to be drawn up to abolish practices that impinge upon the life of any person purely because of sexual distinction" and she urged support for those judges, lawyers and non-governmental organizations that work against honour killings, see UN doc. E/CN.4/2000/3, Art. 84. UN doc. E/CN.4/2001/9 and Corr. 1.

¹³⁷ UN doc. E/CN.4/2001/9 and Corr. 1. Jahangir mentioned her visit to the General Assembly Special Session Beijing+5 and highlighted UN doc. A/Res/55/66 on the elimination of crimes against women committed in the name of honour.

the practice of ‘honour’ killings is the lack of political will by Governments to bring the perpetrators of these crimes to justice”.¹³⁸

Governments are urged to make legislative changes to ensure that such killings receive no discriminatory treatment under the law and sensitize their judiciary to gender issues. Those threatening the life of a female victim should be brought to justice. Government homes for women should not be permitted to detain against their will women whose lives are at risk. Prisons should never be used to detain potential victims of honour killings.¹³⁹

In the report, pursuant to Commission on Human Rights Resolution 2002/36, Jahangir underlined that she “... continues to monitor closely the situation with regard to violations of the right to life of women and children”.¹⁴⁰ She noted that she continually receives reports about the murder of women in the name of honour, but that she only acts “... where the State either approves of or supports these acts or permits institutionalized impunity to the perpetrators, or impunity by giving tacit support to this criminal practice”.¹⁴¹ Jahangir argues that:

[t]he overwhelming number of “honour killings” are carried out by family members or in conspiracy with them. Laws allowing the heirs of the victims to either accept compensation in place of punishment or to pardon the offender therefore gives licence to male relatives to murder women on the justification of being offended by their behaviour. This form of institutionalized impunity for so-called “honour killing” of women is unacceptable and is a violation of the right to life of a person on the basis of gender.¹⁴²

¹³⁸ UN doc. E/CN.4/2001/9, Art. 117.

¹³⁹ UN doc. E/CN.4/2001/9, Art. 117. In the report UN doc. E/CN.4/2002/74 pursuant UN doc. E/CN.4/Res/2001/45, Jahangir focused less on honour killings and picked up the subject of rapes and killings of women in Sri Lanka. She noted that, together with the Special Rapporteur on torture and the Special Rapporteur on violence against women, she sent a joint letter to the Government of Sri Lanka, requesting information on the steps taken to bring the alleged murderers to justice. She also addressed the killing of 52 women, many of whom had also allegedly been gang raped, prior to being beaten or shot to death, by government forces in Myanmar.

¹⁴⁰ UN doc. E/CN.4/2003/3, Art. 58.

¹⁴¹ UN doc. E/CN.4/2003/3, Art. 59.

¹⁴² UN doc. E/CN.4/2003/3, Art. 59. Jahangir also noted that she will continue to follow closely governmental inaction in order to give a clearer picture through her report to be submitted in 2004. In her recommendations, she also underlines specifically that “[g]overnments must end systematic and institutional impunity for those who kill women in the name of honour and so-called morality”, Art. 98. In the 2002 report, however, Jahangir also moved into new areas expressing her increasing concern about reports of women being condemned to death for adultery Art. 60. Jahangir has reacted against the use of the death penalty against women who have committed adultery as “[t]he offence attributed to the accused does not constitute the most serious crime as it

As noted, there are considerable differences between how Ndiaye and Jahangir have chosen to integrate women's human rights and/or mainstream a gender perspective. Ndiaye addresses issues regarding women's human rights only most dutifully. However, he does not seem insensitive to women's human rights issues. Rather, he seems to lack the competence and the resources for integrating women's human rights and/or for mainstreaming a gender perspective. Jahangir does have an interest in women's human rights and gender issues; she has worked purposefully with her mandate in order to lay a bridge over assumptions about the private/public distinction in international law in order to integrate new violations under her mandate.¹⁴³

The Special Rapporteur on Violence against Women, Its Causes and Consequences

The violence against women discourse and the global campaign for recognizing violence against women as a human rights violation are good examples of successful feminist lobbying for the inclusion of an issue onto the international human rights agenda.¹⁴⁴ The issue of violence against women was addressed during the Vienna conference, not in the least due to the Global Campaign against Violence against Women launched by non-governmental organizations before the conference.¹⁴⁵

The Vienna Programme includes references to violence against women in Part I, Art. 18(2), which states that “[g]ender-based violence and all forms of sexual harassment and exploitation, including those resulting from cultural prejudice and international trafficking, are incompatible with the dignity and worth of the human person, and must be eliminated”. The General Assembly responded to the growing concern regarding violence against women by adopting the *Declaration on the Elimination of Violence against Women* (DEVAW) in 1993.¹⁴⁶ The mandate of

is not an intentional crime with lethal or other extremely grave consequences nor is it life threatening”. This report also included a chapter on the violations of the right to life of persons because of their sexual orientation.

¹⁴³ For a discussion about the private/public distinction, see Chapter 3.2.1.

¹⁴⁴ The Nairobi Forward-Looking Strategies Art. 258 stresses that “[v]iolence against women exists in various forms in everyday life in all societies. Women are beaten, mutilated, burned, sexually abused and raped. Such violence is a major obstacle to peace ...”. For analysis of violence against women and the UN human rights framework, see for example Bunch and Reilly 1994, Coomaraswamy and Kois 1999, Eriksson 2000 and Phillips 1999.

¹⁴⁵ See Chapter 3.4.2.

¹⁴⁶ The declaration was adopted with special references to the Nairobi Forward-Looking Strategies and UN doc. E/Res/1990/15 and UN doc. E/Res/1991/18.

the Special Rapporteur on violence against women was established in 1994 as part of the Commission on Human Rights activities for paying attention to issues regarding violence against women and integrating women's human rights into the mainstream of human rights.¹⁴⁷ The Special Rapporteur should function as a key UN institution against violence against women, receiving and processing information from UN human rights institutions, governments and nongovernmental organizations. The Special Rapporteur should work closely with other Special Rapporteurs and Commission on Human Rights mandates and she should "... recommend measures, ways and means, at the national, regional and international levels, to eliminate violence against women and its causes, and to remedy its consequences".¹⁴⁸ The Special Rapporteur mandate regarding violence against women includes

... all violations of the human rights of women in situations of armed conflict, and in particular, murder, systematic rape, sexual slavery and forced pregnancy, as well as all forms of sexual harassment, exploitation and trafficking of women, the elimination of gender bias in the administration of justice and the eradication of the harmful effects of certain traditional or customary practices, cultural prejudice and religious extremism.¹⁴⁹

Radhika Coomaraswamy of Sri Lanka held the mandate of the Special Rapporteur since its inception until the year 2003 when the mandate was assumed by Yakin Ertürk of Turkey. Coomaraswamy interpreted her mandate as consisting of two components: first, the identification of the different elements of the violence committed against women, including any laws relating to it; secondly, the identification and investigation of alleged and actual cases of violence against women. Coomaraswamy chose to use a thematic approach in her reports, dealing with different forms of violence against women in each report.

Coomaraswamy began her work by asking the General Assembly to request governments to provide her with information concerning the instances of violence to which women are subjected, viz., violence in the family, violence in the community and violence by the state.¹⁵⁰ Similar requests were forwarded to the UN human rights treaty bodies, special rapporteurs and other relevant UN institutions and agencies.¹⁵¹ In her subsequent reports, she addressed the different types of violence, focus-

¹⁴⁷ UN doc. E/CN.4/1994/45.

¹⁴⁸ UN doc. E/CN.4/1995/42, Art. 2.

¹⁴⁹ UN doc. E/CN.4/1995/42, Art. 7.

¹⁵⁰ UN doc. E/CN.4/1995/42, Art. 13.

¹⁵¹ UN doc. E/CN.4/1995/42, Art. 14.

ing in her second report on violence against women in the family, in her third report, on violence against women committed by the community and, in her fourth report, on violence against women committed by the state.¹⁵² In her fifth report, she summarized her findings.¹⁵³ The following reports focus on specific issues, such as, trafficking, violence against women during armed conflict and cultural practices in the family that are violent towards women.¹⁵⁴ In her 2003 report, which also completed her term as Special Rapporteur, Coomaraswamy analyzed her findings and the developments over the years 1994–2002, focusing on issues, such as, armed conflict, violence in the family, sexual violence and rape, sexual harassment, trafficking and religious extremism and harmful traditional practices.¹⁵⁵

Coomaraswamy was a pioneer when it comes to the inclusion of violence against women committed by their family members as violations of international human rights law. In her report on domestic violence, she noted that while domestic violence usually occurs in the private sphere – outside the perceived scope of international human rights – when condoned by the state, such violence can be perceived as human rights violations.¹⁵⁶

Among Coomaraswamy's contributions to the contemporary understanding of the violence against women in all its varied forms *as* violations of women's human rights is her recognition that violence against women is not only made possible because of how different societies view women, but also because of how these societies view men. Coomaraswamy views violence against women as a consequence of the historically unequal power relations between women and men and the social and cultural constructions of women's and men's roles. She reacts against using so-called cultural excuses and argues that "... it must be accepted that there are patterns of patriarchal domination which are universal, though this domination takes a number of different forms and is a result

¹⁵² UN doc. E/CN.4/1996/53, UN doc. E/CN.4/1997/47 and UN doc. E/CN.4/1998/54.

¹⁵³ UN doc. E/CN.4/1999/68.

¹⁵⁴ UN doc. E/CN.4/2000/68, UN doc. E/CN.4/2001/73 and UN doc. E/CN.4/2002/83.

¹⁵⁵ UN doc. E/CN.4/2003/75.

¹⁵⁶ Coomaraswamy defined domestic violence as the violence that occurs in the private sphere, generally between individuals who are related through intimacy, blood or law and she noted that despite the "... apparent neutrality of the term, domestic violence is nearly always a gender-specific crime, perpetrated by men against women". As noted above, similar argumentation was used by Jahangir when including so-called honour killings within her mandate. see UN doc. E/CN.4/1996/53, Arts. 23, 26 and 29.

of particular and different historical experiences”.¹⁵⁷ She, however, also recognizes cultural diversity and different value systems, and emphasizes that attempts to universalize women’s experiences may conceal other forms of oppression.

Although Coomaraswamy uses the term, gender, sparingly, she does apply a gender perspective because she uses a relational approach to the violence committed against women. Moreover, as opposed to most other human rights mandate holders, Coomaraswamy focused on both women and men. For example, when addressing trafficking, Coomaraswamy noted that trafficking in women and forced prostitution is “[a] market, driven by customer demand based on racist, sexist and ethnocentric stereotypes, for foreign and ‘different’ women”.¹⁵⁸ When addressing violence against women during armed conflict, Coomaraswamy noted that “[i]t has been posited that the military establishment is inherently masculine and misogynist, inimical to the notion of women’s rights. The masculinity cults that pervade military institutions are intrinsically anti-female and therefore create a hostile environment for women”.¹⁵⁹ In her reports on the cultural practices within the family that are violent towards women, Coomaraswamy argues that although the different forms of cultural practices have different cultural, religious, social and historical roots, she identifies the regulation of female sexuality, masculinity and violence as having common roots. Coomaraswamy noted that many societies believe that the freedom of women, especially, their sexual freedom, needs to be curtailed and regulated.¹⁶⁰ Women’s right to a safe and satisfying sex life is according to Coomaraswamy expressed in the Beijing Platform, but practices that hamper a woman’s enjoyment of sexual and reproductive freedoms persist.¹⁶¹ Women’s sexual freedom is limited by social norms, threats, force and violence. Women who transgress or who have allegedly transgressed the boundaries of appropriate

¹⁵⁷ UN doc. E/CN.4/1995/42, Arts. 50 and 57. Coomaraswamy addressed women’s sexuality and patriarchal control over women’s sexuality as one of the reasons for family and community violence against women, see UN doc. E/CN.4/1997/47, Art. 8.

¹⁵⁸ UN doc. E/CN.4/1997/47, Chapter IV. Coomaraswamy, however, noted that the root causes for trafficking in women are overlapping. Among the root causes, she lists women’s lack of rights, the discrimination against women at different levels of society, the intersection between gender-based discrimination and other forms of discrimination against women, the sexual and economic exploitation of women, the lack of resources, the ever widening gap between rich and poor countries, globalization.

¹⁵⁹ UN doc. E/CN.4/1998/54, Art. 9.

¹⁶⁰ UN doc. E/CN.4/2002/83, Art. 99.

¹⁶¹ UN doc. E/CN.4/2002/83, Art. 99.

sexual behavior are punished by being excluded, by being badly treated, by being subjugated to violence and sexual violence and by being killed.¹⁶² Coomaraswamy noted:

[i]n recent times, anthropologists and scholars have pointed out that, in certain contexts and in certain societies, being “masculine” in an ideal sense involves a tolerance of violence. In many societies, the ideal of heroic masculinity requires acceptance of the notion of honour and the violent regulation of female sexuality. In fact, notions of masculinity are integrally linked to policing the behaviour of women.¹⁶³

According to Coomaraswamy, “[t]he heroic male personality whose masculinity is close to violence is not only the traditional man from the Mediterranean and Middle Eastern societies that believe in honour”.¹⁶⁴ It is also the ideal male personality and masculinity, for example, found in the popular culture of the United States. Obviously, there are other and alternative masculinities, but as the Special Rapporteur noted “... unless there is public education and campaigns to try to counter the negative images of violent men as ideals for a society, the heroic male stereotype in many societies may still be the one carrying the gun”.¹⁶⁵ None of the concluding recommendations of the Special Rapporteur, however, addresses the constructions of men and masculinity. Instead, they are all focused on conventional women-centered measures and gender-sensitization measures with a woman focus.¹⁶⁶

Coomaraswamy summarized her own work and the first decade of the Special Rapporteur’s mandate, stating that “... in many ways, the first decade of this mandate was an explanatory one. As the issue of VAW [violence against women] was new to the human rights agenda, it was necessary to develop definitions and standards”.¹⁶⁷ With her work, Coomaraswamy has contributed significantly to the development of the discourse of violence against women and to the promotion of the inclusion of new forms of violence against women into the international human rights framework. Coomaraswamy ended her last report by stating that “[w]hile the first decade emphasized the need for conceptual clarity and standard-setting, the second decade must focus on compliance and monitoring”.¹⁶⁸

¹⁶² UN doc. E/CN.4/2002/83, Art. 102.

¹⁶³ UN doc. E/CN.4/2002/83, Art. 105.

¹⁶⁴ UN doc. E/CN.4/2002/83, Art. 107.

¹⁶⁵ UN doc. E/CN.4/2002/83, Art. 108.

¹⁶⁶ UN doc. E/CN.4/2002/83, Arts. 120–132.

¹⁶⁷ UN doc. E/CN.4/2003/75, Art. 79.

¹⁶⁸ UN doc. E/CN.4/2003/75, Art. 79.

If the first decade emphasized standard-setting and awareness-raising, the second decade must focus on effective implementation and the development of innovative strategies to ensure that the prohibition against violence is a tangible reality for the world's women. In this context the Special Rapporteur's successor must focus on how to ensure effective protection of women's rights and equal access to justice for women who have suffered violence ...¹⁶⁹

The Special Rapporteur on the Right to Education

The mandate of the Special Rapporteur on the Right to Education was established in 1998 and Katarina Tomaševski of Croatia was chosen as the first Special Rapporteur.¹⁷⁰ The Special Rapporteur was asked to report on the progressive realization of the right to education around the world, to promote assistance to governments, dialogues between and among governments and relevant UN institutions and to identify sources for financing regarding the progressive realization of the right to education. The Special Rapporteur was also requested to "... take into account gender considerations, in particular the situation and needs of the girl child, and to promote the elimination of all forms of discrimination in education" and he or she should make the reports available to the Commission on the Status of Women whenever the contents of such reports concern the situation of women in the field of education.¹⁷¹

In her reports, Tomaševski has chosen to analyze the nature and the scope of the right to education, both at the level of individual states and at the level of inter-governmental structures within which governments act collectively.¹⁷² While the focus on individual states falls within the framework of traditional human rights investigations, the focus on inter-governmental structures introduces new perspectives on the international promotion of human rights obligations. The focus on intergovernmental structures allows the Special Rapporteur, from a human rights perspective, to analyze the work of intergovernmental development agencies and the World Bank argue for the introduction of human rights-based approaches to be interjected into the educational policies of these inter-governmental institutions.

In her reports, Tomaševski has worked with the mainstreaming strategies, i.e., mainstreaming human rights and mainstreaming a gender per-

¹⁶⁹ UN doc. E/CN.4/2003/75, p. 78.

¹⁷⁰ See Lempinen (2001, p. 242–4) for an overview of the processes for integrating economic, social and cultural rights and for establishing economic, social and cultural rights special procedures.

¹⁷¹ UN doc. E/CN.4/Res/1998/33, Art. 1(iii–iv).

¹⁷² UN doc. E/CN.4/1999/49.

spective. Through her annual reports, she develops her analysis of the mainstreaming strategies and their impacts on the right to education.¹⁷³ Tomaševski wants to *mainstream human rights* into education policies because she wants to ensure a rights- and law-based framework for education. She stated that because the Commission on Human Rights has emphasized the importance of mainstreaming a gender perspective, she has chosen to approach gender issues “... by incorporating gender considerations into the body of the report rather than adding them as a separate section at the end”.¹⁷⁴ According to Tomaševski, a human rights-based approach to education allows for a focus on the individual human being. To approach education as an end in itself, referring to accountability as a key demand in international cooperation, Tomaševski noted that:

[t]he human rights approach prioritizes law in holding Governments accountable for their pledges, individually and collectively. Once a pledge becomes a human rights obligation failures to attain the agreed ends by the specified means become denials and violations of human rights which Governments, individually and collectively, have to redress by compensating the victims and ensuring that they do not happen again.¹⁷⁵

In the rights-based approach, Tomaševski saw a potential means against the contemporary trends of viewing human beings as human capital and education as the efficient production of human capital. According to Tomaševski

[t]he human-capital approach moulds education solely towards economically relevant knowledge, skills and competence, to the detriment of human rights values. Education should prepare learners for parenthood or political participation, enhance social cohesion and tolerance. A productivist view of education depletes it of much of its purpose and substance.¹⁷⁶

Tomaševski also introduced the notion of “double mainstreaming”. She uses the notions of double mainstreaming for “... the incorporation of *both* gender perspectives and equal human rights of women throughout the United Nations”.¹⁷⁷ According to Tomaševski, a *women’s human rights*-based approach encourages a perspective where girls and women

¹⁷³ See UN doc. E/CN.4/1999/49, UN doc. E/CN.4/2000/6, UN doc. E/CN.4/2001/52 and UN doc. E/CN.4/2002/60. See also UN doc. E/1997/27-E/CN.6/1997/9, p. 3 and Sullivan 1999.

¹⁷⁴ UN doc. E/CN.4/1999/49, Art. 9 and UN doc. E/CN.4/2002/60.

¹⁷⁵ UN doc. E/CN.4/2002/60, Art. 7.

¹⁷⁶ UN doc. E/CN.4/2000/6, Art. 67.

¹⁷⁷ UN doc. E/CN.4/1999/49, Art. 18.

are viewed as equal to boys and men. The education of girls and women may be seen as an end in itself and not as a means to increase women's reproductive health, to lower fertility rates, etc. According to Tomaševski, international strategies concerning the education for girls have alternated between different justifications:

... meeting girls' needs because these remain unmet to a larger extent than those of boys; enhancing the productivity or lowering the fertility of the future generations of women; and promoting equity or justice. The third justification has sometimes shared the human rights rationale of the equal worth and dignity of all human beings but not necessarily the human rights requirement of the elimination of all forms of gender discrimination. The interdependence of human rights necessitates looking beyond the sector of education. The institutional responsibility for the elimination of gender discrimination within the United Nations of individual states is a cross-sectoral issue. The development of a common language guided by elimination of gender discrimination as the goal and yardstick is the necessary first step towards a comprehensive strategy.¹⁷⁸

Mainstreaming a gender perspective into education enables substantial analysis of sex segregated quantitative data regarding education. Tomaševski addressed the worrisome tendencies to "... shift terminologically to gender while continuing to talk only about girls and women".¹⁷⁹ Tomaševski resorted to the example of war and argued that war is not seen as a gender issue "... although boys are disproportionately affected by their socialization into the role of combatants".¹⁸⁰ Tomaševski further noted that this socialization process of boys into "combatants" is continued through schoolbook stories about wars and "war heroes", violent sports and computerized war games.¹⁸¹ Tomaševski, herself, however, highlights girls and women when discussing gender. She noted, for example, that:

[s]trengthened and broadened commitments to gender equality in access to education have not yet evolved into similar commitments to attaining gender equality through education. There is a colossal difference between the two. Getting girls into education often founders because education as a single sector does not, on its own, generate sufficiently attractive incentives for the girls' parents and the girls themselves if educated girls cannot apply their education to sustaining themselves and/or helping their parents. Years of attending school appear wasted when women do not have access to em-

¹⁷⁸ UN doc. E/CN.4/1999/49, Art. 19, see also table 4-5.

¹⁷⁹ UN doc. E/CN.4/2001/52, Art. 41.

¹⁸⁰ UN doc. E/CN.4/2001/52, Art. 46.

¹⁸¹ UN doc. E/CN.4/2001/52, Art. 46.

ployment and/or are precluded from becoming self-employed, do not have a choice as to whether to marry and bear children, or their opportunities for political representation are foreclosed.¹⁸²

In her last report, Tomaševski focused on the mainstreaming of human rights, but she also continued to address the elimination of gender disparity in education.¹⁸³ Tomaševski identified late and incomplete statistics as one of key obstacles in working for the elimination of gender disparity in education. According to Tomaševski, there is a need to define what she called the equality *of* women and men, rather than “merely equality *between* women and men”, as the yardstick.¹⁸⁴ She recommended “... prioritizing quantitative and qualitative data related to gender disparities in education so as to create a background for assessing progress in the year 2005”.¹⁸⁵

The double mainstreaming approach used by Tomaševski which focused on both the mainstreaming of human rights and the integration of women’s human rights *and* the mainstreaming of a gender perspective is an attempt to utilize the benefits of both sets, types of human rights, including women’s human rights *and* a gender perspective in the work for promoting the right to education. Combining the aforementioned mainstreaming strategies does demand much conceptual, operative and functional prudence. Tomaševski approached the different mainstreaming strategies as complementary rather than as conflicting. Tomaševski did not approach education as a rights-based phenomenon, *per se*, but, rather, as a societal institution that can benefit, for example, from an increased focus on human rights. Hence, with respect to educating the girl child and the woman, Tomaševski argued that the double approach would contribute to an increased understanding of the inequalities in education and an increased equality in education. Tomaševski further argued that the foundations for responding to this challenge have been established and are embodied in the commitment of the UN to double mainstreaming, *viz.*, the incorporation of both gender perspectives and the equal human rights of women throughout the UN. In other words, it is only when women’s human rights are integrated at the same time as a gender perspective is mainstreamed within the UN human rights system that women’s human rights will be sufficiently protected.

¹⁸² UN doc. E/CN.4/2002/60, Art. 40.

¹⁸³ UN doc. E/CN.4/2003/9, Chapter 1 and Art. 25.

¹⁸⁴ UN doc. E/CN.4/2003/9, Art. 25.

¹⁸⁵ UN doc. E/CN.4/2003/9, Art. 25.

The Special Rapporteur on the Situation of Human Rights in Afghanistan

The Special Rapporteur on the Situation of Human Rights in Afghanistan was first appointed in 1984.¹⁸⁶ Since then, the mandate of the special rapporteur has been renewed regularly by the Commission on Human Rights and endorsed by the ECOSOC. The Special Rapporteur reports to the Commission on Human Rights and to the General Assembly. The Special Rapporteur's mandate is since December 1998 held by Kamal Hossain of Bangladesh. The two previous special rapporteurs have also been men.¹⁸⁷ The political situation in Afghanistan has changed extensively since the establishment of the Special Rapporteur's mandate in 1984. Few of these changes seem to have been beneficial for the people of Afghanistan. Afghanistan has suffered from war and war-like crises since 1979, culminating in the military intervention of the United States into Afghanistan in 2001. The war-torn history of Afghanistan has led to an extensive humanitarian crisis marked by extreme underdevelopment and poverty, ecological catastrophes, diseases and high mortality rates for mothers and children. The gender disparity index that is based on a composite index based on the measurement of female life expectancy, educational attainment and income ranked Afghanistan, even in the mid-1990s, as among the lowest in the world.¹⁸⁸

The 1994 report of Ermacora did not deal with women's human rights or equality between the sexes to any considerable extent, although he occasionally referred to specific violations of women's human rights in connection with, for example, discriminatory legislation or harmful traditional practices.¹⁸⁹ Although without any analysis, Ermacore, however, does draw attention to the stoning of women in northern parts of Afghanistan and to the adoption of the Ordinance on the Women's Veil

¹⁸⁶ UN doc. E/Res/1984/37.

¹⁸⁷ The first Special Rapporteur on the situation of human rights in Afghanistan was Felix Ermecore of Austria, who held the mandate from 1984 to 1995. The second Special Rapporteur was Choong-Huyn Paik, Republic of Korea, who held the mandate till 1998, when it was taken over by Hossein. Hossein's mandate was extended through UN doc. E/CN.4/Res/2002/19 for three years. The Special Rapporteurs' reports of all three Special Rapporteurs, in general, have been extensive. The reports provide an overview of the activities, including meetings and travels of the Special Rapporteurs, of the political situation in Afghanistan, including of the political changes since the previous report was submitted, of the human rights situation in different parts of Afghanistan, including in refugee camps for Afghan people in the countries surrounding Afghanistan. Most of the reports, however, seem to be focused on giving an overall picture of the situation and on reporting within the traditional framework of human rights.

¹⁸⁸ *UNDP Human Development Report 1995*.

¹⁸⁹ UN doc. A/49/650.

that had been issued by a nine-member professional committee of the High Court of the Islamic State of Afghanistan.¹⁹⁰

In 1995, the Special Rapporteur's mandate is taken over by Paik.¹⁹¹ While women's human rights and gender issues are not at the forefront of Paik's reports, he does refer to women's issues more extensively than did Ermacora. Paik tends to refer mostly to information that he has been given by women's advocates and gender specialists from different UN agencies and other governmental and nongovernmental organisations in Afghanistan. In the conclusions of his first report to the General Assembly, he noted:

[w]ith regard to the rights of women, the Special Rapporteur witnessed a high-level of female involvement, especially in the areas of medical care and education. However, despite the active involvement of women in the affairs of administration, partly resulting from wartime necessities, the development of the situation as a whole does not seem to have greatly changed the pattern of deeply engrained male domination of the indigenous societal system.¹⁹²

His second and third reports include more extensive references to women owing to two main factors: first, the Beijing conference had resulted in the creation of new women's advocacy groups in Afghanistan and, secondly, the increase in the number of law-based constraints on the lives of Afghan women due to an increase in the enforced repressiveness of the Taliban regime resulted in more attention being paid to the situation of women in Afghanistan.¹⁹³

In 1998, the Special Rapporteur's mandate was taken over by Hossain.¹⁹⁴ Hossain referred to the situation of women in Afghanistan and

¹⁹⁰ UN doc. A/49/650, Arts. 50, 69 and 72.

¹⁹¹ During his period as Special Rapporteur, Paik submitted four reports to the General Assembly. See UN doc. A/50/567, UN doc. UN doc. A/51/481, UN doc. A/52/493 and UN doc. A/53/539.

¹⁹² UN doc. A/50/567, Art. 75.

¹⁹³ See UN doc. A/51/481, Art. 21. With regard to the Taliban entry into Kabul, Paik refers, for example, to the Security Council resolutions regarding women's situation in Afghanistan, to the socio-economic consequences of the law-based restrictions to women's human rights. Paik mentioned that one of the consequences of the Taliban entry into Kabul was the closing of schools and the University and the demanding that women do not return to their work, but stay at home. He expresses concern for the survival of those persons living in the 30,000 female-headed households in Kabul. With regard to the situation of men, he mentioned that men were required to have long beards within six weeks or face punishment, see UN doc. A/52/493, Art. 21 and UN doc. A/53/539.

¹⁹⁴ In between the years, 1998 and 2002, Hossain submitted reports to the ECOSOC, see UN doc. E/CN.4/1999/40, UN doc. E/CN.4/2000/33 and UN doc. E/CN.4/2001/43, UN doc. E/CN.4/2002/43 and UN doc. E/CN.4/2003/39.

to the violations of women's human rights to the same extent as did his predecessor, Paik. In other words, he reported on the situation of women and on the violations of women's human rights, relying on information from women's advocates and gender experts in UN agencies or other governmental or nongovernmental organizations. In one of his reports, Hossain includes a specific section, entitled, simply, *Women*.¹⁹⁵ The information reproduced in the four paragraphs on women, however fails to provide any individual analysis.¹⁹⁶ A later report summarizes the information about women and the violations of women's human rights from a survey regarding the situation of internally displaced persons in Afghanistan.¹⁹⁷ The information summarized included a number of references to violations against women, viz., the denial to women of the rights to education, health and employment, the imprisonment of women in jails without having been charged or even given any reason at all, the abduction of women and girls and the enforcement of arranged marriages.¹⁹⁸ Hossain also cooperated and conducted a partly joint mission with the Special Rapporteur on Violence against Women regarding the situation of women in Afghanistan.

The report submitted after the adoption of the Bonn agreement, referred to the emphasis of the Bonn agreements on creating "... a broad-based, gender-sensitive, multi-ethnic and fully representative government" for Afghanistan.¹⁹⁹ The report highlighted the changes after the fall of the Taliban regime noting that

[a] key change which the transition aims to bring about is the restoration of the rights of Afghan women, who had been the targets of systematic discrimination denying them access to employment, education and health services. That the process of changes has begun is reflected in the reopening of schools for girls and women returning to their normal jobs.²⁰⁰

In the ensuing report, Hossain referred to his discussions with the Afghan national Human Rights Commission regarding key human rights issues, which included discussions about the human rights of women; his information regarding women, however, remained merely summary.²⁰¹

¹⁹⁵ UN doc. E/CN.4/2001/43, paras. 49–52.

¹⁹⁶ UN doc. E/CN.4/2001/43, Chapter IV (E), Arts. 49–52.

¹⁹⁷ UN doc. E/CN.4/2000/33, Arts. 41–9.

¹⁹⁸ UN doc. E/CN.4/2000/33, Arts. 41–9.

¹⁹⁹ UN doc. E/CN.4/2002/43, Art. 24.

²⁰⁰ UN doc. E/CN.4/2002/43, Art. 45.

²⁰¹ UN doc. E/CN.4/2003/39, executive summary and Arts. 18 and 32–9

Within the UN, there has been an ongoing discussion about the situation of women and girls during the Taliban rule in Afghanistan. The discussion continued during the reconstruction process. The Secretary-General of the UN prepared several reports that specifically address the issue of the situation of women and girls in Afghanistan. Even the General Assembly, the ECOSOC and the Commission on Human Rights have adopted resolutions regarding the situation of women and girls in Afghanistan.²⁰² While it is possible that Hossein made an active decision to integrate women's human rights into his last reports, he, nonetheless, failed to take a transformative approach to women's human rights and he failed to attempt to mainstream a gender perspective. Most of the information provided by Hossein seemed to be based on either discussion with women's advocates or gender experts at UN headquarters or field presences or, based on information gleaned from different reports prepared by the UN or other experts. He made no attempts to analyze the information he has received.

5.3.3 The Commission on the Status of Women

The Commission on the Status of Women is the main intergovernmental institution within the UN that has a targeted woman-centred mandate.²⁰³ The Commission on the Status of Women was established as a Sub-Commission to the Commission on Human Rights in 1946. The Commission on the Status of Women became a functional commission in its own right in 1947. The position of the Commission on the Status of Women within the UN has changed considerably during its six decade-long history. The Commission on the Status of Women held a fairly strong position during its first decades.²⁰⁴ While standard-setting was not part of the original mandate of the Commission on the Status of Women, such a role was developed through the drafting by the Com-

²⁰² See for example UN doc. E/CN.4/Sub.2/2000/18, UN doc. E/CN.6/2001/2/Add.1, UN doc. E/CN.4/Sub.2/2001/28 and UN doc. E/Res/2000/9.

²⁰³ Until 1993, the Commission on the Status of Women held its meetings in Vienna, but it transferred its forum to New York, to the Division for the Advancement of Women. The Commission on the Status of Women membership has increased from 15 to 45 over the years; members are elected by the ECOSOC for four-years terms on the basis of the principle of equitable geographical distribution. For further references see Reanda 1996, UN doc. ECOSOC Res. 11 (II) (1946), UN doc. ECOSOC resolution 48(IV) (1947), UN doc. E/1982/34, UN doc. ECOSOC resolution 1987/2.

²⁰⁴ Reanda 1996, pp. 274, 281–9

mission on the Status of Women a number of formal documents, for example, the Convention on the Political Rights of Women, the Convention on the Nationality of Married Women and the Declaration and Convention on the Elimination of All Forms of Discrimination against Women. In the 1970s, while the issue of women's inequality waxed in importance within the UN system, the status of the Commission on the Status of Women waned. In 1980, the General Assembly dealt with a proposal for the abolition of the Commission on the Status of Women, but the proposal was shelved. Towards the end of the Women's Decade, during the ten year period from 1975 to 1985, the Commission on the Status of Women was consolidated because there was a growing need for a centralized institutional mechanism within the UN that could monitor, evaluate and coordinate UN initiatives regarding women.²⁰⁵ The Commission on the Status of Women was assigned the main responsibility for monitoring the implementation of the Nairobi Forward-Looking Strategies to the Year 2000.²⁰⁶ The Commission on the Status of Women held a special session in 1987 in order to review the medium-term plans for integrating the Nairobi Strategies into all planning within the UN system. The session was also used to develop ideas for the further strengthening of the Commission on the Status of Women.²⁰⁷

Since the end of the Third World Conference of Women, Nairobi 1985, and the end of the International Women's Decade, from 1975 to 1985, the Commission on the Status of Women has increasingly focused on questions regarding the integration of women's issues into the mainstream of the UN.²⁰⁸ In 1992, a delegate emphasized that an assessment of key issues from a gender perspective would be an important step towards the integration of women's rights into the human rights work of the United Nations.²⁰⁹ A resolution on the matter was adopted the following year in which the Commission on the Status of Women proposed additions to the Vienna conference agenda regarding equality between

²⁰⁵ Reanda 1996, p. 270.

²⁰⁶ Nairobi Forward-Looking Strategies, and Reanda 1996, p. 298.

²⁰⁷ See also UN doc. E/Res/1987/22 through which ESOSOC decides to expand the Commission on the Status of Women mandate to include the monitoring of the implementation of the Nairobi Forward-Looking Strategies. The terms of reference were again modified via UN doc. E/Res/1996/6 and UN doc. E/Res/2002/4.

²⁰⁸ Reanda 1996, pp. 275–6.

²⁰⁹ See also UN doc. E/1992/74-E/CN.6/1992/13. The Commission on the Status of Women's 1992 resolutions bore titles, such as, advancement of women and the family (36/1), women in decision-making bodies (36/3), integration of elderly women into development (36/4) and women and development (36/5).

the sexes and women's human rights.²¹⁰ The issues that were discussed before the adoption of the resolution centred around the need to strengthen CEDAW through urging State parties to withdraw their reservations, to develop more responsive and effective enforcement mechanisms for addressing violations of women's human rights, especially different forms of violence against women and to urge that all human rights bodies should "... pay due attention to gender aspects in implementing human rights, with a view to integrating the human rights of women into the mainstream of the system for monitoring human rights".²¹¹ The resolution voices many of the issues that are later integrated in the Vienna Programme:²¹² It points out that all human rights are "... universal, inalienable, indivisible and interrelated and, as such, must be applied and be of benefit to all women without discrimination and must therefore be approached from a gender perspective" and it binds the question of women's enjoyment of their human rights tightly to the question of the eradication of all forms of violence against women.²¹³

In 1994, the Commission on the Status of Women was presented with an interesting report prepared by the Secretary-General on the follow-up to the Vienna conference, addressing the implementation of women's human rights by UN human rights institutions.²¹⁴ The report explains the need for a reintegration of women's human rights into the core of the human rights system through a historical lens, referring to the early history of the Commission on Human Rights and the Commission on the Status of Women and the gradual split between the human rights and women's human rights regimes.²¹⁵ The report focuses on both the

²¹⁰ UN doc. E/CN.6/Res/37/4 proposes additions to the Vienna conference under agenda items 9–12 on the provisional agenda. The proposed additions concerned issues, such as, the full realization of the principles of equality and non-discrimination contained in all human rights documents, the promotion of the position of women within all areas related to human rights including in development, the eradication of violence against women and "... attention should be given to the contemporary trend of seeing the realization of human rights from a gender perspective". See UN doc. E/1993/27-E/CN.6/1993/18, p. 35.

²¹¹ UN doc. E/1993/27-E/CN.6/1993/18, Art. 19. References were also made to the UN doc. E/CN.4/Res/1993/46 on the integration of the human rights and the UN doc. E/Res/1992/20 according to which the Commission on the Status of Women should establish working groups to prepare for the Vienna conference. It is on the basis of the latter resolution that UN doc. E/CN.6/Res/37/4 has been drafted.

²¹² UN doc. E/CN.6/Res/37/4.

²¹³ UN doc. E/CN.6/Res/37/4.

²¹⁴ The report had been requested through UN doc. A/Res/48/108 (1993). See also UN doc. E/CN.6/1994/11.

²¹⁵ UN doc. E/CN.6/1994/11, Arts. 4–11.

institutional and the methodological aspects aimed at breaching the gap between human rights and women's human rights, emphasizing measures for closer co-operation between the Centre for Human Rights and the Division for the Advancement of Women, the Commission on Human Rights and the Commission on the Status of Women and the Geneva-based treaty bodies and the CEDAW Committee, emphasizing "... that a gender analysis needs to be applied in all human rights activities".²¹⁶ The report explains

[a]ppplied to international human rights law, gender analysis shows that these norms are not sex-neutral, but their application (and, in part, also their content) and thus the equal protection and promotion of the human rights of women is dependent on the socially determined relations between women and men. In other words, while there is a generally accepted obligation to eliminate discrimination under international human rights law, the formal requirement of equal treatment of men and women does not take into consideration the particular nature or discrimination against women, which is systemic, pervasive, structural and cultural, and which is at the base of women's unequal enjoyment of their rights.²¹⁷

In response to the report, the Commission on the Status of Women adopted a resolution on the mainstreaming women's human rights.²¹⁸ The resolution especially highlighted the institutional requirements for mainstreaming, viz., three main needs: the need for closer cooperation between the Commission on Human Rights and the Commission on the Status of Women, the need for joint work plans between the Centre for Human Rights and the Division for the Advancement of Women and the need for a meeting of the persons chairing the human rights treaty bodies on a regular basis to address the mainstreaming of women's human rights. Since its 41st session in 1997, the Commission on the Status of Women has not adopted any resolutions that deal specifically with issues regarding the mainstreaming of women's human rights. The Commission has dealt with specific human rights issues and has continued its focus on different forms of violence against women and traffic in women and girls.²¹⁹ The Commission on the Status of Women's

²¹⁶ UN doc. E/CN.6/1994/11, Art. 33.

²¹⁷ UN doc. E/CN.6/1994/11, Art. 33.

²¹⁸ UN doc. E/CN.6/Res/38/2. Similar resolutions have been adopted during the following sessions, see UN doc. E/CN.6/Res/39/5 and UN doc. E/CN.6/Res/40/3. The focus of the follow-up resolutions is largely to the same as the focus of Resolution UN doc. E/CN.6/Res/38/2, although new aspects have been added as changes are made within the UN system.

²¹⁹ See for example UN doc. E/CN.6/Res/41/2 on older women, human rights and development, UN doc. E/CN.6/Res/41/4 on violence against women migrant women UN doc. E/CN.6/Res/41/5 on traffic in women.

major contribution after 1997 in the field of human rights however, is the drafting of the Optional Protocol to CEDAW. In 1999 the Commission on the Status of Women agrees on a text for the protocol.²²⁰

The Commission on the Status of Women is part of the three-tiered follow-up mechanism to the Beijing conference as envisaged by the General Assembly. The Commission on the Status of Women has fulfilled its role in the follow-up to the Beijing conference through analyzing the progress made in the implementation of one or a few of the critical areas of concern in the Beijing Platform during each of the Commission's annual sessions between 1996 and 2001. In the aftermath of the Beijing+5 session, the Commission on the Status of Women has added the Beijing+5 outcome document to its analysis.²²¹

Integral to the Beijing and Beijing+5 agenda of the Commission on the Status of Women is the analysis of the implementation of the system-wide and broad-based strategy for mainstreaming a gender perspective within the UN system.²²² The Commission on the Status of Women has adopted a number of resolutions regarding mainstreaming of a gender perspective into all policies and programmes in the United Nations system.²²³ The first resolution was adopted in 1997 on the basis of a draft resolution submitted by Canada, Australia and New Zealand. It is also a result of the ECOSOC resolution that emphasizes the catalytic role of Commission on the Status of Women in the UN gender mainstreaming efforts.²²⁴ The resolution, however, does not include any definition of gender mainstreaming, but it establishes goals and institutional requirements for gender mainstreaming. The primary goal of mainstreaming a gender perspective is to achieve gender equality. Integral to the

²²⁰ See UN doc. E/1999/27-E/CN.6/1999/10.

²²¹ For an overview of the critical areas of concern addressed during the Commission on the Status of Women's sessions since 1996, see www.un.org/womenwatch/daw/csw/critical.htm#bpfa (09-12-2003) and www.un.org/womenwatch/daw/csw/critical.htm#concern (09-12-2003).

²²² A review of the implementation of the gender mainstreaming strategy is made on the basis of the Secretary-General's reports regarding the progress achieved in the follow-up to and implementation of the Beijing Declaration and Platform for Action and the progress achieved in mainstreaming a gender perspective within the United Nations system. The reporting was initiated through UN doc. E/Res/1996/6. For the reports see for example UN doc. E/CN.6/2002/2. See also www.un.org/womenwatch/daw/csw/critical.htm#gender (09-12-2003), UN doc. E/Res/2001/4.

²²³ UN doc. E/CN.6/Res/41/6 and UN doc. E/CN.6/Res/45/2.

²²⁴ See UN doc. E/CN.6/Res/41/6, which is also amongst the background material to the ECOSOC's 1997 session on gender mainstreaming at which the ECOSOC agreed conclusions 1997/2 are adopted.

goal and even a precondition for it is the empowerment of women.²²⁵ The resolution also expresses the necessity of a dual strategy by noting that gender mainstreaming does not exclude the need for targeted, woman-specific action.²²⁶ In 2001, the Commission on the Status of Women adopted its second resolution on gender mainstreaming.²²⁷ Since the adoption of the previous resolution, three main changes have occurred: the adoption of the ECOSOC agreed conclusions 1997/2, the statement on gender equality and mainstreaming by the Administrative Committee on Coordination and the establishment of the Inter-Agency Committee on Women and Gender Equality. The Commission on the Status of Women recommended in the resolution that the ECOSOC include an agenda item on gender mainstreaming on its regular agenda and that it devote the coordination segment of its 2005 session to evaluating the gender mainstreaming strategy.

5.3.4 Conclusions

The Commission on Human Rights and the Commission on the Status of Women have been at the forefront of conceptualizing the strategy for the integration of women's human rights and of conceptualizing the interrelationship between the strategy for integrating women's human rights and the strategy for mainstreaming a gender perspective. The Commission on Human Rights and the Commission on the Status of Women have however largely focused on developing the strategies and on promoting implementation of the strategies within other institutions rather than on how the commissions themselves have succeeded in integrating women's human rights and/or mainstreaming a gender perspective. The inclusion of the human rights of women as an integral component in the work of the Commission on Human Rights is still lacking. So, too, is the inclusion of a gender perspective that moves beyond a simple gender-equals-more-or-less-woman approach lacking from the work of the Commission on the Status of Women. These omissions sadly exemplify, the difficulties integral to integration: The monitoring and evaluation carried out by the Commission on Human Rights and the Commission

²²⁵ UN doc. E/CN.6/Res/41/6, Arts. 1–2. While gender mainstreaming is not defined, it is framed through references to methods referred to in ECOSOC agreed conclusions on gender mainstreaming in UN activities in poverty eradication (1996/1), and to the need for continual development of analytical and practical tools for gender mainstreaming (Art. 26). The main focus of the resolution, however, is on explaining the roles assigned to different UN institutions.

²²⁶ UN doc. E/CN.6/Res/41/6, Art. 3.

²²⁷ UN doc. E/2001/27-E/CN.6/2001/14.

on the Status of Women are effected under specific agenda items dealing with women's human rights or gender issues, but the monitoring functions do not equal or necessarily promote the successful integration of women's human rights or a gender perspective into the mainstream work of the Commissions.

The emphasis of the Commission on Human Rights on the integration of women's human rights, and in certain cases, on the mainstreaming of a gender perspective, has resulted in an increasing amount of attention paid to such issues by the special procedures.²²⁸ There is a considerable difference, however, between the extent to which and the manner in which the different special procedures integrate women's human rights or mainstream a gender perspective. While the special procedures have increasingly begun to integrate women's human rights, this activity tends to be done, as has been noted by Sullivan, in specific sections within otherwise "gender-neutral reports".²²⁹ The special rapporteurs that do not have a special interest in women's human rights or gender issues or those rapporteurs, whose mandate does not force onto the mandate holder a concern for such issues, tend to address these issues dutifully, but without any extensive analysis. Hence, while there are good examples, such as the reports by Coomaraswamy, Tomaševski and Jahangir, many, still, refer mostly to issues well discussed within the UN, such as violence against women.²³⁰

5.4 The Human Rights Treaty Bodies and the Integrative Strategies

5.4.1 Introduction

There are currently seven human rights treaties to which treaty monitoring bodies have been tied: The CERD Committee governs CERD (1965), the Human Rights Committee governs the ICCPR (1966), the ICESCR Committee monitors the ICESCR, the CEDAW Committee governs the CEDAW, the CAT Committee governs CAT (1984) and

²²⁸ This point can be noted in the above review of the Special Rapporteur's report and it has also been acknowledged by Sullivan (1997) and in the Secretary-General's report UN doc. E/CN.4/2000/67, Art. 38.

²²⁹ Sullivan 1997, Art. 39.

²³⁰ UN doc. E/CN.4/2000/67, Art. 40.

the CRC Committee governs CRC (1989).²³¹ The International Convention on the Protection of the Rights of All Migrant Workers and their Families (1990) entered into force in 2003.²³²

The main treaty-based task of the committees is the reviewing of the periodically appearing reports of the member states. The reviewing of the periodic reports also consists of a communications procedure whereby the comments and questions of the Committees are submitted to the Member State. The Member State is then vouchsafed the opportunity to submit written statements and to have a dialogue with the Committee. Most committees can also review individual complaints. The Committees can also adopt general comments, i.e., interpretative statements that can affect the interpretation and jurisprudence under the treaties.²³³ The committees have developed their work since the 1970s. Today the committees present their Concluding Comments in writing and all Committees also adopt General Comments, interpreting and clarifying the meaning of treaty articles. The Meeting of the Chairpersons of the Human Rights Treaty Bodies which was convened in 1984, 1988 and 1990 and, thereafter, biannually or annually is the treaty body system's own attempt to promote better coordination among the treaty bodies.²³⁴

²³¹ The number of Committee members, as well as the number of annual meetings vary from treaty to treaty. CERD was adopted through the General Assembly Res. 2106 (XX) of 21 Dec. 1965 (Entry into force: 4 Jan. 1969), ICCPR was adopted through the General Assembly Res. 2200 A (XXI) of 16 Dec. 1966 (Entry into force: 23 March 1976), ICESCR was adopted through the General Assembly Res. 2200 A (XXI) of 16 Dec. 1966 (Entry into force: 3 Jan. 1976), CEDAW was adopted through UN doc. A/Res/34/180 (Entry into force: 3 Sept. 1981), CAT was adopted through UN doc. A/Res/39/46 (Entry into force: 26 June 1987), CRC was adopted through UN doc. A/Res/44/25 (Entry into force: 2 Sept. 1990) and the Migrant Workers' Convention was adopted through UN doc. A/Res/ and entered into force in July 2003.

²³² According to Alston (1995a, p. 5), the treaty bodies are distinguished by a limited clientele (states parties); a delineated set of concerns set by the normative framework of the treaty; a limited range of procedural options; caution in terms of setting precedents; mostly consensus-based decision-making; and non-adversarial relationship to states parties. See also Evatt 2000 and O'Flaherty 2002.

²³³ For a discussion about the status of the treaty bodies' general recommendations and comments, see Otto 2002.

²³⁴ UN doc. A/Res/45/85 (1990) and Alston 1995, p. 11. The meetings were convened pursuant UN doc. A/Res/38/117, UN doc. A/Res/42/105, UN doc. A/Res/46/111, UN doc. A/Res/48/120, UN doc. A/Res/49/175. For the reports of the meetings see UN doc. A/39/484, annex, UN doc. A/44/98, annex, UN doc. A/45/636, annex, UN doc. A/47/628, annex, UN doc. A/49/537, annex, UN doc. A/50/505, UN doc. A/51/482, UN doc. A/52/507, UN doc. A/53/125 and UN doc. A/54/805. The focus of the meetings has been on developing the work of the treaty bodies.

The UN human rights treaty body system can be described as successful in the sense that all states have signed and ratified at least one or a few of the human rights treaties. Many states are members to all of the six human rights treaties. However, the implementation of the human rights treaties is slow. The work of the human rights treaties, in many ways, is inefficient and hampered by uncooperative State parties.²³⁵ The committees governing the human rights treaties have also tended to emphasize the necessity of an ongoing dialogue with the State Parties, which occasionally leads to excessive diplomacy in the fear of alienating State parties.²³⁶ Scott Leckie argues that the diplomacy of the treaty bodies is less about "... a pragmatic balancing of interests designed to find the truth and to suggest ways of making positive changes in policy and law" than it is about "... a pro-government bias, to the detriment of the rights of the individuals concerned".²³⁷ Andrew Clapham uses the term "splendid isolation" to describe the position of the treaty bodies within the UN human rights system. The treaty bodies are often viewed as the core of the UN human rights system.²³⁸

After the Vienna conference, the chairpersons at their annual meeting, emphasized, *inter alia*, that "... all human rights contained in the international human rights instruments apply fully to women and that the equal enjoyment of those rights should be closely monitored by each treaty body within the competence of its mandate". It was requested that the treaty bodies amend, where appropriate, their reporting guidelines to request information on the situation of women with respect to the human rights treaties.²³⁹ In 1995, in conjunction with the Beijing conference and after the first workshop on the integration of a gender perspective into the work of the treaty bodies had been held, the chairpersons endorsed a recommendation, according to which:

[t]he treaty bodies shall fully integrate gender perspectives into their pre-session and sessional working methods, including identification of issues and preparation of questions for country reports, general comments, gen-

²³⁵ Crawford 2000 and Tistoune 2000.

²³⁶ See for example Leckie 2000, p. 132.

²³⁷ Leckie (2000, p. 132) continues his criticism by arguing that the concluding comments adopted as a last step in the process of the constructive dialogue are "... so general as to lose any realistic hope of being taken seriously".

²³⁸ Clapham 2000, p. 175.

²³⁹ UN doc. A/49/537, Annex, Art. 19–21. It was also emphasized, as a means for enhancing the cooperation among and between different treaty bodies and consolidating the work of the CEDAW Committee, that CEDAW should no longer be separated from the mainstream of the other human rights activities, and it should be based, like all the other human rights treaty bodies, at the United Nations Office at Geneva.

eral recommendations, and concluding observations. In particular, the treaty bodies should consider the gender implications of each issue discussed under each of the articles of the respective instruments.²⁴⁰

The chairpersons address either women's human rights or issues relating to the mainstreaming of a gender perspective in most of the ensuing reports, although with less frequency after the Durban conference.²⁴¹

With regard to the equal representation of the sexes in the treaty bodies, the Secretary-General's report on *Integrating Women's Human Rights and a Gender Perspective* for the year 2002, it was noted that

²⁴⁰ UN doc. A/50/505, Annex, Art. 34(a). The chairpersons, however, do not seem to distinguish between the integration of women's human rights and the mainstreaming of a gender perspective because they state that reporting guidelines and the investigative procedures should be sensitized, sensitive to women's human rights issues and the situation of women, see UN doc. A/50/505, Annex, Art. 34.

²⁴¹ See UN doc. A/50/505, annex and the Report of the Expert Group Meeting on the Development of Guidelines for the Integration of a Gender Perspective into the UN Human Rights Activities and Programmes 1995. During the seventh meeting, in 1996, the chairpersons were asked to comment on the advances made for the promotion of women's human rights and the integration of a gender perspective made by each respective treaty body. The Human Rights Committee reports on its decision to update its general recommendation on ICCPR Art. 3 and the ICESCR Committee, the CERD Committee and the CRC Committee all report on the preparation of a possible revision of reporting guidelines, see UN doc. A/51/482. In the report of the 8th meeting, in 1997, it was noted that the treaty bodies could do more to integrate a gender perspective and the Division for the Advancement of Women was asked to prepare a background paper for the treaty bodies, see UN doc. A/52/507, Arts. 62–4. In the report of the 9th meeting, in 1998, references were made to a possible joint statement by the CEDAW Committee, the Human Rights Committee and the ICESCR Committee regarding the indivisibility of rights and the centrality of gender awareness as part of the celebration of the 50th anniversary of the Universal Declaration, see UN doc. A/53/125, Art. 35. In the report of the 10th meeting, references were made to the Division for the Advancement of Women background paper, requested during the 8th meeting, analyzing what the various treaty bodies had done and should do, was presented. The chairpersons strongly endorsed the report and emphasised its usefulness for the treaty bodies. In the report of the 11th meeting, in 1999, references were made to the 1999 Workshop on Gender Integration into the Human Rights System. The working methods of the treaty bodies had been a topic of discussion there and all human rights treaty bodies had been invited to analyze how and where questions about gender could be raised, see UN doc. A/54/805, Art. 21. In the report from the 14th meeting held in 2002, women's human rights or gender issues are not especially mentioned, but the focus of the report is on the treaty bodies co-operation with other entities within the UN human rights system, see UN doc. A/57/399. The analysis of how the different treaty bodies have chosen to integrate women's human rights and/or to mainstream a gender perspective is based on an analysis of mainly post-1993 general recommendations, concluding comments and reporting guidelines adopted by the treaty bodies.

“[t]here has been little progress in the achievement of gender balance in the membership of the treaty bodies”.²⁴² According to the report, there are currently two women and 14 men on the CERD Committee, two women and 16 men on the Human Rights Committee, two women and 16 men on the ICESCR committee, two men and 21 women on the CEDAW Committee, one woman and nine men on the CAT committee and seven women and three men on the CRC committee.²⁴³ In other words, women represent 36 % of the treaty body members; 80 % of these women serve on the committees dealing with women and children, while only 12 % serves on the other four treaty bodies.²⁴⁴

5.4.2 The Committee on the Elimination of Racial Discrimination

To a great extent the CERD and the CERD Committee have contributed to the manner in which discrimination is defined within the UN human rights framework.²⁴⁵ Until recently, however, the CERD and the work of the CERD Committee have been solely focused on racial discrimination. None of the general comments adopted by the CERD Committee during the 1970s and 1980s included references to women’s rights, sex equality or sex discrimination. General Recommendation No. 14 (1993) refers to “... non-discrimination, together with equality before the law and equal protection of the law without any discrimination” as “... a basic principle in the protection of human rights”.²⁴⁶ However, although sex is recognized as one of the basic non-discrimination cate-

²⁴² UN doc. E/CN.4/2003/72, Art. 37.

²⁴³ UN doc. E/CN.4/2003/72, Art. 37.

²⁴⁴ UN doc. E/CN.4/2003/72, Art. 37.

²⁴⁵ The mandate of the CERD Committee includes reviewing the reports of Member States, making suggestions to the concluding comments and general recommendations, reviewing complaints and reporting to the General Assembly. The Member States obligations include the submission of biannual reports under CERD. Member States can choose if they wish recognize the competence of the CERD Committees to review individual complaints. CERD Part II. CERD Arts. 11–13 authorizes the CERD Committee to deal with interstate complaints submitted by any State Party regarding any other State Party, i.e. as opposed to the interstate complaints procedure provided for under the ICCPR. The interstate complaints procedure under the CERD applies to all States Parties following ratifications. CERD Art.14 and the CERD Optional Protocol authorize the CERD Committee to review individual complaints. See Partsch 1996, pp. 360–3.

²⁴⁶ CERD General Recommendation No. 14, Art. 1. See also Nanda and McKnight 2000.

gories, the focus on General Recommendation No. 14 is on different forms of racial discrimination.²⁴⁷

Around the time of the Durban conference, efforts and undertakings began to emerge to address the item perceived of as the gender-dimension of racial discrimination. The intersectional and multi-dimensional discrimination discourses have also had an effect on the work of the CERD Committee, which has adopted General Recommendation No. 25 (2000) that addresses the gender-dimension of racial discrimination and that has also begun to address gender in its concluding observations. In General Recommendation No. 25, the Committee noted that "... racial discrimination does not always affect women equally and in the same way".²⁴⁸

Certain forms of racial discrimination may be directed towards women specifically because of their gender, such as sexual violence committed against women members of particular racial or ethnic groups [...] Racial discrimination may have consequences that affect primarily or only women, such as pregnancy resulting from racial bias-motivated rape [...] Women may also be further hindered by a lack of access to remedies and complaints mechanisms for racial discrimination because of gender-related impediments ...²⁴⁹

According to the recommendation, the committee will endeavour to take gender into account in its work. It demands that the States Parties submit information about factors affecting women's enjoyment of the CERD rights.²⁵⁰ The Committee has also revised its general guidelines on the form and content of States Parties' periodic reports demanding that States Parties include information on the situation of women.²⁵¹

²⁴⁷ In 1994, the CERD committee adopted General Recommendation No. 18 regarding the establishment of an international tribunal to prosecute crimes against humanity. In the recommendation it refers to woman-centred human rights violations, such as, rape. The general recommendation was adopted in the midst of the Yugoslavia crisis, at a time when news about systematic rapes and rape camps were becoming fairly frequent. See MacKinnon 1994, Charlesworth and Chinkin 2000, pp. 309–10.

²⁴⁸ CERD General Recommendation No. 25, Art. 1

²⁴⁹ CERD General Recommendation No. 25, Art. 2.

²⁵⁰ CERD General Recommendation No. 25, Arts. 3–6.

²⁵¹ The Guidelines stress that "[t]he inclusion of information on the situation of women is important for the Committee to consider whether racial discrimination has an impact upon women different from that upon men, in conformity with General Recommendation 25 on gender-related dimensions of racial discrimination (2000). Reporting officers are asked to describe, as far as possible in quantitative and qualitative terms, factors affecting and difficulties experienced in ensuring for women the equal enjoyment, free from racial discrimination, of the rights under the Convention", see UN doc. CERD/C/70/Rev.5 (2000), Art. 9.

The CERD Committee approach is an attempt to identify when gender, or as is mostly a case when being a woman, adds an additional dimension to racial discrimination and is continued in General Recommendations Nos. 27 and 29. In General Recommendation No. 27 on discrimination against Roma people, the Committee included references to the education of Roma women and girls and to the health of Roma women and girls.²⁵² In general, Comment No. 29 on descent-based discrimination, the Committee included a section on the multiple discrimination suffered by women and recommended states parties take into account the situation of women members of communities, as victims of multiple discrimination, sexual exploitation and forced prostitution.²⁵³

After the adoption of General Recommendation No. 25 and the reporting guidelines, the Committee itself has increasingly begun to address the situation of women and to ask for “gender-segregated” data in its concluding observations, but its approach is, still, inconclusive. During the session at which General Recommendation No. 25 was adopted, the Committee made no attempts in its concluding observations to evaluate whether and how states parties approached the gender-dimension of racial discrimination.²⁵⁴ Since the 56th session, the Committee has begun to make more references to the situation of women, for example, by expressing concern for the lack of information regarding multiple forms of discrimination and the gender-dimension of racial discrimination and by recommending that states parties include such information in their next periodic report.²⁵⁵ The Committee occasionally expresses concern for the discrimination suffered by women belonging to certain ethnic communities or indigenous populations. Even more sporadically, the Committee approaches specific violations with both gender and racial

²⁵² CERD General Recommendation No. 27, Arts. 17, 22, 27 and 34.

²⁵³ UN doc. E/CN.4/2003/72, Art. 33.

²⁵⁴ See for example UN doc. CERD/C/304/Add.99 (Lesotho), UN doc. CERD/C/304/Add.98 (Estonia), UN doc. CERD/C/304/Add. 96 (Tonga), UN doc. CERD/C/304/Add.95 (Spain), UN doc. CERD/C/304/Add.94 (Malta), UN doc. CERD/C/304/Add.93 (Denmark), UN doc. CERD/C/304/Add.91 (France). In the concluding observation on for example Zimbabwe gender discrimination is mentioned, but only when complimenting Zimbabwe for the adoption of a general non-discrimination clause that in its list of grounds for non-discrimination includes gender, see UN doc. CERD/C/304/Add.92. According to the Division for the Advancement of Women the CERD-Committee had before 1998 addressed gender issues or women’s concerns in approximately 10 % of its concluding observations, see *Women 2000* 1998, p. 4.

²⁵⁵ See for example UN doc. A/57/18, paras. 269–291 (Armenia), UN doc. A/57/18, paras. 292–314 (Botswana), UN doc. A/57/18, paras. 344–366 (Estonia), and UN doc. CERD/C/60/CO/1 (Austria).

components.²⁵⁶ In some of its concluding observations, the Committee does refer to the reports of states parties to CEDAW and it tends to compliment states parties that have recently ratified CEDAW or the Optional Protocol.²⁵⁷ Some concluding observations, still, lack references to the gender-dimension of racial discrimination or to woman-centred forms of racial discrimination.²⁵⁸

The overview of the general recommendations and the concluding observations of the Committee shows that the adoption of General Recommendation No. 25 constituted a shift in the Committee's approach to women as victims of racial discrimination and in its definition of the gender-based dimensions of racial discrimination.²⁵⁹ The Committee's approach, nevertheless, remains inconclusive. As noted in the report of the Secretary-General on the integration of the human rights of women and a gender perspective, "... the Committee continues its efforts to clarify the relevance of gender discrimination and women's rights to the monitoring and of the implementation of CERD", but "... the Committee will need to receive additional information and data that would allow it to address thoroughly and systematically the gender discrimination and women's rights relevant to racial discrimination".²⁶⁰ As of yet, the Committee has failed to define the gender-based dimensions to racial discrimination, other than that it includes attentiveness to woman-specific violations, i.e., the Committee, still, interprets gender as meaning sex or women and it does not seem to have developed any consistent mechanism for detecting gender-related dimensions of racial discrimination.

²⁵⁶ See for example UN doc. A/57/18, paras. 315–343 (Canada).

²⁵⁷ See for example UN doc. A/57/18, paras. 435–450 (Senegal).

²⁵⁸ See for example UN doc. A/57/18, paras. 391–411 (New Zealand), UN doc. A/57/18, paras. 451–470 (Yemen), UN doc. A/57/18, paras. 471–476 (Fiji), UN doc. CERD/C/60/CO/10 (Papua New Guinea), UN doc. CERD/C/60/CO/4 (Croatia), and UN doc. CERD/60/CO/5 (Denmark).

²⁵⁹ In its overview of the CERD Committee's work, the Division for the Advancement of Women noted in 1998 that approximately 10 % of the concluding observations of the Committee had addressed what the Division for the Advancement of Women calls gender issues or women's concerns. Further, it noted that, while the committee does increasingly recognize that "... in some cases gender is an important factor of its work [...] it does not systematically take account of gender issues", see *Women 2000*, 1998, p. 5. My analysis of the concluding observations of the CERD Committee observations is based on a sample of about 30 concluding observations adopted by the CERD Committee during the period from 2000 to 2002. A list of the concluding observations included in the sample may be obtained from the author. According to Makkonen (2002, p. 43), the CERD Committee's acknowledgement of intersectional and multiple discrimination has remained more a matter of theory than of practice. See also, Otto 2002, pp.36–8.

²⁶⁰ UN doc. E/CN.4/2003/72, Art. 33.

5.4.3 The Human Rights Committee

While considerable efforts have been made to stress the equal status and interdependence of all human rights, the ICCPR, still, remains one of the more important of the UN human rights treaties. During the 1990s, the Human Rights Committee has also come to integrate quite actively the human rights of women. The general comments of the Committee, adopted during the 1980s, failed to include any extensive references to non-discrimination or equality between the sexes.²⁶¹ General Comment No. 18 (1989) is an exception because it is through this comment that the Committee adopts the definitions of non-discrimination included in CERD and CEDAW Arts. 1.²⁶² During the 1990s, there is, as aforementioned, an increase in awareness regarding non-discrimination and equality between the sexes.²⁶³ The Committee's guidelines for reporting, amended in 1995, request that States Parties include information on factors affecting the equal enjoyment of rights by women under each ICCPR article.²⁶⁴ However, it is through the adoption of General Comment No. 28 on the equality of rights between men and women that the Committee's focus shifted towards a more extensive awareness regarding non-discrimination and equality between the sexes. General Comment No. 28 begins with a short presentation of the ICCPR's non-discrimination and equal rights provisions.²⁶⁵ Art. 5 in the comment includes a statement regarding women's human rights, according to which, "[i]nequality in the enjoyment of rights by women throughout the world is deeply em-

²⁶¹ General Recommendation No. 4 (1981) dealt with the interpretation of ICCPR Art. 3. It is the first general recommendation that deals with issues regarding equality between women and men. The adoption of General Recommendation No. 4 coincides with the entry into force of CEDAW and the Second World Conference on Women held in Copenhagen.

²⁶² The term, discrimination, is defined in General Recommendation No. 18, Art. 7 with reference to the definitions included in CERD and CEDAW.

²⁶³ General Comment No. 19 (1990) dealing with protection of the family does discuss, for example, the definition of family and sex discrimination in relationship to marriage. And a number of general comments address general non-discrimination issues. See, for example, General Recommendations Nos. 21 (1992), 22 (1993), 25 (1996) and 27 (1999). General Recommendation No. 4 is supplanted by General Comment No. 28. While the 1981 recommendation had used non-discrimination language, the later recommendation uses strong women's human rights language.

²⁶⁴ UN doc. A/50/505, paras. 34–5 and *Women 2000* 1998, p. 7. In a later revision, such an emphasis is excluded, see UN doc. CCPR/C/66/GUI/Rev.2 (2001).

²⁶⁵ See General Comment No. 28 (2000), Arts. 1–4. References to multiple discrimination are made in Art. 30 because the Committee noted that "[d]iscrimination against women is often intertwined with discrimination on other grounds such as race, colour, language, religion, political or other opinion, national or social origin, property, birth of other status". For further discussion, see Frostell 1999.

bedded in tradition, history and culture, including religious attitudes. The subordinate role of women in some countries is illustrated by a high incidence of prenatal sex selection and abortion of female fetuses.²⁶⁶

In order to fulfil their obligations under the ICCPR's Art. 3, States Parties should take account of factors impeding the enjoyment of the ICCPR's substantial rights by both men and women equally.²⁶⁷ The core of General Comment No. 28 consists of an overview of each of the substantial articles of the ICCPR and references to what information regarding these rights should be included in the periodic reports. The general comment does not aim at being exhaustive, but rather aims at providing examples of what kind of information should be included.

With regard to the ICCPR's Art. 4 on public emergency and derogations from the ICCPR during public emergency, the Committee noted, for example, that "... women are particularly vulnerable in times of internal or international armed conflict".²⁶⁸ Member States are requested to inform the Committee about all measures taken to "... protect women from rape, abduction and other forms of gender-based violence".²⁶⁹ With regard to the ICCPR's Art. 5 on the right to life, the Committee requests information, especially regarding pregnancy and childbirth and on practices that threaten a woman's right to life. With regard to the ICCPR's Art. 7 on torture, the Committee requests information about domestic violence, access to safe abortions in cases of rape-related pregnancies, forced abortions, forced sterilization and female genital mutilation. With regard to the ICCPR's Art. 8 on slavery and slavery-like practices, the Committee requests information on measures taken to eliminate trafficking in women and forced prostitution.²⁷⁰

Only two general comments have been adopted subsequent to the adoption of General Comment No. 28 and neither of these items refers extensively to women's human rights or equality between the sexes.²⁷¹

²⁶⁶ General Comment No. 28, Art. 5. According to Art. 5, The State Party's obligations include ensuring that "... that traditional, historical, religious or cultural attitudes are not used to justify violations of women's rights to equality before the law and the equal enjoyment of all the Covenant rights".

²⁶⁷ General Comment No. 28, Art. 6. For a substantive analysis of General Comment No. 28, Frostell 1999 and Otto 2002.

²⁶⁸ General Comment No. 28, Art. 8.

²⁶⁹ General Comment No. 28, Art. 8.

²⁷⁰ General Recommendation No. 28, Art. 11. General Comment No. 28 (2000), Art. 12. In conjunction with the ICCPR's Art. 7, but also affecting other articles, the Committee demands information on regulations regarding women's clothing. See General Comment No. 28 (2000), Art. 13.

²⁷¹ General Comment No. 29 (2001) on the ICCPR's Art. 4 concerning derogation from treaty obligations due to a state of emergency, does restate, however, the general

Since 1992, however, the Committee's concluding observations have tended to include some references to women's human rights or gender equality. The substance of these references differs considerably. In some concluding observations, the Committee mainly compliments states for having included the term, gender, as a non-discrimination ground in their Constitutions, for having established women's rights-related public institutions or for having ratified CEDAW and its Optional Protocol.²⁷² In some concluding observations, the Committee expresses concerns regarding discrimination against women or inequality between the sexes, using very general language.²⁷³ In some concluding observations, the Committee has omitted all references to discrimination against women and inequality between the sexes.²⁷⁴ The Committee, however, has become increasingly attentive to issues regarding women's human rights, especially regarding different forms of violence against women.²⁷⁵ Hence, an increasing number of reports towards the end of the 1990s and until the year 2002 shows concern for specific forms of inequalities between the sexes and human rights violations suffered by women and demands information about such matters.

While the Committee has been very slow in including references to women's human rights in its general comments, it has been fairly attentive to non-discrimination and equality between the sexes in its concluding observations. The Committee, however, has avoided jumping on the gender train and has largely kept to a language either of women's human

principle of non-discrimination in the ICCPR's Art. 4(1), noting that "... there are elements or dimensions of the right to non-discrimination that cannot be derogated from in any circumstances", see General Recommendation No. 29 (2001), Art. 8.

²⁷² See, for example, UN doc. CCPR/CO/72/PRK (Democratic Peoples' Republic), UN doc. CCPR/C/79/Add.104 (Chile), UN doc. CCPR/C/79/Add.3 (Belgium), UN doc. CCPR/C/79/Add.48 (Paraguay) and UN doc. CCPR/C/79/Add.86 (Belarus).

²⁷³ See, for example, UN doc. CCPR/C/79/Add.103 (Austria), UN doc. CCPR/C/79/Add.34 (El Salvador), UN doc. CCPR/C/79/Add.39 (Cyprus), UN doc. CCPR/C/79/Add.52 (Ukraine), UN doc. CCPR/C/79/Add.62 (Zambia) and UN doc. CCPR/C/79/Add.87 (Lithuania).

²⁷⁴ See, for example, UN doc. CCPR/C/79/Add.10 (Senegal), UN doc. CCPR/C/79/Add.122 (Republic of Korea), UN doc. CCPR/C/79/Add.9 (Burundi) and UN doc. CCPR/C/79/Add.67 (Peru).

²⁷⁵ See, for example, UN doc. CCPR/CO/75/VNM (Vietnam), UN doc. CCPR/CO/75/YEM (Yemen), UN doc. CCPR/CO/74/SWE (Sweden), UN doc. CCPR/CO/69/KWT (Kuwait), UN doc. CCPR/C/79/Add.25 (Iran), UN doc. CCPR/C/79/Add.104 (Chile), UN doc. CCPR/C/79/Add.30 (Romania) and UN doc. CCPR/C/79/Add.43 (Tunisia).

rights or of non-discrimination and equality.²⁷⁶ There is no evident reason for this choice, possibly, the Committee, as it deals with civil rights and political rights, is more open to and accepting of a women's human rights-based argumentation than a policy-oriented and gender-based argumentation.²⁷⁷

5.4.4 The Committee on Economic, Social and Cultural Rights

While enjoying equal civil and political rights is a prerequisite for equality between the sexes, women's enjoyment of economic, social and cultural rights remains amongst the core constraints to equality. The ICESCR Committee has however been rather attentive to equality and women's rights arguments. In a general sense or with specific reference to women and men, most of the general comments adopted by the ICESCR Committee deal with issues regarding non-discrimination and equality.²⁷⁸ As opposed to the CERD Committee and the Human Rights Committee, the ICESCR Committee, however, has not adopted a general comment that addresses women's human rights or gender issues specifically.²⁷⁹

General Comment No. 4 (1991) on the right to housing reinterprets the male-biased language of the ICESCR's Art. 11 (1). According to the Committee, the Covenant statement that everyone has a right to an adequate standard of living for himself and his family should not be interpreted as implying any limitations on the rights of any individuals or female-headed households.²⁸⁰ Similar readjustments of meaning and the inclusion of specific groups of women are carried out, for example, in

²⁷⁶ Note, however, the emphasis of the Secretary-General reports that the Committee has continued to "... make progress in including gender-related and women's rights issues in its work", see UN doc. E/CN.4/2003/72, Art. 34.

²⁷⁷ It can also be noted that the Human Rights Committee had two woman delegates with an interest in women's human rights at the time of the adoption of General Comment No. 28.

²⁷⁸ The exception is General Comment No. 9 (1998) on the role of national human rights institutions.

²⁷⁹ Noting, however, that many of the general comments address non-discrimination and equality without specific reference to sex or women. See, for example, General Comment Nos. 1 (1989), 2 (1990), 3 (1990) and 9 (1998). Some of the general recommendations address non-discrimination and equality in the terms of different identities and in terms of vulnerable groups, but without any specific mention of sex or women. See, for example, General Comments Nos. 7 (1997) and 8 (1997). For a discussion, see Otto 2002.

²⁸⁰ The ICESCR Committee's General Comment No. 4 (1991), Art. 6.

General Comment No. 5 (1994) on peoples with disabilities where women with disabilities are mentioned explicitly and General Comment No. 6 on economic, social and cultural rights of older persons where older women are mentioned explicitly. The General Comments Nos. 11 (1999) on plans of action for primary education and 12 (1999) on adequate food both further the use by the Committee of an inclusive language and both address gender discrimination, for example, in education and female-headed households. The recently adopted General Comment No. 15 (2002) on the right to water, however, is the best example of how the Committee's efforts to promote non-discrimination, equality and all-inclusiveness in the interpretation of the Covenant's rights. The comment includes equality and non-discrimination when developing the normative content of the right to water. In accordance with the comment:

[t]he obligation of States parties to guarantee that the right to water is enjoyed without discrimination (Art. 2, para. 2), and equally between women and men (Art. 3), pervades all the Covenant obligations. The Covenant thus proscribes any discrimination on the grounds of race, colour, sex, age, language, religion, political or other opinion, national or social origin, property, birth, physical or mental disability, health status (including HIV/AIDS), sexual orientation and civil, political, social or other status, which has the intention of nullifying or impairing the equal enjoyment or exercise of the right to water.²⁸¹

The Committee goes further by noting that the state should take steps to remove *de facto* discrimination based on one or more of the prohibited grounds, but also to prevent non-overt discrimination.²⁸² The States Parties should also "... give special attention to those individuals and groups who have traditionally faced difficulties in exercising this right, including women, children, minority groups, indigenous peoples, refugees, asylum seekers, internally displaced persons, migrant workers, prisoners and detainees".²⁸³ The Committee continues to demand that States Parties take specific steps regarding a number of the aforementioned groups, for example, women should not be "... excluded from decision-making processes concerning water resources and entitlements. The disproportionate burden women bear in the collection of water should be alleviated".²⁸⁴

²⁸¹ The ICESCR Committee's General Comment No. 15 (2002), Art. 13.

²⁸² The reference to non-overt discrimination regarding the right to water is partly included to avoid investments that favour expensive water supplies. ICESCR Committee General Comment No. 15 (2002), Arts. 14–5.

²⁸³ ICESCR Committee General Comment No. 15 (2002), Art. 16.

²⁸⁴ The ICESCR Committee's General Comment No. 15 (2002), Art. 16 (a). Other groups that are specifically addressed include children, inhabitants of deprived rural and

Hence, the comment has developed the Covenant list of non-discrimination grounds – expanding the list to include new grounds of discrimination and molding the language into the form used in the definitions of discrimination embraced by, preferred by CERD and CEDAW. The Committee has also added a number of groups that might not be discriminated against, but who, nonetheless, tend to be structurally disadvantaged in society – States parties are urged to pay special attention to such persons and entities.

The Reporting Guidelines adopted by the Committee deal with each substantial article of the Covenant and the Committee demands that States parties report on the situation of women under most of the articles.²⁸⁵ For example, States parties are asked under ICESCR Art. 6 to submit information about discrimination in law, administrative policies and in practical relationships between persons. Under ICESCR Art. 7, States parties are asked about the principle of equal pay for work of equal value, as well as on just and favourable conditions of work. With respect to the right to food, states parties are asked for information regarding the situation of especially vulnerable or disadvantaged groups, such as, landless peasants, rural workers, the rural unemployed, the urban poor, migrant workers, indigenous peoples, children, the elderly and other especially affected groups. It is further stated that attention should be given to “[a]ny significant differences in the situation of men and women within each of the above group”.²⁸⁶

Since 1992, the Committee’s concluding observations have also shown an increased awareness regarding non-discrimination and equality between the sexes. In almost all of its concluding observations, the ICESCR Committee makes some references to the situation of women.²⁸⁷ The references made during most of the 1990s, however, are less developed than the references made during the last few years. In the 1990s, the ICESCR Committee, still, occasionally omitted addressing non-discrimination and equality between the sexes.²⁸⁸ In some concluding observations, only scarce references are made to positive aspects such as the adoption of equal treatment legislation or to concerns, such as, the lack

urban areas, indigenous peoples, nomadic and traveller communities, refugees, asylum-seekers, prisoners, detainees, older people, persons with disabilities, et cetera.

²⁸⁵ UN doc. HRI/GEN/2/Rev.1. While ICESCR Art. 2(2) is explained in the guidelines, nothing specific is mentioned about Art. 3.

²⁸⁶ ICESCR Reporting Guidelines, Art. 43

²⁸⁷ ICESCR Reporting Guidelines, Art. 43

²⁸⁸ See for example UN doc. E/C.12/1995/22, paras. 206–10 (Dominican Republic), UN doc. E/C.12/1992/22, paras. 211–15 (Panama), UN doc. E/C.12/1993/16 (Mexico), UN doc. E/C.12/1994/4 (Romania) and UN doc. E/C.12/1994/9 (Gambia).

of any information regarding non-discrimination and equality between the sexes.²⁸⁹ In the recent years, the concluding observation of the ICESCR Committee, however, have largely followed the example from its more recent general comment and its reporting guidelines. In each concluding observation, the ICESCR Committee refers frequently to the situation of women as well as to the situation of other discriminated against or vulnerable groups in the specific society. The comments include both complimenting the actions taken by and lamenting the inaction of States Parties. The issues that have tended to draw the attention of the ICESCR Committee include domestic violence, trafficking in women and different forms of sexual violence, sexual harassment and inequalities at the work place, including inequalities in employment and social welfare regimes.²⁹⁰

The ICESCR Committee has come to develop the content of the substantial rights of the ICESCR both through its general comments and reporting guidelines. Although the Committee has not to any significant extent, analyzed or tried to develop the ICESCR articles regarding non-discrimination and equality between the sexes, it, nonetheless, has promoted a far-reaching and inclusive interpretation of both non-discrimination and equality between the sexes as part of its other general comments and as part of its reporting guidelines. The committee, however, has neither chosen to integrate women's human rights nor to integrate a gender perspective. The Committee, to a certain extent, uses a language of women's human rights and a language of gender, but it does so randomly and without any detectable coherence. The Committee seems to have been inspired by the Vienna Conference and its emphasis on paying special attention to different groups that have traditionally been discriminated against or which are marginalized or vulnerable for different reasons. The Committee does address women, often specific groups of women as discriminated against, marginalized or vulnerable. The Committee also seems to have been especially inspired by the campaign against violence against women because some of the issues that it frequently prioritizes when commenting on the reports of State Parties are domestic violence, sexual harassment, trafficking in women and different forms of sexual violence.

²⁸⁹ See for example UN doc. E/C.12/1993/7 (Iran), UN doc. E/C.12/1994/16 (Austria), UN doc. E/C.12/1995/17 (Algeria) and UN doc. E/C.12/1/Add.13 (Russian Federation).

²⁹⁰ See for example UN doc. E/C.12/1/Add.70 (Sweden), UN doc. E/C.12/1/Add.71 (Algeria), UN doc. E/C.12/1/Add.72 (France), UN doc. E/C.12/1/Add.74 (Colombia), UN doc. E/C.12/1/Add.8 (Finland), E/C.12/1/Add.77 (Ireland), UN doc. E/C.12/1/Add.83 (Georgia), UN doc. E/C.12/1/Add.82 (Poland) and UN doc. E/C.12/1/Add.81 (Slovakia).

5.4.5 The Committee against Torture

The CAT Committee is the treaty body which has exerted the most meager effort towards advancing any type of integration of women's human rights or a gender perspective. The Committee, for example, has eschewed making any references to women's human rights or a gender perspective in its general comments or reporting guidelines. Moreover, the Committee makes only scant reference to women's human rights issues in any of its concluding observations.²⁹¹

In the concluding observations on Slovakia, the Committee complimented Slovakia on their adherence to CEDAW and to other international human rights treaties.²⁹² In the concluding observations on Zambia, the Committee recommended that Zambia establish programmes to prevent and combat violence against women, including domestic violence.²⁹³ In the concluding comments on the Russian Federation, Saudi Arabia and Uzbekistan, the Committee recommended that requested data, disaggregated by age, "gender", ethnicity, geography, et cetera, be submitted to the Committee.²⁹⁴ However, in the majority of the concluding observations, no reference was made to non-discrimination or equality between the sexes.²⁹⁵

Neither the strategy for the integration of women's human rights nor the strategy for the integration of a gender perspective seems to have been adopted by the CAT committee. It has only been during the last few years that the CAT Committee has begun to demand gender-disaggregated data and to refer occasionally to sexual violence and sexualized forms of torture.²⁹⁶ These references, however, do not indicate that the CAT Committee has engaged in any substantial discussions about how to integrate women's human rights or a gender perspective or that the CAT Committee has made any decision to address these issues in a systematic

²⁹¹ General Comment No. 1 (1997) and UN doc. HRI/GEN/2/Rev.1.

²⁹² UN doc. A/56/44, paras. 99–105.

²⁹³ UN doc. A/57/44, para. 66 h.

²⁹⁴ UN doc. A/57/44, para. 96 a, 101 l and 116 m.

²⁹⁵ See for example UN doc. CAT/C/CR/28/2 (Luxembourg), UN doc. CAT/C/CR/28/7 (Uzbekistan), UN doc. CAT/C/CR/28/3 (Norway), UN doc. A/56/44, paras. 67–76 (Guatemala), UN doc. A/56/44, paras. 33–39 (Armenia), UN doc. A/55/44, paras. 56–63 (Peru), A/54/44, paras. 35–52 (Yugoslavia), UN doc. A/53/44, paras. 179–195 (Germany), UN doc. A/49/44, 105–115 (Morocco) and UN doc. A/48/44, paras. 133–160 (New Zealand).

²⁹⁶ Note however that the Secretary-General's reports suggests that the CAT Committee reflect issues regarding violence against women in its dialogue with states parties and in its concluding observations, see UN doc. E/CN.4/2002/81, p. 10.

manner. Andrew Byrnes argues that CAT is construed based on a private/public distinction "... which excludes from consideration many of the violations suffered by women at the hands of private individuals".²⁹⁷ Byrnes notes, however, that the exclusion of the private sphere from within the scope of the Convention does not disable the CAT Committee from acknowledging that women suffer from different threats in an interrogation situation, as detainees and prisoners nor does it disable the Committee from seeking information regarding woman-centred forms of torture.²⁹⁸ Just as some of the other treaty bodies have done, the CAT Committee can also adopt a more progressive approach when interpreting the provisions of the treaty, allowing for the inclusion of woman-centred forms of torture.²⁹⁹

5.4.6 The Committee on the Elimination of All Forms of Discrimination against Women

According to Maria Bustelo, the CEDAW Committee has been seen "... both by commentators and by its own members as the poor relation of the treaty bodies, left outside the mainstream of human rights work within the United Nations and neglected by the international human rights community".³⁰⁰ When addressing the Vienna strategy, I called attention to the fact that the integrative measures of the Vienna strategy included both substantial and institutional integration.³⁰¹ Ending the marginalization of the CEDAW Committee, both by vouchsafing more status to CEDAW, for example, through the adoption of the CEDAW Optional Protocol and through bringing CEDAW and the CEDAW Committee closer to the rest of the UN human rights family, is part of the measures for institutional integration. During the 1990s, the CEDAW Committee has also become increasingly proactive in its approach to the CEDAW and in its interpretations of women's human rights. Through the adoption of the Optional Protocol, the CEDAW has been strengthened and joint activities with the other treaty bodies have brought CEDAW into the UN human rights family.

²⁹⁷ Byrnes 1996, p. 519.

²⁹⁸ Byrnes 1996, p. 519–20.

²⁹⁹ Byrnes 1996, p. 519.

³⁰⁰ Bustelo 2000, pp. 81–4. See also Bayefsky 2001, p. 127–8 and Cartwright 2000.

³⁰¹ See Chapter 3.4.2.

The early general recommendations regard technical matters or are reaffirmations of substantial articles in CEDAW.³⁰² Around the time of the tenth anniversary of the CEDAW, the general recommendations became slightly more substantial and the CEDAW Committee began to request information that fell outside a narrowly defined scope of CEDAW.³⁰³ The General Recommendations, however, remain fairly short in length until the adoption of General Recommendation No. 19 on violence against women in conjunction with the preparations for the Vienna Conference.³⁰⁴ In the recommendation, the Committee allows itself an extended interpretative space and allows itself to reinterpret, for example, the CEDAW definition of discrimination so as to include gender-based violence. Gender-based violence is defined as:

... violence that is directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats or such acts, coercion and other deprivations of liberty. Gender-based violence breach specific provisions of the Convention, regardless of whether those provisions expressly mention violence.³⁰⁵

The gender-based violence that falls within the purview of CEDAW is not limited to the violence committed by governments and public authorities. The recommendation includes violence committed by private actors as well.³⁰⁶ Because violence against women was not included as a violation

³⁰² See for example general recommendation No. 1 (1986) and No. 2 (1987) on reporting, No. 3 (1987) on education and public information, No. 4 (1987) on reservations, No. 5 (1988) on temporary measures, No. 6 (1988) on national machineries, No. 7 (1988) on resources and No. 8 (1988) on government representation.

³⁰³ See for example general recommendation No. 12 (1989) on violence against women and No. 13 (1989) on equal remuneration for work of equal value.

³⁰⁴ The CEDAW Committee began addressing violence against women in its General Recommendation No. 12 (1989), according to states parties were required to protect women against violence of any kind "occurring within the family, at the work place or in any other area of social life". Further, states parties were asked to include information in their periodic reports about legislation and other measures to protect women against all kinds of violence in every day life and to support women victims of such violence. See, also, CEDAW General Recommendations No. 14 (1990) on female circumcision, No. 15 (1990) on women and aids, No. 16 (1991) on unpaid women in rural and urban family enterprises, No. 17 (1991) on the measurement of women's unpaid work for recognition in the gross national product and No. 18 (1991) on disabled women.

³⁰⁵ CEDAW General Recommendation No. 19 (1992), Art. 6.

³⁰⁶ CEDAW General Recommendation No. 19 (1992), Art. 9. See also CEDAW Arts. 2 (e-f) and 5. The recommendation describes what forms of gender-based violence is addressed under what articles of CEDAW, see General Recommendation No. 19 (1992), Arts. 10–23.

against women's human rights when the CEDAW was drafted, it has been necessary to fit it within the *old* language of discrimination. While the contemporary international human rights framework has opened itself up to broad interpretations of equality and discrimination, new issues do not necessarily fit into common assumptions about discrimination.

The CEDAW Committee's approach to gender-based violence also offers evidence of the persistent predilection of viewing gender as another word for sex or women.³⁰⁷ When analyzing the annual reports of the Special Rapporteur on violence against women, I noted that, although she did not use a language of gender, she promoted a relational approach, i.e., she viewed violence against women as not only an issue concerning women's gender construct, but also as a men's gender construct. The CEDAW Committee is less progressive and defines gender-based violence as violence directed towards a woman by virtue of her being a woman. Gender-based violence could just as well be violence directed towards a man by virtue of his being a man. Such violence, classified in this way, however, would fall outside of the scope of what the CEDAW Committee should address, because the CEDAW is a *women's* human rights convention. A gender approach to violence against women include an analysis of why men behave violently and what different societies can do to limit men's violence against women.

General Recommendation No. 24 (1999) on CEDAW Art. 12, the right to health, is not as radical in moving new issues onto the Committee's agenda or in reinterpreting CEDAW, but it does continue the trend of differentiating among women. In accordance with General Recommendation No. 24 (1999), biological differences between women and men may lead to differences in health status, but there are also societal factors that are determinative of the health status of women and men, which can lead to variations of health status amongst women.³⁰⁸

For that reason, special attention should be given to the health needs and rights of women belonging to vulnerable and disadvantaged groups, such as migrant women, refugee and internally displaced women, the girl child and older women, women in prostitution, indigenous women and women with physical and mental disabilities.³⁰⁹

³⁰⁷ For further discussions see Chapter 6.3.

³⁰⁸ CEDAW General Recommendation No. 24 (1999), Art. 6.

³⁰⁹ CEDAW General Recommendation No. 24 (1999), Art. 6.

Regarding the strategies for the integration of a gender perspective and for the integration of women's human rights, General Recommendation No. 24 contains an interesting passage.³¹⁰ In its final recommendations, it demands that States Parties should:

[p]lace a gender perspective at the centre of all policies and programmes affecting women's health and should involve women in the planning, implementation and monitoring of such policies and programmes ... [and] require all health services to be consistent with the human rights of women, including the rights to autonomy, privacy, confidentiality, informed consent and choice.³¹¹

That is, the CEDAW Committee seems to move ever closer towards promoting gender perspectives as an addition to its woman's human rights perspective. There is very little indication, however, that the CEDAW Committee uses a gender perspective with anything other than a very strong woman-focus.

The reporting guidelines adopted by the Committee mainly contain information regarding how the reports should be drafted, but omit any information regarding how the different substantial articles of the treaty should be interpreted.³¹² The Committee, however, does refer to the Beijing Platform Art. 323, according to which, State parties to the CEDAW are asked to include information in their reports on how the Beijing Platform is implemented under CEDAW.³¹³ While it is left up to the State parties to interpret what kind of information regarding the 12 critical areas of concern should be included in the reports, the reference opens the door to the inclusion of new areas.

The CEDAW Committee's concluding observations remained fairly terse until the mid-1990s and the Committee, still, tends to keep the discussion close to the substantial articles in the CEDAW. However, when analyzing the concluding observations of the Committee, it should be kept in mind that CEDAW is the most ratified UN human rights treaty, but also, the one to which the largest number of reservations have been made. While, in some member states, CEDAW has been incorporated into national legislation and while the treaty has been used in national

³¹⁰ CEDAW General Recommendations No. 21 (1994) on equality in marriage and family relations and No. 23 (1997) on women in public and political life continue the lengthier and more substantial form and content used in General Recommendation No. 19 and No. 24, but without reinterpreting any basic notions in CEDAW.

³¹¹ CEDAW General Recommendation No. 24 (1999), Art. 31.

³¹² UN doc. CEDAW/C/7/Rev.3.

³¹³ UN doc. CEDAW/C/7/Rev.3, Art. 8.

non-discrimination cases, many member states seem to believe that they are complying with CEDAW, all the while failing to amend discriminatory laws directly and all the while depriving women of political rights and basic needs. In reality, noncompliance is common and undetected as such. As noted above, many of the concluding observations are focused on recommending that State parties amend discriminatory national legislation directly and indirectly. The observations are also focused on asking State Parties to ensure women equal opportunities in education and employment as men.³¹⁴ However, while, in its general recommendations, the CEDAW Committee has been restrictive in breaking up the notion of a unified category of women, in its concluding observations, the Committee does refer to, express concern for and demand information about marginalized groups of women within the State Party. In the concluding observations on the Netherlands, the CEDAW Committee, for example, "... expresses concern at the continuing discrimination against immigrant, refugee and minority women who suffer from multiple discrimination".³¹⁵ Nevertheless, it seems as if new concepts and approaches are introduced to the Committee less by its independent experts than via State Party reports. While the CEDAW Committee itself has not interpreted gender as meaning anything but women's gender, it does applaud Norway's attempts to redirect "... attention to the necessary changes in men's roles and tasks as an important element in achieving true gender equality".³¹⁶ In its more recent concluding observations, such as the concluding observations on Trinidad and Tobago, the CEDAW Committee, while still, mainly focusing on the implementation of CEDAW, has begun to encourage gender mainstreaming as a strategy for equality between the sexes.³¹⁷ However, in the concluding comments in which the CEDAW Committee can compliment a State party for having adopted a gender mainstreaming strategy, the Commit-

³¹⁴ See for example UN doc. A/55/38, paras. 30–66 (Cameroon), UN doc. A/54/38, paras. 117–160 (Nepal), UN doc. A/53/38, Rev. 1, paras. 175–205 (Panama), A/53/38, paras. 262–311 (Indonesia). In each of the reviewed concluding observations with the exception of Rwanda and Iraq the CEDAW Committee refers to inequalities in education and employment.

³¹⁵ UN doc. A/56/38, para. 205. Similar references and references to efforts to combat racism and xenophobia is made in the concluding observations on Sweden and Finland, see UN doc. A/56/38, paras. 319–360 and UN doc. A/56/38, paras. 279–311. These concluding observations are adopted in 2001, i.e. around the time of the Durban conference. The needs of refugee and immigrant women is also mentioned in the concluding observations on Greece, see UN doc. A/54/38, paras. 172–212 (Greece).

³¹⁶ UN doc. A/50/38, para. 486.

³¹⁷ UN doc. A/57/38 (Part I), at para. 144.

tee also tends to express its concern for the State Party's unwillingness to incorporate CEDAW in its national legislation.³¹⁸

The CEDAW Committee has adopted only a few general recommendations that as interpretative statements are comparable to those recommendations adopted by the Human Rights Committee or the ICESCR Committee. General Recommendation No.19 on violence against women remains the only daring re-interpretation of CEDAW. The CEDAW Committee has only very carefully trodden into new areas. While, for example, the CEDAW Committee occasionally uses a language of gender, such language is mainly used to demand State parties include gender-disaggregated data, to repeal gender roles or stereotypes or on occasions when the Committee is complimenting States for their gender mainstreaming efforts.

5.4.7 The Committee on the Rights of the Child

As opposed the earlier human rights treaties, the CRC includes throughout references to both boy and girl children. It is noteworthy however that while continuously making references to both sexes is a step towards giving equal attention to both sexes, such references do not automatically lead to what could be called gender-sensitivity. Sex-specificity and not the least sex-segregated statistics and other equivalent information is a necessary step in gender analysis, but sex-specificity does not equal gender-sensitivity.³¹⁹ Gender sensitivity demands careful analysis of the societal consequences of us being women and men.

The CRC Committee adopts both General Comments and General Recommendations.³²⁰ The Committee has since 2001 adopted five general comments. General Comment No. 1 on the aims of education (CRC Art. 29) was adopted in 2001. In the comment, when addressing the relationship between the general non-discrimination principle in CRC Art. 2 and CRC Art. 29, it is noted that:

... gender discrimination can be reinforced by practices such as a curriculum which is inconsistent with the principles of gender equality, by arrange-

³¹⁸ The CEDAW Committee compliments for example Icelands efforts to incorporate gender mainstreaming in its policy framework while noting that CEDAW has not been incorporated, see UN doc. A/57/38 (Part I), paras 215–255, see also UN doc. A/57/38 (Part I), paras. 256–303 (Sri Lanka).

³¹⁹ See Chapter 4.5.2.

³²⁰ For a distinction between the CRC Committee general comments and recommendations, see the CRC provisional rules of procedure, Arts. 72–73. The general comments serve as interpretive comments regarding the CRC.

ments which limit the benefits girls can obtain from the educational opportunities offered, and by unsafe or unfriendly environments which discourage girls participation.³²¹

General Comment No. 2 on the role of national human rights institutions in the promotion and protection of the rights of the child (2002) uses a less sex- and gender-sensitive language than the CRC and the General Comment No. 1 do. It uses the sex-neutral term child or children instead of referring to him and her or an equivalent; it touches upon the issue of discrimination only in passing.³²² General Comment No. 3 on HIV/AIDS and the child (2003) notes that gender based discrimination combined with "... taboos or negative or judgmental attitudes to the sexual activity of girls, often limiting their access to preventive measures and other services" is of particular concern.³²³ States are requested to take gender norms into account when designing HIV/AIDS policies. In 2003 the CRC Committee has adopted two General Comments, No. 4 on adolescent health and No. 5 on measures for implementation of the CRC. The General Comment on adolescent continues the tradition of the other general comments to use a less sex-specific language than the Convention. While the General Comment addresses issues such as for example adolescent sexuality, it does not distinguish between boys' and girls' experiences, except when dealing with what is often perceived woman-centred phenomena (early marriages, harmful traditional practices et cetera.).³²⁴ General Comment No. 5 includes no woman- or gender-related references.

The CRC Committee has adopted six general recommendations since 1998 dealing with children and armed conflict, administration of juvenile justice, exceptional submission of combined State reports, content and size of state reports, submission of periodic reports and committee work in two chambers. The recommendations are as noted largely of an administrative character and deal, and none of them make any sex-specific or gender-related references.

Both the ICESCR Committee and the CRC Committee hold general days of discussion during each session.³²⁵ It is noteworthy that during

³²¹ General Comment No. 1 (2001), Art. 10. Art. 11 addresses the non-discrimination based on colour, race, ethnicity or national origin. See also Art. 19.

³²² See General Comment No. 2 (2002), Arts. 12 and 15.

³²³ General Comment No. 3, para. 8. The paragraph also highlights discrimination based on sexual orientation.

³²⁴ See for example General Comment No. 4, Arts. 20, 24 and 26.

³²⁵ See *CRC Committee reports of general days of discussion*, document compiled by the UN High Commissioner on Human Rights and CRC Committee Rules of Procedure Art. 75.

the day of discussion on children in armed conflict, references were made to both girls and boys and to the different violations suffered by girls and boys during armed conflict. That is, the day of discussion in 1992 evoked issues that are not in any way represented in the Optional Protocol on children in armed conflict.³²⁶ The CRC Committee held a day of discussion regarding the girl-child in 1995.³²⁷ The day was supposed to serve as a preparation to the CRC Committee's contribution to the Beijing Conference. Much of the discussion seemed to have circled around issues regarding violations of women's and girl-children's human rights and the importance of the CRC Committee in promoting the rights, especially of girl-children. However, the conclusions include an interesting reference to how gender issues should be approached:

[a]ddressing the question of inequality and discrimination on the basis of gender did not imply that they [the issues] had to be seen in complete isolation, as if girls were a special group entitled to special rights. In fact, girls are simply human beings who should be seen as individuals and not as just daughters, sisters, wives or mothers, and who should fully enjoy the fundamental rights inherent to their human dignity.³²⁸

The CRC reporting guidelines supply in-depth information about what the CRC Committee wishes that State parties would report on with respect to the CRC substantial articles.³²⁹ The CRC Committee demands information differentiated by sex as well as information on differentiation between girls and boys with respect to most of the substantive articles.

In most of its concluding observations, the CRC Committee refers to non-discrimination and equality based on sex, and uses a language of gender. The concerns expressed and the recommendations made by the CRC Committee regarding sex- or gender-based issues are seldom, however, extensive, but tend, rather, to amount to one or a few references per concluding observation in a manner similar to the references in the concluding observations by the Human Rights Committee or by the ICESCR Committee. The most common references regard the discrimination between girls and boys with regard to marriage age, education, access to basic resources, harmful traditional practices and sexual as well as other forms of violence. The CRC Committee tends to focus on one or a few similar issues in each concluding observation, pointing to the

³²⁶ See *CRC Committee reports of general days of discussion*, pp. 3–9.

³²⁷ See *CRC Committee reports of general days of discussion*, pp. 36–42, see also UN doc. CRC/C/38.

³²⁸ See *CRC Committee reports of general days of discussion*, Art. 283.

³²⁹ UN doc. HRI/GEN/2/Rev.1, pp. 47–100.

lack of information regarding a specific violation and recommending that State Parties investigate the issue and take steps to eradicate the violations. For example, in the concluding observations on the Sudan, the CRC Committee noted that traditional patterns of discrimination limit opportunities available for girls and women. It was recommended that the Sudan “[c]onduct a study to assess the scope and causes of discrimination between boys and girls and take steps to address such discrimination, giving particular attention to the impact of traditional and cultural practices upon girls and women with a view to adopting a proactive and comprehensive strategy for the elimination of discrimination against them”.³³⁰ In the concluding observations on Spain, the CRC Committee expressed concern regarding reports about the practice of female genital mutilation in Spain on girls of Sub-Saharan origin. It recommended that Spain investigate the issue and take steps to eradicate the practice.³³¹ A specific feature of the recommendations of the CRC Committee is that they increasingly address specific violations of the rights of the boy-child and discusses gender issues from the perspective of the boy-child.³³²

The CRC Committee is often cited as one of the best examples regarding gender mainstreaming within the UN human rights system. However, as was noted in the introduction sex-specificity does not equal gender-sensitivity. Otto notes that the CRC, “... although gender inclusive in its use of pronouns (it consistently uses his and her), is actually gender blind because it does not recognize any differences in the experience of girls and boys that may be due to structurally embedded unequal gender relations or to gendered social expectations. By treating girls and boys in the same way, male/boys’ experience is effectively reinstated as the standards because gender-specific rights violations are silenced”.³³³ The review of the general comments, general recommendations and the concluding observations of the CRC Committee also indicate that the CRC Committee is a best example on the decline. The CRC was adopted at a time when the UN had begun to show an increasing interest in women’s human rights and had begun to use a gender language. The focus on women’s human rights and gender issues was on the rise during the first half of the 1990s. It was probably during these years that the

³³⁰ UN doc. CRC/C/Add.190 (Sudan), Art. 27. See also for example Art. 21–2.

³³¹ UN doc. CRC/C/Add.185 (Spain), Arts. 40–1.

³³² See for example UN doc. CRC/C/15/Add.40 (Sri Lanka), UN doc. CRC/C/15/Add.121 (Grenada), UN doc. CRC/C/15/Add.130 (Surinam), and UN doc. CRC/C/15/Add.146 (Lithuania).

³³³ Otto 2002, pp. 21–2. See also Gruskin and Plafkar 2000.

CRC Committee acquired its role as a sex- and gender-sensitive human rights treaty body. This role was strengthened through the CRC Committee's involvement in the Beijing conference and with its focus on the girl-child for a few years after the Beijing conference.

5.4.8 Concluding Comments

The above analysis of some of the work of the UN human rights treaty bodies shows that considerable differences exist between how and to what extent the different treaty bodies have chosen to approach and address women's human rights and/or gender issues.³³⁴ The CAT Committee and the CERD Committee have been slow to integrate women's human rights and/or to mainstream a gender perspective. Although in different ways, the Human Rights Committee and the ICESCR Committee have both begun to address women's human rights and/or gender issues in their work. The Human Rights Committee uses a women's human rights language and has eschewed the gender train. The ICESCR Committee, on the other hands, has not as of yet adopted a women's human rights or gender comment, but quite consistently mentioned either women or gender concerns in their general comments and concluding observations throughout the 1990s. It is difficult to assess to what extent the CEDAW Committee has been active in promoting the strategy for integrating women's human rights, but the strategy, nevertheless has brought the CEDAW Committee closer to the other human rights treaty bodies. The CRC Committee remains the good example with regard to making sex-specific references and acknowledging gender concerns, but it is a best example on the wane, on decline.

³³⁴ In my review of the work of the treaty bodies, I have not analyzed the communications procedures because the communications procedures do not necessarily give much additional information regarding how the treaty bodies approach women's human rights or gender-related issues. There remains, however, a considerable gap between the complaints issued by women and men. In the Secretary-General's report on the integration of women's human rights and a gender perspective, it is noted that "[i]t may be necessary to target women and their advocates in efforts to disseminate information regarding the individual complaints procedure", see UN doc. E/CN.4/2003/72, para. 36. According to the Secretary-General's report, 20 communications submitted under the first Optional Protocol of the ICCPR dealt with issues involving discrimination based on sex. It also noted that a review of the individual communications procedures under the Human Rights Committee, CERD and CAT showed that 19 % of the communications submitted to the Human Rights Committee during 2002, 20 % to the CERD Committee and 17 % to the CAT Committee involved a female complainant.

5.5 The Secretariat and the Integrative Strategies

5.5.1 Introduction

The UN Secretariat is a Charter-based institution and it administers and executes the decisions by the inter-governmental, expert and judicial human rights institutions. The OHCHR, located at the UN headquarters in Geneva and the Division for the Advancement of Women, located as part of Department of Economic and Social Affairs at the UN headquarters in New York City bear the main responsibility for the administration of the UN human rights and women's advancement agendas.³³⁵ High-level civil servants such as the UN Secretary-General, the UN High Commissioner on Human Rights or the UN Special Advisor on Gender Issues and the Advancement of Women serve as the *public faces* of the UN. Depending on what issues they choose to prioritize and the support they are given, they can wield considerable influence over the UN policy lines regarding, for example, the human rights of women or gender mainstreaming.³³⁶ While operating mainly under administrative and executive mandates, the Secretariat as well, depending on priorities and financial and human resources, can have a considerable effect on how different issues are approached within the UN human rights framework.

The mandate of the UN High Commissioner on Human Rights was established after the Vienna Conference.³³⁷ The High Commissioner's

³³⁵ The UN Secretariat currently has a staff of 8,900 persons and draws its budget from over 170 countries. The UN's main headquarters are in New York City and Geneva, but a significant presence is also found, for example, in Addis Ababa, Bangkok, Nairobi, Santiago and Vienna, www.un.org/documents/st.htm (23-09-2003). For developments within the UN Secretariat, see Beigbeder 2000.

³³⁶ Individuals such as the current Secretary-General, Kofi Annan, and the former High Commissioner for Human Rights, Mary Robinson, are public figures with considerable power to decide the UN agenda. Sand (2001) argues that with the process of globalization and with the increased power of intergovernmental organizations, such as, the UN, the importance of high-level civil servants and bureaucracies is growing.

³³⁷ The High Commissioner on Human Rights' mandate is based on the UN Charter Arts. 1, 13 and 55, the Vienna Programme and UN doc. A/Res/48/141 (1993). The mandates of the High Commissioner and the OHCHR include the promotion of the universal enjoyment of human rights, play a leading role in the human rights field at international and national levels, promote international cooperation for human rights, stimulate and coordinate action for human rights throughout the human rights system, promote universal ratification and implementation of international standards, assist in the creation of new norms, support human rights organs and treaty monitoring bodies, respond to serious human rights violations, undertake preventive human rights action, promote the establishment of national human rights infrastructure, undertake human

office and the UN Centre for Human Rights were consolidated into one institution as part of the programme for renewing the process of the UN system.³³⁸ The OHCHR only has a limited mandate regarding women's human rights and among the woman-centred mandates. It administers, however, the mandate of the Special Rapporteur on violence against women, its causes and its consequences, while the Division for the Advancement of Women administers the work of the Commission on the Status of Women and the CEDAW Committee. Due to the increased emphasis on the integration of women's human rights and on mainstreaming a gender perspective, and also due to the overall emphasis of streamlining and inter-agency cooperation within the UN, the OHCHR has increased its focus on women's human rights and on a gender perspective. Additionally, it has increased its co-operation with the Division for the Advancement of Women.

The Division for the Advancement of Women has been the main Secretariat institution for the advancement of women and gender issues, including women's human rights issues. The Division for the Advancement of Women serves as a motor for UN activities in the areas of women's advancement and gender equality. It supports the implementation of the Nairobi Forward-Looking Strategies, the Beijing Programme, the Beijing+5 outcome document and other relevant international conference documents and it administers the work of the Commission on the Status of Women and the CEDAW Committee.³³⁹ Owing to the increased

rights field activities and operations, and provide education, information advisory services and technical assistance in the field of human rights, see www.unhchr.ch/html/hchr.htm (23-09-2003).

³³⁸ UN doc. A/51/950, Arts. 197–8, action 14. The OHCHR administers the UN inter-governmental, expert and judicial human rights institutions, and reports annually to the General Assembly, ECOSOC and the Commission on Human Rights. The consolidated OHCHR is currently the main Secretariat institution with an overall responsibility for the UN-based human rights regime.

³³⁹ The Division for the Advancement of Women served as the Secretariat for the four world conferences on women and for the General Assembly special session Women 2000. See www.un.org/womenwatch/daw/daw/ (23-09-2003). In the early days of the UN the Section of the Status of Women residing under the Human Rights Division of the Department of Social Affairs was the main Secretariat body dealing equality and equal rights between the sexes. The Section was upgraded to the Branch for the Promotion of Equality for Men and Women as part of the Centre for Social Development and Humanitarian Affairs. In 1993 the re-named branch moved from the UN headquarters in Vienna to the headquarters in New York. Since 1996 the Division for the Advancement of Women has resided under Department of Economic and Social Affairs. The Division for the Advancement of Women is divided into three main sections or units the Gender Analysis section, the Women's Rights Unit and the Coordination and Outreach Unit.

efforts to mainstream a gender perspective into the UN system, new mandates and institutional settings have emerged in close affinity with the Division for the Advancement of Women. The UN *Special Advisor on Gender Issues, the Office of the Special Advisor on Gender Issues and the Advancement of Women* (OSAGI) and the *Inter-Agency Network on Women and Gender Equality* (IANWGE) were established after the Beijing Conference.³⁴⁰

The OHCHR's location at the *Palais Wilson* in Geneva and the Division for the Advancement of Women's location within the Department of Social Affairs at the UN headquarters in New York City have been seen by some authors as reinforcing the perceived gap between human rights and women's human rights within the UN human rights system.³⁴¹ People dealing with women's issues tend to want the CEDAW Committee to be in New York and they perceive it as important that women's rights are a big part of the work done on behalf of women in general. Because the whole division moved from Vienna to New York, it is logical that it stays there. The people who insist on the subject, believe that it is more important to think in terms of human rights and would like to see human rights integrated with the other human rights issues – then, it would and should belong in Geneva with the other treaty bodies. The situation is as much a political issue as it is a bureaucratic issue.

While for a long time, there has been informal cooperation first between the Centre for Human Rights and then between the OHCHR and the Division for the Advancement of Women, it has only been during the last few years that this cooperation was formalized and the OHCHR and the Division for the Advancement of Women have begun to adopt annual joint work plans.³⁴² Since the year 2000, the Division for the Advancement of Women and the OHCHR have adopted joint work plans that are communicated to both the Commission on the Status of

³⁴⁰ Beijing Platform Art. 326.

³⁴¹ See, for example, Gallagher 1997 and Reanda 1996.

³⁴² The cooperation between the Division for the Advancement of Women and the OHCHR is however increasing, and the earlier informal cooperation is since a few years consolidated through the Joint Work Plans of the Division for the Advancement of Women and the OHCHR. The Commission on the Status of Women did in its resolution 39/5 (1995) suggest that the cooperation between the Division for the Advancement of Women and the OHCHR be formalised, the resolution was supported by the UN doc. E/CN.4/Res/1997/43. See UN doc. E/CN.4/2001/118-E/CN.6/2000/8, and UN doc. E/CN.4/2001/70-E/CN.6/2001/3. In interview No. 2 it was noted that the joint work plans are not enough, but a first step in the cooperation between and coordination of OHCHR and the Division for the Advancement of Women.

Women and the Commission on Human Rights. The cooperation between the two offices is aimed at mainstreaming women's human rights.³⁴³

The OHCHR and the Division for the Advancement of Women have also organized panel discussions, expert meetings and workshops on issues of common concern, sometimes in cooperation with other institutions. Some of these activities have contributed directly to the development of strategies for integrating women's human rights and mainstreaming a gender perspective within the international human rights framework. For example, in 1995, the Centre for Human Rights and UNIFEM co-organized an Expert Group Meeting on the *Development of Guidelines for the Integration of Gender Perspectives into the UN Human Rights Activities and Programmes*. In 1999, the OHCHR, the Division for the Advancement of Women and UNIFEM organized a follow-up workshop on *Gender Integration into the Human Rights System*. In 2000, in the aftermath of the General Assembly Beijing+5 Session, a related Expert Group Meeting was organized by the OHCHR, the Division for the Advancement of Women and UNIFEM on *Gender and Racial Discrimination*.³⁴⁴

The aim of the 1995 Expert Group Meeting was to assist the Centre for Human Rights and other UN human rights bodies and mechanisms in drafting gender-sensitive guidelines and other relevant material for the integration of the human rights of women into UN system-wide activities and programmes.³⁴⁵ The Expert Group Meeting was convened as a result of the Vienna Conference and only a few months after the end of the Beijing Conference.

³⁴³ UN doc. E/CN.4/2001/70-E/CN.6/2001/3, Art. 1. The cooperation has included meetings between the Special Adviser and the High Commissioner, circulation of documents between and within the two offices, cross-referencing in web sites, facilitation of visits by for example members of the Commission on the Status of Women and the CEDAW Committee at the Human Rights Committee, co-organisation of a number of panel discussions, workshops and expert meetings. Co-operative activities have also been undertaken regarding the General Assembly's Special Session Women 2000 (Beijing+5) and the adoption of the Optional Protocol to the CEDAW. While many of these measures might seem self-evident they consolidate the previous informal co-operation between the two offices that was largely based on personal relationships, and some of the co-organised workshops and expert meetings have been crucial for the development of a human rights-relevant gender mainstreaming strategy.

³⁴⁴ See *Gender and Racial Discrimination 2000, Gender Integration into the Human Rights System 1999* and *Report of the Expert Group Meetings on the Development of Guidelines for the Integration of Gender Perspective into the United Nations Human Rights Activities and Programmes 1995*.

³⁴⁵ UN doc. E/CN.4/1996/105, para. 1.

The presentation in the workshop of outcome documents of the conceptual framework included definitions of concepts, such as, gender and gender-sensitive perspectives and discussed what gender-based approaches might add to international human rights. The definitions used were those definitions, which, during the later part of the 1990s, were well disseminated among UN gender experts.³⁴⁶ As noted in Chapter Four, this conceptual framework is based on an intricate mélange of feminist theories on sex and gender and feminist woman-centred rhetoric: the outcome being a conceptual framework, according to which, the *nature* of gender oscillates between being a contingent social construct and being nothing but sex. The only “gender-bending” space allowed, in the above definitions, are the interstices between cultures. Within a culture, the gender perspective seems to function no differently than an equality perspective does, because its aim is to make female and male genders equal.

According to the report, gender-sensitive perspectives or gender perspectives are “... based on an understanding that in all situations some perspective of interpreting reality is present”.³⁴⁷ Historically, reality has been interpreted from a male point of view, which has rendered women’s realities invisible. The use of gender-sensitive perspectives or gender perspectives gives new tools to interpret reality:

[t]he development of gender perspectives in the human rights context facilitates understanding of how the exercise and enjoyment of human rights is adversely influenced by social constructions of the female and male roles.³⁴⁸

It has been noted that although the Workshop report is focused on women’s human rights, by virtue of its references, to women’s human rights that have been neglected and made invisible, nonetheless, it is “... evident that development and utilization of gender-sensitive perspectives will necessarily improve understanding, and therefore the promotion and protection, of the human rights of men as well as women”.³⁴⁹ This pre-

³⁴⁶ Gender is defined in the *1995 Workshop Report* as the socially construed roles of women and men, as opposed to biological sex. Gender is seen as culturally variable, but according to the definition gender constructions on the basis of the two-sex model exist in “... all societies all over the world” (Art. 13). The problem is however not seen as the “... social construction of roles, attitudes and relationships of women and men ...” as these “... will always exist” (Art. 14). The problem is that “... almost invariably gender constructs function in a way that subordinates and discriminates against women”, and hence, the challenge is to “... ensure that this construction is fair to both sexes and that neither sex dominates the other” (Art. 14).

³⁴⁷ *The 1995 Workshop report*, Art. 15.

³⁴⁸ *The 1995 Workshop report*, Art. 18.

³⁴⁹ *The 1995 Workshop report*, Art. 18.

sumption that gender perspectives contribute to *all* promotion and protection of human rights is reproduced in much gender and human rights material, although there are seldom any extensive analyses of how and what benefit the gender perspective can contribute.³⁵⁰

The 1999 Workshop was a follow-up to the 1995 Expert Group Meeting and organized as part of the joint work plan of the OHCHR and the Division for the Advancement of Women. While the 1995 Expert Group Meeting was convened at the beginning of the gender turn in international human rights, much activity had already happened in 1999.³⁵¹ The 1999 Workshop attempted to assess the progress made and build on already existing structures. The Workshop proposed a large number of recommendations, many of which dealt with the need for increased information, normative clarification, training and inter-institutional exchanges. Read together, the reports from the Expert Group Meeting and the Workshop suggested that while the integration of women's human rights and the gender mainstreaming projects have developed in the sense that more and more well-developed questions have been asked, the obstacles to the integrative and mainstreaming projects are fairly basic.

The Expert Group Meeting on Gender and Racial Discrimination may be perceived of as a consequence of the gender mainstreaming project.³⁵² The Beijing Conference drew attention to how age, disability, socio-economic position or membership in a particular ethnic group created certaintypes of barriers for women. The UN human rights institutions have been very reluctant to address issues of multiple and intersectional discrimination, partly because such issues tend both to cross-over and fall into the interstices between the traditional mandates, partly because none of the existing institutions have had the conceptual or practical tools to deal with such issues.

5.5.2 The Office of the High Commissioner for Human Rights

The High Commissioner for Human Rights functions as the UN's face to the world vis-à-vis, human rights. The office holder reports annually about hers or his activities to the General Assembly, the ECOSOC and the Commission on Human Rights.³⁵³ During the years when at the

³⁵⁰ For further discussion, see Chapter 6.

³⁵¹ The 1995 workshop delegates were guided by the ECOSOC Agreed Conclusions and the Division for the Advancement of Women definition of gender, Arts. 12–13.

³⁵² For further analysis, see Chapter 3.3.1, see also Chapter 6.

³⁵³ In the below analysis, I have, to get an overview of the OHCHR's activities for issues regarding, as it is often phrased in the High Commissioner for Human Rights reports,

mandate was held by the first High Commissioner for Human Rights, José Ayala-Lasso of Ecuador, the OHCHR worked only moderately to promote the integrative strategies.³⁵⁴ An overview of the High Commissioner's annual reports to the General Assembly and to the Commission on Human Rights shows that while women's human rights were a concern for the High Commissioner during the early years of his mandate, the concern was expressed through targeted interventions rather than through attempts to integrate women's human rights or a gender perspective.³⁵⁵ In 1997, the mandate of the High Commissioner for Human

gender and the human rights of women, relied on the High Commissioner for Human Rights reports to the General Assembly and to a certain extent to the Commission on Human Rights. The General Assembly reports to ECOSOC have in general not included any substantial references to gender and the human rights of women. It should be noted that the reports provide only general overviews, and how thoroughly they address certain issues is often dependent on who has drafted, commented and finalised the reports.

³⁵⁴ UN doc. A/50/36, Arts. 21, 27–36, and 69. The reports to the General Assembly provide general overviews to the prioritised issues within and the activities of the OHCHR during the year. The reports to ECOSOC focus on economic and social rights, and related matters. The reports to the Commission on Human Rights are the most comprehensive as the OHCHR reports to the Commission on Human Rights both under the agenda item on the follow-up to the Vienna conference and under the agenda item on the promotion and protection of human rights.

³⁵⁵ The report to the Commission on Human Rights in 1995 includes a chapter on the equal status and human rights of women in which references are made to for example the Vienna and Beijing conferences, and to the Commission on Human Rights and Commission on the Status of Women resolutions regarding mainstreaming of the human rights of women, see UN doc. E/CN.4/1995/98, Chapter III E, Arts. 101–105. The 1996 report to the General Assembly focuses, as regards women's human rights, on the efforts of the human rights treaty bodies to integrate women's human rights, on the Special Rapporteur on violence against women's report regarding trafficking and forced prostitution of women in Eastern Europe, on the Special Rapporteur's work against domestic violence in Brazil, and on the roundtable organised on women's reproductive rights. References are also made to the Commission on Human Rights resolution 1996/22 regarding the persons chairing the human rights treaty bodies' decision to monitor each treaty body's integration of women's human rights. see UN doc. A/51/36, Chapter VA(2), Arts. 73–6 and 91. The 1997 reports do include very few references to women's human rights. In for example the 1997 report to the General Assembly addresses women's human rights when discussing the work of the Sub-commission Working Group on contemporary forms of slavery, and the report to the Commission on Human Rights does not include any substantive references to women's human rights. The Working Group's work concerned the Japanese military's treatment of comfort women during the Second World War. See UN doc. A/52/36, Arts. 35–38 and UN doc. E/CN.4/1997/98. The Working Group's work concerned the Japanese military's treatment of comfort women during the Second World War.

Rights was taken over by Mary Robinson of Ireland.³⁵⁶ Robinson's assumption of office coincides in time with the adoption of the ECOSOC Agreed Conclusions on Gender Mainstreaming, the adoption of the UN Reform Programme that stresses the importance of human rights and the preparations for the five-year review of the Vienna Conference and the 50th anniversary of the Universal Declaration. Robinson also has an openness to women's human rights and gender issues; she chooses trafficking, including trafficking in women and girls, as one of her prioritized areas of concern. Hence, there has been, within the OHCHR, an increased focus on women's human rights and gender issues, during the years when Robinson has held the mandate of the High Commissioner for Human Rights. This increased focus is partly due to the system-wide, viz., post-Vienna, post-Cairo and post-Beijing, focus on women's human rights and gender issues. The importance, however, of Robinson's openness towards women's human rights and gender issues and her choice of trafficking as a prioritized issue should not be underestimated. Nevertheless, as will be demonstrated below, after the events of September 11 and the Durban Conference, the focus of the OHCHR has shifted from women's human rights issues to human rights and conflict and racial discrimination, leaving women's human rights almost completely unaddressed and neglected in Robinson's last report.

The focus of the 1998 report to the General Assembly is on the 50th anniversary of the Universal Declaration and on the five-year review of the Vienna conference. Trafficking was highlighted as a priority area. Women's human rights are addressed in the context of contemporary challenges to human rights and gender and the human rights of women are subsumed under the chapter on trafficking in women and children.³⁵⁷ The main challenges regarding gender and women's human rights identified by the High Commissioner are many. Three challenges stand out, in particular, viz., the integration of the gender perspective into all activities of and within the OHCHR, the active and broad participation of women within the UN human rights system and the initiation of specific programmes, special projects and activities aimed at improving the enjoyment by women and girl children of their fundamental human rights.³⁵⁸ The 1999 report to the General Assembly includes a chapter

³⁵⁶ In September 2002, the position was taken over by Mr. Sergio Viera de Mello of Brazil. Sadly, Viera de Mello died in Iraq, in August 2003, while serving as the UN's Special Representative in Iraq. The mandate of the High Commissioner on Human Rights was taken over by Bertrand Ramcharan.

³⁵⁷ UN doc. A/53/36. See also UN doc. E/CN.4/1998/122 and E/1998/84.

³⁵⁸ UN doc. A/53/36, Art. 50.

on *Gender Issues and the Human Rights of Women*, which focuses on a number of items. Specifically, the report discusses the 1999 workshop on gender mainstreaming, the 20th anniversary of the CEDAW, the finalization of the policy statement regarding gender mainstreaming and the human rights of women and the preparation of a work plan regarding these issues, the field offices work on gender issues within the human rights framework, and the development of the priorities defined in the 1998 report.³⁵⁹ The 1999 report to the Commission on Human Rights also includes a chapter on *Gender and the Human Rights of Women*.³⁶⁰ The chapter refers to a number of items, in particular, the increased cooperation between the OHCHR and the Division for the Advancement of Women, to the mission statement of the OHCHR on gender and the human rights of women and to gender and women's human rights training. According to the report, the OHCHR:

... will continue to pursue the integration of a gender perspective into all human rights mechanisms, activities and programmes of the United Nations system; foster knowledge and understanding on the incorporation of a gender perspective into human rights activities and programmes, invest in capacity-building at the regional and national levels in incorporating a gender perspective; and develop an information base on the situation of human rights of women.³⁶¹

The policy statement on *Gender Mainstreaming and the Human Rights of Women* refers to the Vienna, Cairo and Beijing conferences, noting that the conferences confirmed "... the strong link between the gendered nature of violations of human rights, and the actual advancement of women's human rights".³⁶² The mission statement fails to make a distinction between integrating women's human rights and mainstreaming gender, but emphasizes gender mainstreaming as the main approach when outlining the nine core aspects of the OHCHR policy. The nine core aspects include: the reflection of gender concerns in the conceptualization, implementation and evaluation of human rights policies; strategic planning and the setting of priorities and objectives; the use of gender analysis when analyzing the impact of activities and procedures for advancing human rights; the promotion of training and sensitization programmes aimed at integrating gender and building capacity for gen-

³⁵⁹ UN doc. A/54/36, Arts. 90–94. The chapter on trafficking emphasises the rights of women and children (ch. XIA).

³⁶⁰ UN doc. E/CN.4/1999/9, Chapter III, Arts. 27–30.

³⁶¹ UN doc. E/CN.4/1999/9, Art. 30

³⁶² *Gender Mainstreaming and Human Rights of Women* 2000, p. 6.

der analysis from a human rights perspective for staff members, human rights bodies and consultants; an active support for and promotion of the human rights of women and the girl-child; the prioritization of issues regarding the trafficking in human beings and the mainstreaming of human rights into anti-trafficking initiatives; the development of specific strategies and benchmarks to measure progress made in mainstreaming a gender perspective; the encouragement of Member States to ensure the broader participation of women in all fields of UN human rights activities; dialogue between and among the OHCHR, UNDP, UNICEF, United Nations High Commissioner for Refugees, UNIFEM and United Nations Population Fund in order to build up a common understanding of the fundamental link between gender issues and the human rights of women and the girl-child; and the forging of a commitment to internal gender parity within the OHCHR and recognizing the primary responsibility of Senior Management to provide active leadership in the gender mainstreaming process. The core aspects highlight the three main parts of the gender mainstreaming strategy, viz., mainstreaming, gender analysis and the promotion of and equal representation of women. The other aspects relate closely to the work of the OHCHR, i.e., they emphasize both gender training and sensitization within the OHCHR and the OHCHR's important role in promoting awareness about the link between gender and women's human rights.

In the 2001 report, the Durban conference is given much space and the report recognizes that "... the victims of discrimination on race, colour, descent and national or ethnic origin can also suffer multiple of aggravated forms of discrimination on other related grounds such as sex, language, religion, political or other opinion, social origin, property, birth or other status".³⁶³ Women's human rights are addressed in the chapter on human rights in conflict and a special focus is vouchsafed to women and peace, together with the human rights of other vulnerable groups, such as, children and the elderly and in the context of HIV.³⁶⁴ The 2001 report to the Commission on Human Rights has an extensive focus on contemporary forms of racism and racial discrimination. A chapter of the report deals with the gender dimension of racial discrimination. According to the report, issues, such as, the trafficking in women and children, violence against women, gender-based war crimes, reproductive rights, et cetera, have highlighted the interconnections between

³⁶³ UN doc. A/56/36, Arts. 5, 41–2 and 54.

³⁶⁴ UN doc. A/56/36, Arts. 63–74 and 84.

sex and race discrimination and other forms of multiple discrimination.³⁶⁵

The 2002 report to the General Assembly was prepared to after the terrorist attack of the Twin Towers in New York City and the accompanying terrorism in Washington, DC and Pennsylvania on 11 September 2001 and after the Durban conference.³⁶⁶ The report awards special emphasis to human rights and conflict, to racial discrimination and to issues regarding development. The report omits any specific chapter on *either* equality and non-discrimination *or* on gender and women's human rights issues. Further, the report does not address women's human rights to any significant extent. For example, in the chapter on human rights and conflict, there is no specific reference to gender or women's human rights, except that rape is included in the list of violations suffered by civilian populations during conflict.³⁶⁷ The report does devote a chapter on mainstreaming, but the focus of the chapter is on the mainstreaming of human rights, although the report mentions that "[t]he need to integrate a gender perspective is an issues which both human rights and development experts have increasingly recognized as a necessary component of their work".³⁶⁸

The above analysis of the reports demonstrates that while there has been an increased interest and awareness of women's human rights and gender issues within the OHCHR, this interest is not constant; the policy statement indicates that there is no one consistent approach taken within the OHCHR, Office's policy consists of a patchwork of different strategies and goals, which tend to change quite frequently depending on prioritized policy objectives.

5.5.3 The Secretariat and the Advancement of Women

The Division for the Advancement of Women is the UN Secretariat institution for the UN's work for the advancement of women and gender equality. It is only a minor UN division that services, on the one hand, the Commission on the Status of Women and the CEDAW Committee

³⁶⁵ UN doc. E/CN.4/2001/16, Arts. 53–59. The report emphasises General Comment 21 of the CERD Committee that focuses on gender factors or issues which may be interlinked with racial discrimination (Art. 60–61).

³⁶⁶ UN doc. A/57/36, see also UN doc. E/2002/68.

³⁶⁷ UN doc. A/57/36, Chapter II.

³⁶⁸ UN doc. A/57/36, Arts. 93–6, Arts. 97–102 addresses rights-based approaches.

and, on the other hand, serves as a catalyst for the UN work on gender equality.³⁶⁹ In the wake of a number of events, including the Beijing conference, the creation of the Special Advisor on Gender Issues and the establishment of the IANGWE, the work of the Division for the Advancement of Women in advancing gender mainstreaming, administering and servicing the Commission on the Status of Women and the CEDAW Committee has predominated over its work.

Because the Division for the Advancement of Women's mandate is divided on women's rights and gender analysis, the Division for the Advancement of Women also distinguishes quite clearly between rights-based and gender mainstreaming approaches. The Division for the Advancement of Women relies heavily, although not exclusively on the CEDAW and the Beijing Platform when performing its work. The rights-based approach, which, in the Division for the Advancement of Women framework, is CEDAW-related, and the gender mainstreaming approach is related to the Beijing Platform.

The Division for the Advancement of Women and OSAGI have both contributed to the development of the UN gender mainstreaming strategy in two ways, first, by developing the strategy and the gender analytical tool and, secondly, by encouraging and providing support for different UN institutions to mainstream gender. The Division for the Advancement of Women and OSAGI have also contributed directly to the efforts to mainstream a gender perspective within the UN human rights framework by preparing analyses and reports regarding what mainstreaming a gender perspective means and how to mainstream a gender perspective. For example, in the report on *Integrating a Gender Perspective into the UN Human Rights Practice* (1998), the Division for the Advancement of Women reviewed the efforts of the different treaty bodies to integrate a gender perspective and defined the *next steps* to be taken by each of the treaty bodies, as well as developing general recommendations for all the treaty bodies. In its report on integrating the gender perspective into the work of the UN human rights treaty system, the Division for the Advancement of Women made an attempt to show the interlinkages between the *women's rights are human rights* trend emanating from the Vienna Process, the woman-centred gender mainstreaming trend emanating from the Beijing Process and the growing preference for human rights and rights-based approaches within the overall UN system.³⁷⁰

³⁶⁹ The focus on both women's human rights and gender mainstreaming is also reflected in the Division for the Advancement of Women's organisation as it is divided in a gender analysis and a human rights section.

³⁷⁰ UN doc. HRI/MC/1998/6, Art. 4.

The Division for the Advancement of Women has also relied, in its work, both on the Beijing Platform and on the general shift “... in the work for gender equality from a focus on advancing women’s status to a focus on gender relations”, increasingly focused on the role of men and boys in achieving gender equality.³⁷¹ While there seem to be tendencies to frame this work in an added-value of gender equality for men language, there are also references to a more critical perspective, which, for example, focuses on “[t]he role of men as perpetrators, and as actors in ending gender-based violence”.³⁷² In the Aide-Mémoire for the Expert Group meeting on the role of men and boys, it was noted that:

[f]ull engagement of men and boys in achieving gender equality requires much greater attention to gender stereotypes and expectations about men’s roles and responsibilities, and how these expectations influence male behaviour. Such stereotypes continue to place greater emphasis, as well as greater value, on the role of men and boys in public life and in the work place, as opposed to women’s role in unpaid family labour, care giving and community. Peer pressure, socialisation processes and belief systems influence adherence to gender-specific stereotypes.³⁷³

The Division for the Advancement of Women and the OHCHR also participate in the work of the IANWGE, a network of UN offices, specialized agencies, funds and programmes which monitors the implementation of the Beijing Platform, the outcome of the Beijing+5 Session, gender-related recommendations emanating from other UN conferences and the General Assembly special sessions and gender mainstreaming within the UN system.

³⁷¹ www.un.org/womenwatch/daw/egm/men-boys2003/aide-memoire.html (28-09-2003). During the autumn of 2003, the Division for the Advancement of Women organized, in cooperation with ILO and UNAIDS, an Expert Group Meeting regarding the role of men and boys in achieving gender equality. Before the meeting, during Summer 2003, an online discussion was organized regarding the issue. The themes chosen for the online discussion were the world of work, the HIV/AIDS pandemic and the value-added of gender equality for men and boys [emphasis of the author]. The aims of the Expert group were many, viz., how to adapt existing approaches of working with men and boys with regard to, for example, the violence against women to other areas, how to suggest means for overcoming resistance to the shifts in the power relations between men and women, how to propose means for overcoming the obstacles preventing men and boys from contributing more actively towards achieving gender equality and how to elaborate on the roles of actors in civil society.

³⁷² www.un.org/womenwatch/daw/egm/men-boys2003/aide-memoire.html (28-09-2003). The critical perspective on men was first introduced into the UN human rights framework by the Special Rapporteur on violence against women.

³⁷³ www.un.org/womenwatch/daw/egm/men-boys2003/aide-memoire.html (28-09-2003).

5.5.4 Conclusions

The distance between the different geographical locations for the OHCHR in Geneva and the Division of the Advancement of Women in New York City ironically epitomizes as well the theoretical *gap* between human rights, on the one hand, and women's human rights, on the other hand. The division in labor is that the OHCHR administers and services most of the UN human rights mandates, while the Division for the Advancement of Women services the *traditional* women's human rights mandates aptly exemplifies as well the woman-centred equality strategy that aimed at advancing women and equality between the sexes through separate woman-specific initiatives. In the aftermath of the Vienna and Beijing conferences, efforts have been made to bridge the gaps between the two institutions and between human rights and women's human rights.

Still, the processes of integrating women's human rights and of mainstreaming a gender perspective are only at the most incipient stages of implementation at the OHCHR. For example, the policy statement on mainstreaming gender and women's human rights omits any kind of extensive information about how to mainstream gender and women's human rights. The policy statement, moreover fails to distinguish between the two strategies. While mixing the two strategies might have been a strategic choice and while there can be advantages to using both a rights-based strategy and a gender mainstreaming strategy, a *mélange* will only undermine the potential of each strategy if insufficient attention is paid merely to the potential of each strategy.

I have highlighted that the persistent constraints to successful gender mainstreaming within the UN relate to the questions: What does it mean? What does it do? And how should it be done? As I noted earlier, these questions are very fundamental constraints. There is, however, within the Division for the Advancement of Women, OSAGI and the newly established IANWGE much and ever-growing knowledge about how to mainstream gender. The Division for the Advancement of Women and OSAGI have also, as I have noted, shifted away from a focus on the *magic of gender* to a *grounded strategy for mainstreaming a gender perspective*. They are increasingly attempting to answer questions about *how* to mainstream a gender perspective within different contexts. In this respect, the work and contributions of the Division for the Advancement of Women's and OSAGI can certainly add input to the strategy for mainstreaming a gender perspective and women's human rights within the OHCHR.

5.6 Conclusions

The aim of this chapter has been to analyze different initiatives undertaken by different UN human rights institutions in order to mainstream a gender perspective or to integrate women's human rights. I have focused the analysis on key issues or processes within the institutions for the integration of women's human rights or for the mainstreaming of a gender perspective. I have concentrated my analysis on a ten year time period, from 1992–2002, which is the period of time during which the mainstreaming and gender turns have emerged and are being promoted within the UN system. Given the limited number of institutions and the amount of UN documentation analyzed in this chapter, I do not go as far as to suggest that the analysis provide a thorough empirical analysis of how the institutions have approached and implemented the integrative strategies. However, the analysis does provide an overview of how different institutions have tackled the exhortation to integrate women's human rights and/or to mainstream a gender perspective.

Most of the UN human rights institutions analyzed in this chapter have decided to increase their focus on women's human rights and to integrate women's human rights and/or a gender perspective. The Vienna and Beijing strategies have proven to be successful in highlighting the attention paid to women's and/or gender issues. However, the analysis also suggests that some overall challenges persist with regard to both the substance and consistency of the emphasis on women's human rights and/or a gender perspective. The lack of substance and the lack of consistency are interlinked because, without substance, it is difficult to promote consistent approaches. In other words, in the absence of any real clarity about the content, meaning and aims of the strategies, and in the absence of any type of analysis of the potential shortcomings and negative effects of the strategies, it is difficult to ensure that the strategies will be integrated beyond mere simple expressions of concern for the situation of women, either stowed under specific headings or tucked away in the ultimate or penultimate paragraphs of resolutions, declarations, guidelines or reports.

Among the human rights institutions and the mandates addressed, it was mainly the Special Rapporteurs on extrajudicial, summary or arbitrary executions and on education that had worked with their mandates in order to *integrate women's human rights or a gender perspective in any sort of substantial way*. The Special Rapporteur on the right to education, Katarina Tomaševski, was among the few mandate holders that seem to have attempted to analyze the added value of the mainstreaming strategies for her mandate. The double mainstreaming approach, launched by

Tomaševski, suggests that she recognized the necessity, even the urgency or exigency of distinguishing between different mainstreaming perspectives in order to give substance to and make use of the strategies. The Commission on Human Rights, as well as, for example, the Human Rights Committee and the CERD Committee, offer examples of attempts to give substance to the integrative strategies through well-defined and grounded approaches in their decisions to integrate women's human rights. Especially, in the case of the CERD Committee, these entities endeavour to integrate an analysis of the gender dimension of racial discrimination. Nonetheless, it, still, remains to be seen what the institutions will make of the integrative strategies in practice and on a long-term basis.

6 Conclusions

In Chapter One, I defined the main objective of this thesis as being a three-pronged analysis of the integrative parts of the dual strategies, viz., their development, their content and their institutional implementation within the UN human rights framework. In Chapter Two, I discussed the theoretical and methodological frameworks of this thesis, identifying the two principal sources of my inspiration: first, feminist scholarship addressing international law and human rights and, secondly, Carol Bacchi's What is the problem? approach. In Chapter Three, I focused on the first prong of my objective: I situated the integrative strategies into a historical context and analyzed their developments. In Chapter Four, I focused on the second prong of my objective: I analyzed the content of the integrative strategies. In Chapter Five, I focused on the third and final prong of my objective: I analyzed the institutional implementation of the integrative strategies within the UN human rights framework. Those tasks having been accomplished, I now address the aim of this chapter, which is to conclude the thesis. To aid me in my summation, I will return to some of the earlier questions posed in Chapter Two, i.e., I will try to analyze what has "really" become of the integrative strategies.

6.1 Introduction

During the period between the end of the Cold War and the events of September 11, international human rights experienced a sort of renaissance. During this period, more than before, different movements, including women's movements, seized the opportunity, went international, and translated their claims into a language of human rights. In the aftermath of the September 11 events, some human rights and women's rights scholars have noted a downside to "human rights" and "women's human rights" arguments. As Gillian Wylie notes, the arguments can "... become part of the moral justification given for waging 'war on ter-

ror' ...".¹ In their analysis of *Sex, Gender and September 11*, Charlesworth and Chinkin note that "[c]rises can have the effect of reaffirming the traditional distribution of power between women and men".²

The rather profound shift in the human rights discourse after the Cold War, however, led to a re-conceptualization of human rights and to the inclusion of new issues onto the international human rights agenda. The Vienna and Beijing strategies, i.e., the strategies for strengthening and integrating women's human rights and for the advancement of women and the mainstreaming of a gender perspective, which have been the focus of this thesis, are part of the attempts to reconceptualize, rethink and refocus the human rights agenda. The first parts of the dual strategies are constituted by their emphasis on the strengthening of the women's human rights schemes and the women's advancement schemes of the UN. These elements are not 1990s innovations, but rather they may be defined as reaffirmations of the importance of the dominant woman-centred strategies from the 1970s. It is the second parts of the dual strategies or their emphases on integrating women's human rights or mainstreaming a gender perspective that are the 1990s innovations.

As has been noted by Charlesworth, Chinkin and Wright, feminist scholarship provides less for a set of standard answers about women's oppression, than for ways of posing questions. The commitment of feminist scholarship may be seen as basically two-fold. On the one hand, their commitment is to the production of academic knowledge. On the other hand, their commitment is to the emancipation of women. This dual commitment affects how feminist scholars ask their questions, that is, their criticism needs to be weighed against the dangers of the criticism hampering the reconstructive project.³ Engle and Higgins suggest that the dual commitment has been especially prevalent in the field of international human rights for two main reasons. First, the research agenda regarding women and human rights was very limited, even up to the beginning of the 1990s. Secondly, increased knowledge or awareness about the violations of women's human rights and the extent to which women's human rights are violated are instigation enough to launch a probe for *any* kind of solution. Hence, feminist international law scholars in the field of human rights have criticized international human rights, their institutional framework and their practices, but without querying whether,

¹ Wylie 2003, p. 217.

² Charlesworth and Chinkin 2002, p. 605. See also Björk 2003 and Orford 2002.

³ See Charlesworth and Chinkin 2000, pp. 21 and 61–1. See also Chapter 2.

feminist interventions into international human rights are worthwhile on a more fundamental level.⁴ Or as Engle notes:

[w]hile I had begun [...] with many doubts about the human rights law and rhetoric, I had ended [...] by suppressing those doubts. It seemed impossible both to reject human rights and to promote women's rights. The latter issue took priority.⁵

Braidotti had cautioned feminists as early as 1991 to be moderate in their joyful celebrations of the "International" and to question whether what seemed to be facile solutions were not merely convenient pretexts, masking the inability to come to terms with national politics and local realities.⁶ Lately, feminist international law scholars and others, have begun to question the motives underlying the international community's attempts to integrate a gender perspective and to "save women". According to Guattri Spivak, for example, "... the UN must first rationalize 'woman' before they can develop her."⁷ Orford asks and with reference to the UN gender mainstreaming project:

[d]oes gender work as a category in such situations [in attempts to support the role of women in peace processes and in reconstructive projects in Bougainville, the Solomon Islands and East Timor], and if so, whose work does it do? How does this officially sanctioned desire to 'include' women as participants relate to the current enthusiasm for exporting institutions of the free market in the name of democracy? Such issues are much more complicated than the picture painted by these UN documents of a world in which, to paraphrase Spivak, white women save brown women from brown men. Failing to ask such questions of the role played by 'gender mainstreaming' in the new world order may mean that feminism ends up simply facilitating the existing projects and prioritise of militarised economic globalisation in the name of protecting and promoting the interests of women.⁸

Both Braidotti and Orford suggest that feminist scholars and activists should, to use Bacchi's words, "... consider what goes unproblematized in particular discursive constructions".⁹ In other words, as I have already noted, just because certain approaches and issues, such as the mainstreaming of a gender perspective or the recognition of different forms of violence against women were difficult to get onto the international agenda

⁴ See however Charlesworth 1999b, Engle 1992a and Orford 1998b and 2002.

⁵ Engle 1992a, p. 603.

⁶ Braidotti 1992, p. 7.

⁷ Spivak 1999, p. 245.

⁸ Orford 2002, p. 283.

⁹ Bacchi 1999, p. 207.

in the first place, it does not mean that feminists should content themselves with the results. As Bacchi suggests, problem representations are nested, one within the other. Therefore, shifting the focus of one problem representation may very well also change the focus of other problem representations.¹⁰ Hence, it is necessary to ask continually: What is the problem? What has really happened? And, last but not least, was anything excluded, if so, what was excluded while, for instance, a gender perspective was being included?

Charlesworth and Mary Wood show the dual or binary nature of the gender and human rights discourses in their analysis of the two facets of the program launched by the temporary administration in East Timor, viz., first, how the staff attempted to mainstream a gender perspective into the independence process and, secondly, how human rights were used in the same process.¹¹ According to Charlesworth and Wood the establishment of a Gender Affairs Unit within the temporary administration was a far from evident process and when established it was unclear what the Gender Affairs Unit should do. Charlesworth and Wood note, for example, that the small Gender Affairs Unit was unable to "... produce a clear definition of gender mainstreaming" and that "[i]t was unclear whether gender mainstreaming was aimed at the UNTEAT [UN Transitional Administration in East Timor] international workers, or East Timorese women, or East Timorese people in general".¹²

The case of East Timor in the UNTEAT era illustrates however the complexity of the translation of worthy public statements about the equality of women. UNTEAT's GAU [Gender Affairs Unit] has an uncertain and little-known mandate. Its funding was constantly being renegotiated and it tended to be marginalized and without proper institutional support. Language and cultural barriers have arisen between local women's groups and the GAU. There is little evidence of attention to gender issues outside the small GAU office.¹³

Hence, while I urge for critical perspectives in feminist analysis regarding international law and human rights and while I support, for example, Or-

¹⁰ Bacchi 1999, p. 5.

¹¹ Charlesworth and Wood 2002. I use Charlesworth's and Wood's research as an example, although I have not in this thesis analyzed the implementation of the integrative strategies beyond the UN system's international level. Communicating and implementing the integrative strategies in relationship to UN Member States, in UN field operations and technical assistance programmes et cetera, opens up for an array of new theoretical, legal, political and practical questions and problems to be addressed.

¹² Charlesworth and Wood 2002, p. 344.

¹³ Charlesworth and Wood 2002, p. 347.

ford's critical questioning about the role of feminist scholarship in the new imperialistic project which produces and reproduces the exclusion of Other women, I would also like to note that feminist self-reflection and auto-criticism does not mean, to put it bluntly, that patriarchy is dead. Instead, as remarked upon earlier, feminists move about in the inconvenient spaces and interstices between a self-reflective analyzing of their own shortcomings and a constant explaining to much of the *core* that sex matters. And, while the core nods, I am not always convinced that it listens.

Charlesworth writes in her article, *Alienating Oscar* (1993), about how she had been asked by the conference organizers of an early 1990s international law conference to avoid making overly provocative feminist interventions in order to avoid alienating the eminent international law professor, Oscar Schachter.¹⁴ According to Charlesworth, Schachter had not been especially disturbed, but, as Charlesworth notes in a later analysis, some international legal scholars did become rather alarmed and they have responded to feminist criticism with either cries or whispers. The *cries* have been responses from mainly the liberal tradition in international law. The criticism of these liberal proponents of international law has been mainly two fold: first, they criticize what they perceive as feminism's disrespect for the basic rules of both academic knowledge production and international law, secondly, they criticize feminists' apparent lack of gratitude for the great advances and progress that international legal scholars and the international legal community have brought about on behalf of women. The *whispers* are the non-responses from critical international legal scholarship. In other words, while most critical scholars would list feminist interventions in international law as part of contemporary international scholarship, the engagement seldom amounts to more than a disengaged acceptance.¹⁵ That is, as was noted in Chapter Two, only in the best of worlds does lack of polemic mean engaged acceptance. Mostly, it just means disengagement and a lack of interest.¹⁶

The aim of this chapter is to conclude this thesis. The three objectives of this thesis defined in Chapter One have been developed in Chapters Three, Four and Five respectively. What I will do in this chapter is to pick up (return to) the somewhat rhetorical Bacchian questions from

¹⁴ Charlesworth 1993a.

¹⁵ Feminist international legal scholarship has been criticised by for example Tesón 1993 and Fellmeth 2000. For discussions about these interventions, see Charlesworth 1994a and 1996b and Orford 2002.

¹⁶ See Chapter 2.4.

Chapter 1.1.2: What has really become of the integrative strategies? Are they a success story? Or did the possibilities and power vanish again? This chapter is divided in five main parts: In Chapter 6.2, I will analyze the “mainstreaming turn”; in Chapter 6.3, I will analyze the “gender turn”; and in Chapter 6.4, I will analyze the strategy for integrating women’s human rights into the UN human rights framework. In Chapter 6.5, I will analyze the interaction between the strategies for mainstreaming a gender perspective and integrating women’s human rights, i.e., what can be defined as one of the unintended consequences of the integrative strategies. In Chapters 6.6, I will provide some concluding comments.

6.2 The “Mainstreaming Turn” within the UN Human Rights Framework

Since the Nairobi conference, there has been recognition within the UN system that women’s advancement and equality initiatives can but marginally succeed, when promoted only in the margins. During the Vienna and Beijing conferences, dual strategies were promoted, according to which women’s advancement and equality initiatives should focus on both targeted intervention *and* mainstreaming. A continuing recognition of the importance of *targeted interventions* is necessary because in many areas, women, still, remain silenced and inequalities and injustices between the sexes, still, remain hidden.¹⁷ Women need to be empowered and inequalities and injustices thoroughly analyzed before attempts to mainstream “women” or knowledge about inequalities and injustices can fully succeed. That is, in case women are denied equal possibilities and in case there is a lack of critical knowledge about inequalities and injustices between the sexes, mainstreaming efforts will fail.

Mainstreaming, however, has become a 1990s buzzword: it is argued that mainstreaming strategies will do what the previous equality strategies did not and could not do, i.e., substantially promote women’s human

¹⁷ When addressing strategies for mainstreaming a gender perspective I underlined that the strategy formed part of a dual strategy, i.e., the strategy was supposed to be implemented in addition to the strengthening of woman-centred initiatives. I also noted that in most policy statements, manuals and guidelines for mainstreaming a gender perspective, the mainstreaming strategy in itself included different forms of targeted interventions aiming, for example, at promoting an equal representation of the sexes and women’s participation in decision-making. The mainstreaming strategy has, however, in equality discourses and in practice occasionally been promoted as the progressive alternative to targeted interventions. See Chapter 4.5.2.

rights and gender equality.¹⁸ Nevertheless, the *blame the strategy* approach, as I call it, can hide more persistent constraints to inequalities and injustices between the sexes.¹⁹ Mainstreaming will end up as nothing more than just a buzzword if the focus is shifted altogether from targeted interventions to mainstreaming, without ensuring that two remedial steps be taken. First, as was emphasized above, women must be enabled to overcome the historical and structural exclusions to which they have been subject; secondly, the knowledge production about inequalities and injustices and better practice examples must continue, and continually be incorporated in the implementation and evaluation of the mainstreaming efforts.²⁰

During this thesis-process, two ideas, other than the above emphasis on the continuing relevance of targeted interventions and of continuing knowledge production, have crystallized themselves as particularly important to recognize in order to develop successful mainstreaming strategies. I categorize these two “recognitions” as follows: (I) Recognition of the necessity to develop grounded mainstreaming strategies and to contextualize mainstreaming efforts; and (II) Recognition of the importance of “passionate mainstreamers”. Both of these “recognitions” are necessary in order to provide a substance to mainstreaming strategies and to avoid the situation where they might be haphazardly implemented or emptied or drained of their potentially transformative content when implemented.

I Grounded and Contextualized Strategies

When addressing mainstreaming strategies, I have distinguished between integrative and transformative mainstreaming strategies. *Integrative mainstreaming* includes moving an issue into a framework from which it had previously been excluded, i.e., the issue is added, but it is not expected to change the framework. *Transformative mainstreaming* includes moving

¹⁸ During the 1990s mainstreaming strategies have been promoted for gender and women’s human rights issues. As was noted in Chapters 4.5.2 and 4.6.2 mainstreaming strategies have also been used with, for example, rights-based approaches in general. When I in this chapter, Chapter 6.2, address the mainstreaming strategy I rely on knowledge and examples from the strategies for mainstreaming a gender perspective and integrating women’s human rights, although I am convinced that the conclusions at least in some respect are generalizable.

¹⁹ See Chapter 1.3.2.

²⁰ The UN Womenwatch database with links to, for example, the Division for the Advancement of Women’s, OSAGI and the IANGWE provide much substantial information about how the UN has approached mainstreaming strategies, see www.un.org/womenwatch/ (12-01-2004).

an issue into a framework and allowing it to have an impact on that framework, to transform it. As, for example, Beveridge and Nott have pointed out, integrative mainstreaming strategies have become favored by public institutions, although transformative mainstreaming strategies, in fact, are the only mainstreaming strategies that are considered to have long-term effects on the equality discourses of an institution.²¹ I emphasized that at their best mainstreaming strategies have a twofold aim: to move issues from the margins to the mainstream and to allow the issues to have an impact on and transform the mainstream.²²

In order to manage the shift from purely integrative to transformative mainstreaming strategies, i.e., in order to implement the twofold aim, two aspects have crystallized themselves in this thesis as particularly important: mainstreaming strategies should be both grounded and contextualized. When discussing gender analysis, I emphasized the shift from what I called strategies based on the *magic of gender* to *grounded* strategies, i.e., while an important component of mainstreaming strategies is that they are participatory and that individuals working with them may have a say about their content, it is as important that different steps for successful mainstreaming be identified and that different ways of evaluating mainstreaming strategies be developed. Only then might the shift envisaged by OSAGI be effectuated, i.e., the shift from “adding a women’s component” to “... bringing the perceptions, experience, knowledge and interests of women as well as men to bear on policy-making, planning and decision-making”.²³

However, grounded, well-defined and critical mainstreaming strategies do not succeed if they are not *contextualized*, i.e., adapted to a context, be it institutional, process-related or framework-related, a context in which they are supposed to function. Guidelines for mainstreaming, such as the one developed by OSAGI serve as an aid for mainstreaming efforts. They provide a hint as to what sort of areas a strategy for mainstreaming a gender perspective should focus on.²⁴ However, they do not provide insights into how for example the OHCHR or a branch of the OHCHR should go about when mainstreaming a gender perspective.

The OHCHR’s policy statement regarding *Gender mainstreaming and the human rights of women* is an example of an attempt to adapt the broad-based and system-wide strategy for mainstreaming a gender per-

²¹ Beveridge and Nott 2002a, see also Chapter 4.5.2.

²² See Chapter 4.5.2.

²³ *Gender Mainstreaming: Strategy for Promoting Gender Equality*, OSAGI, 2001.

²⁴ For an overview of the OSAGI guidelines, see www.un.org/womenwatch/osagi/gendermainstreaming.htm (12-01-2004) and Chapter 4.5.2.

spective into the specific context of the OHCHR. The policy statement draws on the ECOSOC agreed conclusions 1997/2 on gender mainstreaming relating them to the Commission on Human Rights resolutions on *Integrating the Human Rights of Women throughout the United Nations System*. The policy statement attempts, then, to distinguish how a gender perspective should be used within the human rights framework in order to gender mainstream within the OHCHR.²⁵ The policy statement is adamant about gender analysis, but it also highlights the importance of promoting women's human rights and it contains a special emphasis vis-à-vis the question of trafficking. That is, the OHCHR's strategy for mainstreaming a gender perspective is given content or substance by the Office's work for women's human rights and by one of the currently most discussed violations of women's human rights, viz., trafficking. Note, however, that the policy statement does not define the different components of the strategies for mainstreaming a gender perspective or integrating women's human rights and it does not distinguish between the strategies.²⁶

Since the late-1990s and especially during recent years, there have been attempts within the UN to develop and implement grounded and contextualized mainstreaming strategies. Hence, one might argue that it is only now that mainstreaming has been made possible. An important aspect in the process of grounding and contextualizing the mainstreaming strategies, however, is to include in the process an analysis of whether and why a mainstreaming strategy would be the best solution for the sought-after goal. That is, a strategy for mainstreaming a gender perspective might not *add* anything, for example, to the work of a branch of the OHCHR, but what the branch might need is a well-grounded and contextualized strategy for the integration of women's human rights.

II Recognizing Passionate Mainstreamers

When addressing mainstreaming strategies, I made a distinction between expert-driven and participatory mainstreaming efforts.²⁷ To a large extent, the UN has come to promote *expert-driven mainstreaming* strategies, i.e., the woman-centred institutions are being promoted as knowledge banks and motors for the mainstreaming strategies and the roles of gender units and focal points are being accentuated. Expert-driven mainstreaming efforts have been criticized as being counter-productive to substantial

²⁵ *Gender Mainstreaming and Human Rights of Women* 2000, pp. 5–6.

²⁶ See Chapters 5.5.2, 5.5.4 and 6.5.

²⁷ See Chapter 4.5.2.

mainstreaming, which implies that everyone in an institution be given the opportunity to analyze what mainstreaming means for her or his own work. However, as was noted above, for mainstreaming strategies to succeed, it is necessary to know *what* to mainstream, *how* to mainstream and *why* to mainstream. Hence, the criticism against expert-driven mainstreaming solutions pertains mostly to the assumption that there is a “silver bullet” or a once and for all kind of checklist for successful mainstreaming. Evidently expertise is needed in order to know what to mainstream. Similarly, however, *participatory mainstreaming* has been criticized, especially participatory mainstreaming efforts which, through participation, aim at endowing an unrepresented or marginalized group with “a voice”. Orford provides an example of how at a UN seminar on extreme poverty, efforts were made via participation to give the poor a voice. The seminar “... ‘broke new ground’ by inviting thirty ‘very poor persons’ to New York to engage in ‘direct dialogue’ with UN bodies”.²⁸ The staged participation, using thirty “very poor people” as representative for millions, well-meaning as it may be, operates to mask the extent to which the very poor are unable to have a say in the often global politics that produce and reproduce poverty.²⁹

Nevertheless, what tends to be overlooked in mainstreaming manuals, but what became evident from both my analysis of the implementation of the integrative strategies is that besides the decisions to integrate women’s human rights and to mainstream a gender perspective, besides the mainstreaming efforts made by the woman-centred institutions, besides gender desks and focal points and besides different structures for inter-agency cooperation, the integrative strategies are promoted by individuals, mostly women, within an institution who feel passionately³⁰ about the issues regarding equality between the sexes. Successful mainstreaming is not achieved through the adoption of a mainstreaming decision or through “borrowed” experts or gender training programs alone, but through the arduous and persistent work of, what I would call, *passionate mainstreamers*. One could probably argue that the adoption of the strategies for integrating women’s human rights and mainstreaming a gender perspective has legitimized and created tools for individuals within the UN human rights system who previously had had an interest in and concern for women’s human rights and equality issues.

²⁸ Orford 2002, p. 280.

²⁹ Orford 2002, p. 280.

³⁰ I use the words “passionately” and “passionate” deliberately. Work for equality and justice demands much knowledge and even more persistence, but it tends to demand an equal amount of personal commitment.

The priority given to women's human rights and gender equality issues during the 1990s, and the adoption and promotion of the integrative strategies have provided legitimacy for those individuals already working with women's human rights and equality issues and for broad-based and system-wide work for equality between the sexes. The chosen focuses of work of Jahangir, the Special Rapporteur on arbitrary, extrajudicial or summary executions and of Tomaševski, the Special Rapporteur on the right to education, for example, have largely been influenced by the emphasis on the importance of mainstreaming a gender perspective. Similarly, the General Comment No. 25 (2000) adopted by the CERD Committee on the gender-dimension of racial discrimination and the General Recommendation No. 28 (2000) adopted by the Human Rights Committee on the equality of rights between women and men were, as I have been informed, drafted by women on the committees concerned about equality issues.

Hence, the Vienna and Beijing processes have resulted in the creation of new policies and institutional structures, but it is the people who have been interested in equality issues and who continue to be interested in such issues, who push the strategies forward. That is, a decision to mainstream will remain one among many non-implemented policy-decisions, but for one or a few people, mostly women,³¹ who have a thorough knowledge about the inequalities and injustices between the sexes and who are committed to working for equality and justice. Hence, whatever approach to mainstreaming is chosen, in order for mainstreaming strategies to be less haphazardly implemented, it is necessary to engender and promote more effective support structures and sufficient resources for those who *really* do the work.

³¹ I emphasized above that the passionate mainstreamers tend to be women and this was also suggested by the examples from the UN human rights system. I am *not* suggesting that it is only women who care for equality issues or who can work for equality issues. I know that this is not true. However, to some extent (in practice to a large extent) it is women who do the work in the "women's human rights movement" and it is mostly women who predominantly emphasize the importance of mainstreaming a gender perspective.

6.3 The “Gender Turn” within the UN Human Rights Framework

The “gender turn” in equality politics, i.e., the shift from woman-centred to gender-centred equality strategies can be defined as the 1990s innovation in equality politics. When analyzing the gender turn in UN equality politics during the Beijing process, I remarked that the term “gender” was far from being an uncontroversial term and that many competing and contradictory definitions of gender flourished during the process. When providing a background to the term “gender” as one of the preferred, but also one of the most debated, analytical categories or relations in feminist and gender studies scholarship, I pointed out a number of problems with respect to the usages, translations and travels of the analytic category of gender. I have also noted that there remains a great deal of confusion within the UN system about what gender means, how a gender perspective should be applied in different sectors and what its contribution should or could be.

Bacchi and Halsanger suggest that concepts such as, gender do more than just map preexisting groups of individuals or phenomena. They can, in fact, create and reinforce certain ways of viewing people and issues.³² Hence, while creating a category of so-called “gender issues”, or while subsuming an array of what had been women’s or equality issues under the banner of “gender issues”, aimed at changing how we think and work with certain issues and at promoting equality – the result can be rather the contrary.

In her analysis of the category of “women” and its implication for public equality discourses, Bacchi noted that using the category of woman showed tendencies to limit political change for women. Further, the use of the category of woman contributed to the marginalization of women and it forced feminists and other women’s advocates to assign a meaning to the category of women. Bacchi notes that, by her criticism of the category of women she does not “... suggest that feminists should refuse the meanings assigned to ‘women’”, because deploying the category of women and its diverse meanings might be strategically important.³³ However, as Bacchi argues

[b]y drawing attention to the political effects of different deployments of ‘women’ we can bring other items onto the agenda. [...] [W]e can draw attention to the ways in which identity categories are themselves formed by

³² Bacchi 1996, p. 2.

³³ Bacchi 1996, p. 11.

their boundaries, by what they exclude. We can also show how talk about 'women' can leave some women's needs unaddressed. This can produce a more reflexive, responsive and progressive agenda.³⁴

Similarly, I would argue that the success of the strategy for mainstreaming a gender perspective might be discerned from the different meanings that can be assigned to and that, in fact, have been assigned to the term "gender" and to the impact of gender analysis.

I will refer here below to some of the competing meanings assigned to the term gender and to the idea of gender analysis, which, in this thesis, have crystallized themselves as being particularly important features of the UN human rights system. My intention is to outline the tendencies or trends and consequences of the following actions: (I) of interpreting gender as an synonym to sex; (II) of interpreting gender as a synonym to women; (III) of interpreting gender with a men-centred focus; and (IV) of pinning down and fixing the term gender as a sex-related term which can be delimited from other social categories such as race, ethnicity, class, geographical origin, et cetera.

I Mainstreaming Sex

When discussing gender as an analytical category, I commented that I prefer using what Margaret Davies has defined as a critical language of sex instead of the by now diluted language of gender.³⁵ Davies' preference for the language of sex, however, is a result of the feminist deconstruction of the sex/gender distinction and of the fading elegance of the term gender. During the 1970s and 80s, the sex/gender distinction provided a means to overcome assumptions about "women's nature". Later, however, the distinction has been criticized for giving preference to certain types of "women's gender".³⁶ The deconstruction of the sex/gender distinction for the benefit of the notion of gender has been criticized both for taking "the body" and "real life" out of feminist analysis and for giving a content to gender that is as ontological as sex.³⁷ How gender has been framed in much academic and certainly public equality discourses, obscures our understanding of sex as a power-impregnated social category interrelated to other difference-producing social categories.³⁸

³⁴ Bacchi 1996, p. 13.

³⁵ Davies 1997, pp. 31–2, see also Chapter 2.2.2.

³⁶ See Chapter 4.3.1.

³⁷ Baridotti 1995 and Moi 1997. See also Chapter 4.3.1.

³⁸ Braidotti 1995, see also Chapter 4.3.2.

In the UN equality discourses the term gender is often both explicitly and implicitly understood as meaning sex. This understanding, however, is not a result of a wish to return to a critical language of sex or of a desire to add a political edge to an argument, but rather the contrary.

Explicitly, the term gender has been equated with sex, for example, in the Holy See interpretive comment to the Beijing Platform, according to which it was urged that gender be understood as "... grounded in biological sexual identity, male or female".³⁹ While the Holy See recognized that how men and women are, is culturally variable, it wished to limit the extent to which gender was perceived as construed, viz., as merely a matter of interpretation. Similar definitions of gender have been included in the Statute of the International Criminal Court, which in Article 7(3) states that "[f]or the purpose of this Statute, it is understood that the term 'gender' refers to the two sexes, male and female, within the context of society. The term 'gender' does not indicate any meaning different from the above".⁴⁰ The Durban Programme indicates a meaning similar to the above in its first footnote. The Durban Programme includes only two footnotes in its text. The "gender footnote" reproduces the Statute's definition, stating that "[f]or the purpose of this Declaration and Programme for Action, it was understood that the term 'gender' refers to the two sexes, male and female, within the context of society. The term 'gender' does not indicate any meaning different from the above". The Holy See's interpretive comment does hold a considerable weight within the Catholic world. The inclusion of a similar definition in the Statute of the International Criminal Court, which remains among the few international so-called hard law documents that uses a language of gender and the reproduction of this definition in the Durban Programme, however, does lend legitimacy to viewing gender as just another word for sex.⁴¹

Implicitly, the term gender has been equated with sex in both the Beijing Platform and in many later attempts by different UN human rights institutions to use a language of gender and apply a gender perspective. The use of terms such as "gender-segregated" data or statistics, "gender balance", "underrepresented gender", et cetera, implies that the term gender is also substituted, in addition to other usages, as another word for sex. That is, when the Beijing Platform stresses the importance

³⁹ UN doc. A/Conf.177/20, see also Chapter 3.5.2.

⁴⁰ For a discussion, see Moshan 1998.

⁴¹ The term gender is, however, increasingly used in international law. For example, the CRC Optional Protocol on the sale of children, child prostitution and child pornography (2000) refers to gender discrimination.

of “gender-segregated” statistics or when the UN treaty bodies ask Member States to in their periodic reports include “gender-segregated” statistics asking, the Platform or the treaty bodies are asking for information distinguished by sex. The gradual shift towards a language of gender when, in fact, nothing but sex is meant, is probably due to a confusion regarding what gender means, at the same time as efforts are made to fulfill the gender mainstreaming objective.

The above referred to explicit and implicit tendencies to interpret gender as sex do however not promote what Davies has referred to as a critical language of sex. Instead, the above tendencies undermine the potential critical edge of gender. That is, they reaffirm ideas of women’s and men’s identities as fixed and natural. They undermine attempts to allow women and men to break out of their traditional roles. They undermine analysis where gender is viewed as one of many social dimensions that have an effect on our lives. At the same time, given that gender is a concept that seems to be difficult to understand, the practice of using gender as sex undermines one of the positive effects of sex, which is that most people know what is meant by sex. Moreover, as the term gender is introduced into legal language with content overlapping with and similar to sex, the *mélange* of gender and sex, at some stage, will have an influence on the interpretation of non-discrimination clauses that, still, tend to use a language of sex.

II Mainstreaming Only Women

The shift from woman-centred to gender-centred equality politics was seen by women’s advocates and other proponents of the strategy for mainstreaming a gender perspective as an attempt to do away with viewing women as the problem in equality politics to problematizing, instead, the inequalities and injustices reproduced in the “gender relationship”. According to Flax, the notion of gender relations is meant to capture the complex set of social relations that refer to a changing set of historically variable, gender- and power-impregnated social relations.⁴² That is, analyzing how inequalities between the sexes are produced and reproduced, entails making a shift from targeting women to targeting the historical and social arrangement of the sexes. With respect to equality politics, the shift from woman-centred to gender-centred strategies entails a shift from viewing women as the problem, to viewing unequal and oppressive gender relations as the problem.

⁴² Flax 1987, p. 628 and Svensson 1997 and 2001. See also Chapter 2.2.2.

Within the UN human rights framework, the strategy for mainstreaming a gender perspective, however, has occasionally come to be mainly a strategy for mainstreaming women or women's gender. In Chapter Five, I noted that some of the UN human rights institutions had come to interpret the strategy as a strategy for *mainstreaming a concern for women*. That is, when addressing the efforts of the Security Council and the General Assembly with regards the integrative strategies, I noted that the two institutions had fulfilled their mainstreaming mandate through adding "a concern for women".⁴³ I characterized as positive any expressions of concern offered by institutions, which traditionally had failed to indicate any concern over women's human rights or equality issues. However, I also noted that these expressions of concern tended to *force* women into traditional roles as being either especially vulnerable human beings and victims or as being especially caring or good peace-builders.⁴⁴

The strategy for mainstreaming a gender perspective was, however, promoted as a strategy that would target both women and men. The shift in focus from a woman only focus to a focus on gender relations, implies a shift from viewing inequalities and injustices between the sexes as a "women's issue" to viewing them as everybody's concern and as a product of the social construction of unequal gender relations. When the term gender is used as just another word for woman, the shift from woman-centred to gender-centred approaches is undermined, at the same time as women, as well as women's very material concerns with respect to especially economic and social rights run the risk of being marginalized even more, as they are discussed as non-material and sex-neutral "gender issues".

III Mainstreaming Only Men

The Cairo conference was a forerunner with regard to using a critical approach, which focuses on both women and men. The Cairo Programme emphasized that "[m]en play a key role in bringing about gender equality since, in most societies, men exercise preponderant power in nearly every sphere of life".⁴⁵ That is, by focusing on reproduction and violence against women, the Cairo Programme did note that women do

⁴³ For further references to the notion of mainstreaming a concern for women, see Chapter 5.2.

⁴⁴ See Otto's (1999) discussion regarding women's "allowed" identities in the Beijing Platform in Chapter 3.5.2. See also the analysis of the Security Council's woman-centred initiatives in Chapter 5.2.2.

⁴⁵ Cairo Programme, Chapter 4, Art. 24.

not by themselves produce inequalities and injustices. Therefore, strategies for equality and justice should focus on both women and men. The Beijing Platform, however, downplayed the critical approach in favor of a *partnership approach*, according to which men and women are equal partners in the common equality project. For example, in accordance with the Beijing Mission Statement, "... women share common concerns that can be addressed only by working together and in partnership with men towards the common goal of gender equality around the world".⁴⁶ The Draft Beijing Platform Art. 224, however, included references to a critical partnership approach, similar to the one found in the Cairo Programme. The Draft Beijing Platform focused partnership between women and men, and women's and men's shared responsibility within the spheres of sexuality and reproduction. According to draft Art. 224:

[c]hanges in both men's and women's knowledge, attitudes and behaviour are necessary for achieving harmonious partnerships between women and men. It is essential to improve communication between women and men on issues of shared responsibility, including sexuality and reproductive health, so that women and men are equal partners in public and private life. Special efforts are needed to emphasize men's shared responsibility and promote their active involvement in responsible parenthood and sexual and reproductive behaviour.

The article was deleted from the Beijing Platform⁴⁷ – possibly because the proposed interpretation of the partnership approach was to change oriented. Braidotti has criticized the academic "gender turn" for promoting an assumption about a new symmetry between the sexes.⁴⁸ That is, feminists or gender studies scholars, in their attempts to recognize difference have done away with a feminist power analysis according to which the production of difference includes production of power-impregnated hierarchies. Similarly, the shift in focus between the Cairo, the Beijing and the Beijing+5 conferences has undermined the critical and relational potential of gender analysis.

While the UN strategy for mainstreaming a gender perspective does not seem to be promoted with much critical *and* relational content, some of the interviewees noted, however, that there was an openness towards giving attention to both women's and men's genders, but that there was, still, very little knowledge about how such an effect should be achieved.⁴⁹ During recent years the UN has begun to promote gender approaches

⁴⁶ *Beijing Mission Statement*, Art. 3.

⁴⁷ UN doc. A/Conf.177/L.3, Art. 224.

⁴⁸ Braidotti 1995, p. 151.

⁴⁹ Interviews Nos. 1, 4, 6 and 13.

and gender projects that focus on men and on the construction of masculinities in different contexts. For example, the Special Rapporteur on violence against women has focused on the idealization of violent male personalities and on the construction of violent forms of masculinities.⁵⁰ In October 2003 the Division for the Advancement of Women did organize an expert meeting and online discussion under the title of *The Role of Men and Boys in Achieving Gender Equality*. The meeting served as part of the Division's preparations for the Commission on the Status of Women's March 2004 session, at which the Commission on the Status of Women focused on the issue of *The Role of Men and Boys in Gender Equality*. Outside the realm of the women's human rights-centred and human rights-centred institutions, The UN has also initiated a growing number of men-centred gender projects.⁵¹

The men-centred approaches to gender and men-centred gender projects and programmes are interesting. When dealing with issues, such as reproduction and gender-based violence, they can contribute to a better understanding of inequalities and injustices between the sexes and to the promotion of equality and justice. However, as I noted when addressing critical male and masculinity studies, men-centred approaches are not necessarily about promoting equality.⁵² Men-centred approaches are often about advancing knowledge about men and the construction of masculinities and about teaching men about themselves and constructions of masculinities. The fact that men-centred approaches are not always about equality is noted in the *From Beijing to Beijing+5* report. The report states that

[e]fforts to work with men must, however, always be put in the overall context of promoting gender equality and eliminating the adverse social and cultural values, institutional structures and processes that produce inequalities between women and men. Increased attention to men should not mean a deviation from committed support to women by reducing the funding available for women-targeted inputs. Nor should it suggest the abandonment of support to women's individual or collective initiatives.⁵³

⁵⁰ UN doc. E/CN.4/1998/54 and UN doc. E/CN.4/2002/83. See Chapter 5.3.2.

⁵¹ Some examples include the INSTRAW project on *Men's Roles and Responsibilities on Ending Gender-based Violence*, see www.un-instraw.org/en/research/mensroles/index.html (12-01-2004); the UNICEF has also promote project dealing with men and boys and gender-based violence, see www.unicef.org/gender/index.html (12-01-2004); the UNAIDS *Men and Aids – A Gendered Approach*, which was part of the UNAIDS *World Aids Campaign 2000*, see www.thebody.com/unaidsmen/contents.html (12-01-2004); and the UNDP programme for *Men and Gender Equality*, see www.sdn.undp.org/gender/programmes/men/ (12-01-2004).

⁵² See Chapter 4.3.2.

⁵³ *From Beijing to Beijing+5* 2000, p. 10.

The men-centred approaches are very important, but they are not necessarily about promoting equality, and they are certainly not about promoting women's human rights – that is, for some reason, men-centred approaches are very seldom about men *and* women.

IV Mainstreaming Nothing but Gender

In the beginning of this chapter, I referred to Orford's cautionary comment, according to which *we* needed to carefully analyze whose game gender plays.⁵⁴ Spivak addresses the internationalization of the gender concept, noting that “[t]here just is no way to sponsor global cultural studies made easy without falling into neo-colonialism”.⁵⁵ In Chapter Four, I cited Haraway who argued that while at times feminist scholars have attempted to hold “... race, sex/gender and class analytically together”, the “three” are always reduced to “two”, which “... quickly become lonely ones in the vanguard”.⁵⁶ These things, as Haraway notes, “matters politically”.⁵⁷ Beveridge and Nott have noted that:

[i]t is logically impossible in the long term to pursue a strategy which requires a focus on the real lives of people, a strategy which calls attention to factors which lie behind their inequality, their poverty, their exclusion and which examines the processes which produces that inequality, poverty or exclusion, and to see only gender. While the moment may yet be distant where it is appropriate to abandon ‘women’s policy’ or ‘gender policy’ at a strategic level, it is suggested that on a theoretical level the mainstreaming concept calls into question the privileged position within many social institutions of ‘gender’ as opposed to race, ethnicity, religion, economic status, age, (dis)ability and other factors which operate as a challenge to the liberal orthodoxy and the neutrality of law.⁵⁸

That is, the language of gender and the promotion of the strategy for mainstreaming a gender perspective, in the way that OSAGI does it, viz., as a “... globally accepted strategy for promoting gender equality” reduces the complexities of global sex-based and intersecting inequalities and injustices.⁵⁹ The potential reductionism hides both global inequalities and injustices and differences between groups of women and men. In different contexts of the UN, particularly in conjunction with the Durban

⁵⁴ Orford 2002, p. 293. See also Chapter 6.1.

⁵⁵ Spivak 1999, p. 105.

⁵⁶ Haraway 1991, pp. 128–9.

⁵⁷ Haraway 1991, pp. 128–9.

⁵⁸ Beveridge and Nott 2002a, p. 311.

⁵⁹ See at www.un.org/womenwatch/osagi/gendermainstreaming.htm (12-01-2004).

Conference and in the work of the CERD Committee, efforts have been made to analyze the interconnections between gender and race, and to approach the gender-dimension of racial discrimination. These approaches, however, are not dominant approaches.⁶⁰ The “gender turn” in UN equality politics however, has reproduced an understanding of gender, which has a strong focus on women’s and men’s genders without necessarily viewing gender as an analytical dimension that relates to the other difference-producing and power-impregnated analytical dimensions.

Above I have referred to a number of shortcomings regarding how the strategy for mainstreaming a gender perspective has been approached within the UN human rights framework. The shortcomings are analytical, but with considerable legal, political and practical implications. I have, especially, emphasized the tendencies to equate “gender” with sex, with only women, with only men and with only “gender”, i.e., as unrelated and separate from other difference-producing categories and relations. The “gender turn”, nevertheless, has been fairly successful in the sense that what was once, at the beginning of the 1990s the new language for public equality politics, has become, by 2003, the dominant language used in UN equality politics.

6.4 The Reintegration of Women’s Human Rights

From the outset, the UN-based human rights regime included women as subjects of human rights and attempted to foster the equal and non-discriminatory promotion and protection of human rights. The early international human rights regime, however, was seldom interpreted as emphasizing equal rights between women and men. The International Bill of Rights remained a blunt instrument for women’s rights advocates. However, the early woman-centred human rights regime codified what was called women’s human rights, but the early instruments, such as the Convention on the Political Rights of Women, did not reinterpret human rights. These early instruments were mainly attempts to insist that women be acknowledged as rights’ holders in a human rights context. Later, woman-centred human rights instruments, such as the CEDAW, included attempts to reinterpret human rights and to insert new rights into the human rights framework. The creation of separate women’s

⁶⁰ The strategies for identifying and fighting multi-dimensional discrimination are also dependent on a category politics, which can, as was noted in Chapter 3.3.1 have detrimental effects.

human rights instruments and, as was also the case, separate UN institutions for the advancement of women and women's human rights, actually resulted in increased attention being paid to women's human rights, but brought about a marginalization of women's human rights within the overall human rights framework. The post-Cold War "human rights turn" in international politics, however, opened up a window for the rights claims of feminists and other alternative groups. The 1990s have been the decade when human rights went from being one of many Cold War battlegrounds to becoming a core area of international, regional and national law and politics. Different groups, including women's groups, have been able to use this space for making their, at times, conflicting, rights-claims.

While both the creation of specific woman-centred human rights instruments and the current emphasis on the integration of women's human rights might be seen as necessary strategies for providing adequate attention to women as rights holders and for acknowledging how women's human rights are violated, these same strategies are also symptoms of the paradox of feminism.⁶¹ That is, since the establishment of the UN and the adoption of the Universal Declaration, women have had, at least in a formal sense, the same rights and have been considered equal to *other* humans. In reality, due to the historical and structural exclusions of women from the power-dense spheres of life and the discrimination of women, women have neither had the same rights nor the equal status. Hence, women as rights holders and women's human rights have had to be promoted via a differentiation between women and other humans, and thereby supporting the notion that women are the exception, while others are the norm. The adoption of the Vienna strategy for the promotion and integration of women's human rights aims at continuing the trend of transforming the UN human rights framework, at the same time as it aims at overcoming the split between human rights and women's human rights and the marginalization of the latter body of rights. As shall be shown below, the Vienna strategy, however, does not, break out of the paradox.

During this thesis-process three ideas have crystallized themselves as especially important for the inchoateness of the strategy for integrating women's human rights. The three elements include: (I) the distinction between human rights and women's human rights, i.e., the aforementioned

⁶¹ The so-called "paradox of feminism" or the "feminist dilemma", a paradox and dilemma largely shared with other movements and advocacy groups attempting to promote the position or rights of a specific group, has been addressed previously in this thesis in Chapters 3.2.1, 3.5.2, 5.3.3 and 5.5.

paradox or dilemma; (II) the overly successful collectivism of women's human rights; and (III) the thematic approach to women's human rights. The three ideas or issues are largely interlinked.

I Human Rights versus Women's Human Rights

Earlier, I referred to the paradox of feminism, an entanglement by which feminists are wedged in by their own argumentation in furtherance of women's equality. The trap, albeit, as it seems, an unavoidable one, is that any sort of differentiation of women from *all* humans vitiates or impairs the opportunity of approaching women as *any sort of* human beings. Yet by *not* differentiating women from *other* human beings, tends to lead to an exclusion of women and women's concerns. The paradox of feminism has been reproduced within the UN human rights system, first, with the separation between *women's* human rights and *human* human rights, secondly, with the emphasis on the integration of women's human rights into the overall human rights framework. With regard to the strategy for the integration of women's human rights the paradox crystallizes itself in two different ways. First, it has contributed to the development of the two overlapping integrative strategies at the Vienna and Beijing conferences. Second, it contributes to the hesitations regarding *what*, in fact, should be integrated?

The Vienna and Beijing strategies have developed in and emerged from separate, albeit interlinked human rights and women's advancement frameworks within the UN. The world conference processes reproduce the distinction between *women's* human rights and *human* human rights. Or, rather, they tend to reproduce the *dual nature* of the UN women's human rights framework as both a part of the UN human rights framework and a part of the UN women's advancement and gender equality framework. That is, the world conference processes reproduce the paradox of feminism: women remain both within and beyond, they are included, yet different (or treated differently).

The adoption of the Vienna strategy for the promotion and the integration of women's human rights aimed at overcoming the split between human rights and women's human rights and the marginalization of the latter body of rights, at the same time as it aims at continuing the ongoing trend of transforming the UN human rights framework, which has been in play since the adoption of DEDAW (1967). Assumptions have been made that the Vienna strategy was further developed at the Beijing conference. These assumptions, however, are only partially true. The Beijing Platform furthered the Vienna Programme's "integrative agenda", i.e., through the adoption of the strategy for mainstreaming a

gender perspective. The Beijing Platform put an edge on the idea of integration.⁶² However, with regard to human rights, specifically, the Beijing Platform reaffirmed the Vienna Programme's emphasis on institutional integration, at the same time as it reformulated the Vienna Programme's women's *human rights* language in women's *rights* terms.

The strategy for integrating women's human rights has not been as well developed as the strategy for mainstreaming a gender perspective.⁶³ In UN practice different interpretations of what it means to integrate women's human rights, however, have developed.⁶⁴ The dominant interpretations, or the dominant practices, have been a CEDAW-centred and institutional approach to the integration of women's human rights. That is, the focus, to a large extent, has been on bringing the CEDAW framework closer to the *human* human rights framework through the strengthening of the CEDAW and through an emphasis on increased institutional cooperation. The efforts to strengthen and integrate the CEDAW has had a fair amount of success during the last decade, i.e., the CEDAW is now, placed on the same footing as the other human rights treaties within the UN human rights treaty body system, not in the least because of the adoption of the Optional Protocol to the CEDAW.

The CEDAW-centred approach counteracts the CEDAW's position as the "poor relation of the treaty bodies".⁶⁵ It can be suggested that the CEDAW-centred and the institutional approaches to the integration of women's human rights contribute to strengthening the legal and institutional framework for women's human rights. However, neither approach by itself will lead to the realization of women's human rights, in actuality. Implementing the strategy for integrating women's human rights through nothing but a CEDAW-centred approach can lead to an excessive focus on formal advances and on law in the realization of women's human rights. For example, when the General Assembly or the human rights treaty bodies apply a CEDAW-centred approach to the integration of women's human rights, they tend to focus on the "three R's" (ratification, reservations and reporting), i.e., they emphasize the importance of ratifying the CEDAW, of withdrawing reservations from the CEDAW and of reporting to the CEDAW Committee. The "three R's" are impor-

⁶² I have in this thesis used the terms mainstreaming and integration interchangeably, as the terms in the UN framework are used as synonyms. However, the success of the "mainstreaming" language and the development of mainstreaming strategies in the aftermath of the Beijing conference provides an edge to integration.

⁶³ See Chapter 4.6.3.

⁶⁴ See Chapter 5.

⁶⁵ Bustelo 2000, p. 81.

tant for strengthening and consolidating the UN human rights framework and its standing as a global framework, but as was noted in Chapter One, the adoption of treaties and of new institutional structures only means going halfway or less to changing practices in actuality.

It can be said that the creation of specific women's human rights regimes have failed to bring about the inclusion of women and the inclusion of rights crucial for women's well-being into the core of the UN human rights framework. The inclusions might, however, occur with the wearing down over time of old interpretations of human rights and with the defying of silences at a crossroads and meeting-place for international law-making.⁶⁶

II Overly Successful Collectivism

While the early 1990s women's movement, gathered under the slogan *Women's rights are human rights* contributed to moving *women* and *certain* violations of women's human rights into the limelight, it also contributed to the tendencies to view women as *a* collectivity and to identify women's human rights by way of certain, fairly well specified, thematic rights. The overly successful collectivism of the women's human rights approach and the thematic approaches to women's human rights, as I have named them, have resulted in a shift from women's individual rights to an increasingly collective approach to women's human rights, and they have also resulted in a preference for thematic approaches with regard to women's human rights. Hence, while collective approaches can be positive and rewarding, they have, nonetheless, with regard to women's human rights, been furthered at the expense of identifying and acknowledging each woman's right to her individuality and her individual rights, as well as at the expense of identifying and acknowledging socioeconomic and other disparities affecting women's situations. I will here address the consequences of the overly successful collectivism, while the consequences of the thematic approach will be addressed under the next heading.

When addressing the "gender turn", I noted that the strategy for mainstreaming a gender perspective, when promoted as *the* globally accepted strategy for *gender* equality, led to the hiding of global scale inequalities and injustices. These inquires include not only sex-based inequalities and injustices, but also economic and social inequalities and injustices.

⁶⁶ Nevertheless, in order for the wearing down process to promote equality and justice, and not produce new inequalities and injustices (or disguise the old one's), it is necessary to recognize that everyone is not represented at the international law meeting place – and that lack of representation is certainly not democratic.

Similarly, the collectivism of the woman's human rights approach can lead to an erosion of some of the basic ideas behind human rights, i.e., that the human rights framework provides rights for the individual and aim at protecting the individual from violations committed primarily by the state, but increasingly also by other actors. While the idea of the autonomous individual has been one of the issues criticized by feminists, some feminist scholars, such as Smart and Salecl have attempted to *save* the autonomous individual and the focus on her or his individual rights.⁶⁷ The focus on individual rights is also one of the aspects emphasized as the strength of a rights-based approach.⁶⁸ Hence, the women's-human-rights-are-human-rights movement and some of the ways in which the UN discourse about women's human rights have developed run the risk of undermining core benefits of the human rights framework.

III The Thematic Approach to Women's Human Rights

Much of the success of the post-Cold War women's human rights discourse is due to its identification of certain thematic women's human rights violations under the aegis of which, the broad-based women's human rights approach has been promoted. The women's human rights discourse has been especially successful with regard to the question of violence against women and the assertion that violence against women is a violation of human rights. The "violence theme", while, as Otto has noted "... designed with careful attention to women's diverse experiences of violence" has come to give priority to certain types of violence.⁶⁹ The discourse has especially focused on different forms of harmful traditional practices, identified in the early 1990s largely by the issue of female genital mutilation and now, today by the issue of so-called honor crimes.⁷⁰ Another key theme that has crystallized itself is trafficking. In the early 1990s the trafficking and sex trade discourses, to a large extent, were focused on the sex trade in children in South East Asia, while the key focus during recent years has been on the trafficking in women from former Eastern Bloc countries.⁷¹ The themes constitute pressing concerns with regard to women's human rights, but the "thematic approach" might misdirect the focus from, for example, underlying economic and social inequalities and injustices.

⁶⁷ Salecl 1994 and Smart 1989. See also Chapter 2.3.1.

⁶⁸ See Chapter 4.6.2.

⁶⁹ Otto 1999, p.124.

⁷⁰ See Chapters 1.2.1 and 2.3.3.

⁷¹ Kouvo 2003.

Bacchi's *What is the problem?* approach emphasized the need of a shift of focus from what has been defined as the problem to how the problem has been defined. This shift of focus allows us to analyze the shortcomings of our definition of the problem, it enables us to analyze how political platforms, policies and strategies for equality, while furthering equality at one level, reproduce exclusions or injustices at other levels. The women's human rights approach has moved some women and some women's human rights from the margins towards the core. The women's human rights approach has, however, also come to reproduce an exclusion of both so-called second and third generation rights. Otto has, for example, noted that while the post-Cold War women's human rights campaign was "... not conceived as an assertion of civil and political rights to the exclusion of other categories of rights", it has unfortunately, in its production of "... the masculinist form and content of human rights law" come to assert some rights at the expense of others.⁷²

Consequently, the global women's human rights strategy has had the unintended effect of endorsing the post-Cold War dominance of civil and political rights.⁷³

The overly successful collectivism, and the priority given to a thematic approach to women's human rights has simplified the idea of what women's human rights are. As Engle notes, when discussing feminist approaches to the tensions between women's human rights and human rights:

[t]he literature and the movement surrounding women's human rights has possibly challenged the human rights core more than any other literature and movement. At the same time, it has become one of the core's staunchest defenders. Even as every author identifies and conveys difficulties with the discourse, they all make it somehow work for them. The core is shaken, but it remains. Women are still on the periphery.⁷⁴

Attempts to push the notion of women's human rights forward along with the new interpretation of what women's human rights are and what should be included in the human rights framework have also contributed to the tendency to address *all* issues as human rights issues. That is, it is not asked whether using a human rights framework or using a rights' rhetoric would be beneficial for the sought-after goal. The danger with successful and well-traveling concepts is that the general public, politicians, policy-makers, lawyers and the media may grow tired of the subject

⁷² Otto 1999, p. 123.

⁷³ Otto 1999, p. 124.

⁷⁴ Engle 1992a, p. 605.

matter without *really* having dealt with the core of the problem. This idea is one of the conclusions reached by the Special Rapporteur on violence against women; she noted that while laws against violence against women have been adopted during the last decade, reality lags behind.

6.5 Submerged Strategies and Multiple Mainstreaming

Social constructivist and discursive methods, which in this thesis have been approached mainly through Bacchi's *What is the problem?* approach, are based on a recognition that knowledge is historically, culturally and socially contingent. We, scholars, to use Haraway's words, speak from the belly of the monster, i.e., we cannot avoid interpreting facts through the lenses of our history, culture and social contexts. As Bacchi emphasizes, we, feminist scholars and policy makers, change reality when analyzing, for example issues regarding women's inequality.⁷⁵ While disturbing social conditions certainly do exist, these issues are, as Bacchi notes "... once they are given the shape of an interpretation, once they are characterized as a 'problem' [...] no longer real".⁷⁶ That is, our interpretation of the problem and our proposed solutions, might have less to do with the issue at hand, than with prejudices and political constraints.

In Chapter Two, I underlined that the recognition that knowledge is subjective and situated and the recognition that we cannot but interpret reality should not be perceived as excuses for bad research or for disengagement in the pressing inequalities and injustices experienced and lived by people in the contemporary global community. Rather, the contrary should be true. The acknowledgement of knowledge as situated enables us to avoid the "god trick", i.e., to avoid claiming that our knowledge and our vision of the world are objective and universal.⁷⁷ It also forces us to constantly question our knowledge claims and what our partial visions *do* to the world.

In accordance with the above assertions, it is also impossible to develop and implement strategies for equality, such as, the strategies for mainstreaming a gender perspective or for integrating women's human rights, without these strategies themselves becoming affected in some way by the very contexts in which they were developed and crafted by some

⁷⁵ Bacchi 1999, pp. 1–13. See also Chapter 2.3.3.

⁷⁶ Bacchi 1999, p. 9, see also Chapter 2.3.3.

⁷⁷ Haraway 1991, p. 189.

shortcomings which often go unrecognized or unnoticed at the outset and without the strategies mutating in sometimes rather surprising ways upon implementation.⁷⁸

The “belly of the monster”, the inescapable context of the integrative strategies, is the biased history and realities of human rights, which have resulted in the dominance of certain rights frameworks, and which have contributed to the separation of women’s human rights from the overall human rights framework. However, the *blame the strategy* approach, as I have called it, tends to be somewhat shortsighted. Because of this flaw or feature, the integrative strategies were developed less with a focus on historical and structural injustices resulting in the silencing of many women’s experiences and the marginalization of *women’s* human rights and of women as rights’ holders. Rather, the integrative strategies were developed with a focus on the shortcomings of the most recent equality experiments. That is, the integrative strategies have developed to serve as add-ons and to remedy the shortcomings or woman-centred equality strategies and of the marginalizing effects of having, within the overall UN human rights framework, a separate women’s human rights framework. It is uncontested and irrefutable that the integrative strategies have contributed to the erosion of the dominant notion that inequalities and injustices between the sexes are “women’s issues” to be dealt with in and by a “women’s margins”. Equality has become a concern and a goal expressed by many. There are, however, no easy solutions to adjust complex and multi-layered patterns of inequality and injustice. No one strategy will lead to equality or justice and most strategies have unintended consequences.

The development of the different approaches to and the different strategies for the promotion of equality between the sexes in Vienna and Beijing seems unintentional. The difference in the subject matter to be integrated and targeted is not a result of deliberate choice, but a result, rather, of the different contexts and focuses of the Vienna and Beijing conferences. Similarly the parallel development of the two dual strategies is not a result of deliberate choice, but, rather, again, a result of the inter-governmental and institutional structures within the UN that promote the *dual nature* of the UN women’s human rights schemes as part of both the UN human rights framework and of its women’s advancement and gender equality framework. The Vienna conference was a human rights conference, and it addressed women’s human rights as part of the

⁷⁸ The mutations of the strategies for mainstreaming a gender perspective and integrating women’s human rights were analysed in Chapters 6.3 and 6.4.

human rights framework and with the primary focus of strengthening the position of women's human rights within the UN human rights framework. The Beijing conference was a women's conference. It addressed women's human rights as one of many areas to be targeted in order to "advance women and gender equality". The strategy for mainstreaming a gender perspective, in and of itself, has nothing to do with the human rights framework. Because it has come to be promoted in the Beijing process and in its aftermath as *the* system-wide and broad-based strategy, it has also come to be adopted into and have an effect on the UN human rights framework. As I have suggested, it has also taken over the strategy for integrating women's human rights.

The *two* dual strategies, and especially their integrative strategies have, however, become gradually submerged when developed for and implemented within the UN human rights framework. When addressing the five-year review of the Vienna conference, I noted that the five-year review report of the High Commissioner for Human Rights to the General Assembly emphasized the strategy for mainstreaming a gender perspective, which, according to the report, was a result of both the Vienna and the Beijing conferences.⁷⁹ The five-year review of the High Commissioner for Human Rights to the Commission on Human Rights includes a similar reference. In accordance with the report:

[o]ne of the important means of achieving the objective of full respect for the human rights of women is the mainstreaming of the human rights of women in the activities of the human rights programme and in all activities of the United Nations. The Secretary-General has taken the lead in implementing the Economic and Social Council agreed conclusions relating to gender mainstreaming throughout the United Nations system. The High Commissioner is intensifying efforts to integrate a gender perspective in all human rights activities and to help ensure that the human rights of women are included as an important element of all activities of the system.⁸⁰

The citation suggests that the strategies for mainstreaming women's human rights and a gender perspective are viewed as two mutually reinforcing strategies, but the specificities are not especially highlighted. Similar references are made in Secretary-General's reports presented to the Commission on Human Rights first under the agenda item on *Further Promotion and Encouragement of Human Rights and Fundamental Freedoms* and during later years under the agenda item on *Integration of the Human*

⁷⁹ UN doc. A/53/327, Arts. 40 and 43.

⁸⁰ UN doc. E/CN.4/1998/122, Art. 82.

Rights of Women and the Gender Perspective, entitled *The Question of Integrating the Human Rights of Women throughout the United Nations System*.⁸¹ The reports include different definitions of certain terminology, viz., integration of women's rights, on the one hand, on the other hand, the mainstreaming of a gender perspective means. The report prepared for the Commission on Human Rights session in 1998 included the following definitions of "mainstreaming", "mainstreaming women's human rights" and "gender mainstreaming":

(7) Mainstreaming involves the placing of an issue within the pre-existing institutional, academic and discursive framework. It is the opposite of marginalisation and, as such, is an appropriate way to characterize the objective of gender-perspective integration.

(8) Not only does the issue need to be placed within the pre-existing structures, it needs to be a constant consideration which is central to every aspect of the work of that structure. The aim of mainstreaming women's human rights is to ensure that the inevitable social construction of men's and women's respective roles does not permit a discriminatory bias which subordinates women to men or places women in any kind of inferior position.

(9) Gender mainstreaming is thus the process of bringing an awareness of the status of women into the public arena, this primarily involves realizing that there is a gender dimension to every occurrence of a human rights violation. Secondly, it involves increasing women's participation in the mechanisms dedicated to protecting and promoting human rights. Moreover, coordination and cooperation between different parts of the United Nations system must be strengthened if mainstreaming is to have a lasting impact on the way human rights work is executed.⁸²

The definitions provide for a very interesting mélange of the different strategies and what is thought to be necessary prerequisites for and the goals of mainstreaming women's human rights and a gender perspective. As can be noted, the mainstreaming of women's human rights is defined as a tool for fighting discriminatory effects of the social construction of women's and men's roles, rather than as a strategy that derives its force

⁸¹ E/CN.4/1998/49/Add.1, UN doc. E/CN.4/1999/67, UN doc. E/CN.4/1999/67/Add.1, UN doc. E/CN.4/2000/67, UN doc. E/CN.4/2001/71 and UN doc. E/CN.4/2002/81, UN doc. E/2003 (early version) and UN doc. E/CN.4/2003/72.

⁸² UN doc. E/CN.4/1998/49, Arts. 7–9. See also UN doc. E/CN.4/1999/67, Arts. 8–10. In a later report the definition is submerged into one article, see UN doc. E/CN.4/2000/67, Art. 8. Note that the two definitions have been excluded from the year 2000 and 2001 reports, see UN doc. E/CN.4/2001/71 and UN doc. E/CN.4/2002/81.

from already codified women's human rights and that aims at promoting women's human rights. Gender mainstreaming is defined as having a very strong woman-centred content, i.e., as being a strategy for furthering awareness about women's status and for promoting women's participation in and position within the UN human rights framework.

The partial submersion of the two strategies and, especially, the lack of efforts to distinguish between the two strategies encumber the implementation of the strategies with unnecessary burdens. These encumbrances can undermine the potential of and the implementation of each specific strategy.

The submersion of the policy-based strategy for mainstreaming a gender with the strategy for integrating women's human rights can undermine the woman-focus and the law-focus of the latter strategy. First, the fact that women are rights' holders on equal terms with men and that, *en plus*, women's human rights have been codified in, for example, the CEDAW can be both strategically important and empowering. Submerging the strategy for integrating women's human rights with the strategy for mainstreaming a gender perspective sabotages the "woman focus" or the first mentioned strategy. The strategy for integrating women's human rights is a woman-centred strategy and it is so for good reasons, because, *de facto*, in many parts of the world, women enjoy neither basic civil and political nor basic economic, social and cultural rights. Secondly, the idea of human rights *law* carries with it a considerable amount of good will. It is imbued with a certain amount of good will. The policy-based strategy for mainstreaming a gender perspective can end up sabotaging the force of the law argument both by undermining the distinction between human rights law and soft law or policy, and by undermining the focus on individual rights.⁸³ The argument that women's human rights are legal rights and, therefore, they should be implemented, has a rather dubious record of success. International human rights' laws focus on individual rights has been criticized for its "Western" and "male" biases. Nevertheless, when arguments *for* human rights law are expressed, it is often the law-argument and the individual rights argument, which are emphasized as the benefits or strengths of international human rights.⁸⁴

The submersion of the strategy for integrating women's human rights with the strategy for mainstreaming a gender perspective, on the other

⁸³ Similar points of views were expressed by Salecl (1994) and Smart (1989). See Chapter 2.3.1.

⁸⁴ See for example Chapters 2.3.1, 2.3.2 and 4.6.2.

hand, leads to a woman-only focus and undermines the transformative potential of gender analysis. A gender perspective, at its best, can be used to overthrow taken-for-granted truths about women and men. And a gender analysis of the diversity of women and men and, especially, of the gender relationship, can enable us to identify new reasons for inequalities and injustices and to develop new models for solving “gender-based” inequalities and injustices. The women’s human rights perspective unintentionally added as an integral component of a gender perspective implies a shift in focus from gender (relations) to women. Similarly the human rights framework *fixes* the focus of a gender analysis defining what issues a gender analysis should target, creating a preference for rights-based solutions.

The strategy for integrating women’s human rights, however, can benefit from the strategy of mainstreaming a gender perspective and vice versa, but in order for these two strategies to support rather than undermine each other, their difference needs to be defined and utilized. When the strategies are decisively or definitively distinguished from each other, the potential of each one can be used to support advances in women’s human rights and gender equality. In Chapters Four and Five, I touched upon issues relating to “multi-dimensional” and “double” mainstreaming approaches noting, however, that, to date, there seem to be few examples within the UN human rights framework where different mainstreaming strategies, and especially the strategies for mainstreaming women’s human rights and a gender perspectives, are used in support of each other.⁸⁵ Deploying “multi-dimensional” mainstreaming approaches and “double” mainstreaming approach as defined by the Special Rapporteur on education, Tomaševski, will probably become increasingly common. This prediction is based on two suppositions, first, because promotion within specialized schemes is viewed as an insufficient mechanism, and secondly because mainstreaming strategies have become so common that it is inevitable that they overlap.

Tomaševski argues that it is only by using both a gender perspective and a women’s human rights-based approach that the rights of girls and

⁸⁵ Chinkin promotes, for example, in her *Gender Mainstreaming in Constitutional and Legal Affairs* (2001) what she calls a rights-based approach to gender mainstreaming. The World Health Organization has also with respect issues regarding reproduction adopted gender- and rights-based approaches. See www.who.int/reproductivehealth/gender/tools.html (28-09-2003), www.who.int/reproductive-health/gender/modules.html (28-09-2003), www.who.int/reproductive-health/mps/index.htm (28-09-2003), www.who.int/health_topics/gender (28-09-2003).

women to education will be sufficiently protected.⁸⁶ The gender perspective enables one to perform an analysis of why, how and with what consequences women are discriminated against vis-à-vis educational matters. The rights-based approach enables one to move beyond what Tomaševski calls the “human capital approach to education”, i.e., with a rights-based approach, education has a value in and of itself, education is an individual right. Combining the different mainstreaming strategies in a fruitful manner involves, however, as Tomaševski has noted, “... a considerable conceptual, strategic and operational challenge”.⁸⁷ Tomaševski does not propose the double mainstreaming approach as a system-wide and broad-based strategy, but, within the context of education, she has identified a need for the double mainstreaming approach. The last remark is important because I would not like to suggest, having criticized both the strategy for mainstreaming women’s human rights and a gender perspective, that the *solution* lies in between the two.

6.6 The Strategies Became the Goal

The promise of the three-pronged objective set forth at the outset of this thesis included providing a background for the integrative parts of the dual strategies as well as situating them into contexts or contextualizing them. Further, it was promised that the content and the institutional implementation of the strategies would be analyzed. I noted in Chapter One that I was interested in the integrative strategies because, as it seemed, they had so swiftly become everyone’s darlings. I noted that feminist history *and* common sense suggested that if everyone would become fluent either overnight or within a short period of time in languages of gender and human rights, then one would probably have to start asking questions about what really happened? What was the actual victory? What was the price paid? Where did the possibilities, opportunities and power go again? While, here, in this thesis, I have analyzed the development, content and institutional implementation of the integrative strategies, this thesis is only a beginning for the unpacking of the integrative strategies.

When addressing the feminist perspectives on international law in Chapter Two, I criticized Charlesworth’s and Chinkin’s approach to in-

⁸⁶ UN doc. E/CN.4/1999/49, Art. 18. Tomaseski seeks the foundation to the “double mainstreaming strategy” in E/1997/27, E/CN.6/1997/9, p. 3. See also Tomaševski’s later reports, UN doc. E/CN.4/2000/6, UN doc. E/CN.4/2001/52, UN doc. and E/CN.4/2002/60. For further discussion and Tomaševski 1998c. and Chapter 5.3.2.

⁸⁷ UN doc. E/CN.4/1999/49, Art. 19.

ternational law, according to which international law, first, needed to be analyzed and unpacked from a feminist perspective, and, secondly, reconstructed to fit women's experiences and needs. I noted that feminist scholars seemed to be bargaining with the system, suggesting that we support the system for now and we try to explore its potentials for promoting equality and justice, but that we will also keep an eye on whether the system delivers.⁸⁸ In retrospect, I have taken the very same approach with regard to the integrative strategies. I have analyzed the development, content and implementation of the strategies, commenting that the strategies are encumbered with some rather fundamental constraints and that they have changed during this process of implementation – and not necessarily for the better. However, I have not wanted to discard the strategies, but rather, have wanted to save them – for the sake of equality.

The strategic approach is defensible, although not necessarily for the sake of equality and justice. The strategy for integrating women's human rights has been promoted since the Vienna conference in 1993, although the strategy for mainstreaming a gender perspective has dominated the UN's equality discourses since the mid-1990s. During the early years of its development, the strategy for integrating women's human rights was overshadowed by the issue of violence against women, which, although an important issue, fails to capture the whole problematic concerning women's enjoyment of their human rights. During this time, the strategy for mainstreaming a gender perspective was far from well comprehended, at least, beyond the sphere of woman-centred institutions. The terms, "mainstreaming" and "gender", were used, but as I have shown, without a clear content. That is, during most of the 1990s people, who were supposed to implement the strategies, neither understood nor were able to use the strategies. It has only been during the last few years that more user-friendly guidelines and manuals for mainstreaming a gender perspective have been published by the woman-centred institutions. It has only been during this same, very recent period of time that various UN human rights institutions have adopted decisions and tailored made guidelines for their contexts in order to integrate women's human rights or mainstream a gender perspective. Hence, it is too premature, to attempt to predict a future for or to discard the integrative strategies.

It is possible to state that during the last few years, the integrative strategies have moved into a new phase as more and more attention is currently being channeled into the grounding and contextualizing of the strategies. Nonetheless, some fundamental constraints do remain, by-products, at least, perhaps, in part of the processes of grounding and

⁸⁸ Charlesworth and Chinkin 2000, pp. 60–1. See also Chapter 2.3.2.

contextualizing. There are ongoing tendencies to neutralize the strategies. The strategy for integrating women's human rights has been activated, utilizing mainly CEDAW-centred, institutional- and thematic-approaches, marginalizing as it seems a holistic approach that emphasize women's economic and social rights. The strategy for mainstreaming a gender perspective has become a strategy that both women and men should be able to profit from equally instead of being a strategy, which, from an analytical perspective, focuses equally on women and men in order to promote equality more effectively.

The neutralization of the strategies has resulted in a shift, whereby the integrative strategies are no longer viewed as *means to an end*, but rather as *the end in and of themselves*. The idea behind the integrative strategies had been to move women's human rights or a gender perspective into the "mainstream" in order, thereby, promoting women's enjoyment of their human rights or "gender equality". Now, the formal or formalized *adding* of women's human rights or gender components seems to have overshadowed the goals. That is, the strategies are no longer means to a goal. They are no longer approaches which would entail constant evaluation of whether the strategies are actually performing, viz., actually promoting women's human rights and gender equality. We now seem to have arrived at the point where the adoption of the strategies and the inclusion of references to "women's human rights" or to "gender" have become goals in and of themselves.

Bibliography

The bibliography entries marked with a star (*) are secondary references.

- Abeyesekere, Sunila. 1995. Consolidating Our Gains at the World Conference on Human Rights: A Personal Reflection. *Canadian Women's Studies/Cahiers de la femme* vol. 15, no. 4, pp. 6–11.
- *Abu-Odeh, Lama. 1997. Comparatively Speaking: The “Honor” of the “East” and the “Passion” of the “West”. *Utah Law Review* no. 2, pp. 287–307.
- Afkhami, Mahnaz. 2000. Cultural Relativism and Women’s Human Rights. In *Women and International Human Rights Law, vol. II*, edited by Askin, Kelly and Koenig, Dorean M. New York: Transnational Publishers, Inc.
- Agamben, Giorgio [translated by Heller-Roazen, Daniel]. 1998. *Homo Sacer. Sovereign Power and Bare Life*. California: Stanford University Press.
- Agosin, Marjorie, ed. 2001. *Women, Gender and Human Rights. A Global Perspective*. New Brunswick, New Jersey and London: Rutgers University Press.
- Alexander, Jacqui M. and Mohanty, Chandra Talpade, eds. 1997. *Feminist Genealogies, Colonial Legacies, Democratic Futures*. New York and London: Routledge.
- Ali, Shaheen Sardar. 2000. *Gender and Human Rights in Islam and International Law. Equal Before Allah, Unequal Before Man?* Netherlands: Kluwer Law International.
- Alston, Philip, ed. 1996. *The United Nations and Human Rights. A Critical Appraisal*. Great Britain: Clarendon Paperbacks.
- Alston, Philip. 1996a. Critical Appraisal of the United Nations Human Rights Regime. In *The United Nations and Human Rights. A Critical Appraisal*, edited by Alston, Philip. Great Britain: Clarendon Paperbacks.
- Alston, Philip. 1996b. The Committee on Economic, Social and Cultural Rights. In *The United Nations and Human Rights. A Critical Appraisal*, edited by Alston, Philip. Great Britain: Clarendon Paperbacks.
- Alston, Philip. 1996c. The Commission on Human Rights. In *The United Nations and Human Rights. A Critical Appraisal*, edited by Alston, Philip. Great Britain: Clarendon Paperbacks.
- Alston, Philip and Crawford, James, eds. 2000. *The Future of the UN Human Rights Treaty Monitoring*. Great Britain: Cambridge University Press.
- Alston, Philip and Steiner, Henry J. 1996. *International Human Rights in Context. Law, Politics and Morals, first edition*. Great Britain: Oxford University Press.

- Alston, Philip and Steiner, Henry J. 2000. *International Human Rights in Context. Law, Politics and Morals, second edition*. Great Britain: Oxford University Press.
- Altink, Sietse. 1995. *Stolen Lives. Trading Women into Sex and Slavery*. London: Scarlet.
- American Anthropological Association's Statement on Human Rights. 1996 [1947]. In *International Human Rights in Context. Law, Politics and Morals*, edited by Steiner, Henry J. and Alston, Philip. Oxford: Clarendon Press.
- Anderson, Bonnie S. 2000. *Joyous Greetings. The First International Women's Movement 1830–1860*. New York: Oxford University Press.
- An-Na'Im, Abdullahi Ahmed, ed. 1992. *Human Rights in Cross-Cultural Perspectives. A Quest for Consensus*. Philadelphia: University of Pennsylvania Press.
- Annan, Kofi A. 1997. Strengthening United Nations Action in the Field of Human Rights: Prospects and Priorities. *Harvard Human Rights Law Journal* vol. 10, pp. 1–9.
- Apodaca, Clair. 1998. Measuring Women's Economic and Social Rights Achievement. *HRQ* vol. 20, no. 1, pp. 139–172.
- Arendt, Hannah. 1967 [1951]. *The Origins of Totalitarianism (third edition)*. London: George Allen & Unwin Ltd.
- Ashworth, Georgina. ed. 1995. *A Diplomacy of the Oppressed. New Directions in International Feminism*. London and New Jersey: Zed Books Ltd.
- Ashworth, Georgina. 2000. Political Perspectives on the Civil and Political Rights of Women. In *Women and International Human Rights Law, vol. II*, edited by Askin, Kelly and Koenig, Dorean M. New York: Transnational Publishers, Inc.
- Askin, Kelly D. and Koenig Dorean M., eds. 1999. *Women and International Human Rights Law, vol. I. Introduction to Women's Human Rights Issues*. New York: Transnational Publishers, Inc.
- Askin, Kelly D. and Koenig Dorean M., eds. 2000. *Women and International Human Rights Law, vol. II. International Courts, Instruments, and Organizations and Select Regional Issues Affecting Women*. New York: Transnational Publishers, Inc.
- Askin, Kelly D. and Koenig Dorean M., eds. 2001. *Women and International Human Rights Law, vol. III. Toward Empowerment*. New York: Transnational Publishers, Inc.
- Bacchi, Carol Lee. 1996. *The Politics of Affirmative Action. 'Women', Equality & Category Politics*. Great Britain: SAGE Publications Ltd.
- Bacchi, Carol Lee. 1999. *Women, Policy and Politics. The Construction of Policy Problems*. London, California and New Delhi: SAGE Publications.
- Bader Ginsburg, Ruth and Jones Merritt, Deborah. 1999. Affirmative Action: An international Human Rights Dialogue. *Cardozo Law Review* vol. 21, pp. 253–282.
- *Baden, S. and Goetz, A.M., 1998. Who needs sex when you can have gender? Conflicting discourses on gender at Beijing. In *Feminist Visions of Development*, edited by Jackson, C. and Pearson, R. London: Routledge.
- Bailey, Sydney D. 1996. The Security Council. In *The United Nations and*

- Human Rights. A Critical Appraisal*, edited by Alston, Philip. Great Britain: Clarendon Paperbacks.
- Baker, Susan and Doorne-Huiskes, Anneke van, eds. 1999. *Women and Public Policy. The Shifting Boundaries Between the Public and Private Spheres*. England and USA: Ashgate Publishing Ltd./Company.
- Balibar, Etienne. 1992. *Les Frontières de la démocratie*. Paris: Éditions la découverte.
- Banton, Michael. 2000. Decision-taking in the Committee on the Elimination of Racial Discrimination. In *The Future of UN Human Rights Treaty Monitoring*, edited by Alston, Philip and Crawford, James. Great Britain: Cambridge University Press.
- Barnett, Hilaire. 1998. *Introduction to Feminist Jurisprudence*. London: Cavendish Publishing Ltd.
- Barlebo Wenneberg, Søren [translated by Nilsson, Björn]. 2001. *Socialkonstruktivism – positioner, problem och perspektiv*. Helsingborg: Liber.
- Bartlett, Katharine T. and Kennedy, Rosanne, eds. 1991. *Feminist Legal Theory. Readings in Law and Gender*. USA and United Kingdom: Westview Press.
- Bayefsky, Anne F. 2001. *The UN Human Rights Treaty System. Universality at the Crossroads*. The Hague, London and New York: Kluwer Law International.
- Beigbeder, Yves. 2000. The United Nations Secretariat Reform in Progress. In *The United Nations at the Millennium. The Principal Organs*, edited by Taylor, Paul and Groom A. J. R. London and New York: Continuum.
- Bell, Diane. 1992. Considering Gender: Are Human Rights for Women, Too? An Australian Case. In *Human Rights in Cross-cultural Perspectives. A Quest for Consensus*, edited by An-Na'Im, Abdullahi Ahmed. Philadelphia: University of Pennsylvania Press.
- Bell, Emma. 2001. Gender and Governance: A Bibliography. *BRIDGE Development – Gender*, no. 11. Sussex: Institute for Development Studies.
- Berger, P. L. and Luckman T. 1966. *The Social Construction of Reality: A Treatise in the Sociology of Knowledge*. New York: Anchor Books.
- Beveridge, Fiona and Nott, Sue. 2002a. Mainstreaming, A Case for Optimism and Cynicism. *Feminist Legal Studies* vol. 10, pp. 299–311.
- Beveridge, Fiona and Nott, Sue. 2002b. Mainstreaming Gender in European Public Policy: Bibliography. *Feminist Legal Studies* vol. 10, pp. 313–28.
- Binion, Gayle. 1995. Human Rights: A Feminist Perspective. *HRQ* vol. 17, no. 3, pp. 509–526.
- Bisilliat, Jeanne. 2000. La dynamique de “genre” dans les politiques de développement en Afrique. *Afrique Contemporaine* no. 196, pp. 75–82.
- Björk, Malin. 2003. Trying to Make Sense ... in the Caves of the UN Building in New York. *Scum Grrrrls* no. 3, pp. 14–5.
- Björk, Malin and Kouvo, Sari. 2002. Det förklädda motståndet. *Bang. Feministisk kulturtidskrift* no. 2-3, pp. 65–9.
- Bob, Clifford. 2002. Globalization and the Social Construction of Human Rights. In *Globalization and Human Rights*, edited by Brysk, Alison. Berkley, Los Angeles and London: University of California Press.

- Bobbio, Norberto [translated by Cameron, Allan]. 1996. *The Age of Rights*. Cambridge and Oxford: Polity Press and Blackwell Publishers Ltd.
- Bock, Gisela. 1991. Challenging Dichotomies: Perspectives on Women's History. In *Writing Women's History. International Perspectives*, edited by Offen, Karen, Roach Pierson, Ruth and Rendall, Jane. Bloomington and Indianapolis: Indiana University Press.
- Bouayad-Agha, Fatih and Hernández, Homero L. 1996. *Comparison of Methods of Calculating Equitable Geographical Distribution within the United Nations Common System*. Geneva: Joint Inspection Unit Report 1996/7.
- Boyd, Susan M, ed. 1997. *Challenging the Public/Private Divide: Feminism, Law and Public Policy*. Toronto: Toronto University Press.
- Braidotti, Rosi. 1992. The Exile, the Nomad, and the Migrant. Reflections on International Feminism. *Women's Studies International Forum* vol. 15, no. 1, pp. 7–10.
- Braidotti, Rosi. 1995. *Nomadic Subjects. Embodiment and Sexual Difference in Contemporary Feminist Theory*. New York: Columbia University Press.
- Braidotti, Rosi and Vonk, Esther, eds. 2000. *The Making of European Women's Studies. A Work in Progress Report on Curriculum Development and Related Issues*. Netherlands: ATHENA/University of Utrecht.
- Braidotti, Rosi, Vonk, Esther and van Wichelen, Sonja, eds. 2000. *The Making of European Women's Studies, vol. II. A Work in Progress Report on Curriculum Development and Related Issues in Gender Education and Research*. Netherlands: ATHENA/University of Utrecht.
- Braithwaite, Ann. 2002. The Personal, the Political, Third-Wave and Postfeminisms. *Feminist Theory* vol. 3, no. 3, pp. 335–44.
- Brems, Eva. 1997. Enemies or Allies? Feminism and Cultural Relativism as Dissident Voices in Human Rights Discourse. *HRQ* vol. 19, no. 1, pp. 136–64.
- Brooks, Ann. 1997. *Postfeminisms. Feminism, Cultural Theory and Cultural Forms*. London and New York: Routledge.
- Brownlie, Ian and Goodwill-Gill, Guy S., eds. 2002. *Basic Documents on Human Rights, fourth edition*. Oxford: Oxford University Press.
- Buchanan, Ruth and Pahuja, Sundhya. 2002. Collaboration, Cosmopolitanism and Complicity. *NJIL* vol. 71, pp. 297–324.
- Bulbeck, Chilla. 1998. *Re-orienting Western Feminisms*. Cambridge: Cambridge University Press.
- Bunch, Charlotte and Reilly, Niamh. 1994. *Demanding Accountability. The Global Campaign and Vienna Tribunal for Women's Human Rights*. New York: Centre for Women's Global Leadership, Rutgers University.
- Bunch, Charlotte. 1995a. Transforming Human Rights from a Feminist Perspective. In *Women's Rights Human Rights. International Feminist Perspectives*, edited by Peters, Julia and Wolper, Andrea. New York and London: Routledge.
- *Bunch, Charlotte 1995b. The Global Campaign for Women's Human Rights: Where Next after Beijing? *St. John's Law Review* vol. 69, pp. 171–8.
- Busby, Karen. 1989. The Maleness of Legal Language. *Manitoba Law Journal* vol. 18, pp. 191–212.
- Bustelo, Maria. 2000. The Committee on the Elimination of Discrimination

- against Women at the Crossroads. In *The Future of the UN Human Rights Treaty Monitoring*, edited by Alston, Philip and Crawford, James. UK: Cambridge University Press.
- Buss, Doris Elisabeth. 1997. Going Global: Feminist Theory, International Law, and the Public/Private Divide. In *Challenging the Public/Private Divide. Feminism, Law and Public Policy*, edited by Boyd Susan B. Canada: University of Toronto Press.
- Buss, Doris and Herman, Didi. 2003. *Globalizing Family Values. The Christian Right in International Politics*. Minneapolis and London: University of Minnesota Press.
- Butler, Judith. 1990. *Gender Trouble: Feminism and the Subversion of Identity*. New York: Routledge.
- Butler, Judith. 1993. *Bodies that Matter. On the Discursive Limits of "Sex"*. London and New York: Routledge.
- Byrnes, Andrew. 1996. The Committee against Torture. In *The United Nations and Human Rights. A Critical Appraisal*, edited by Alston, Philip. Oxford: Clarendon Press.
- Byrnes, Andrew. 1997. Human Rights Instruments Relating Specifically to Women, with Particular Emphasis on the Convention on the Elimination of All Forms of Discrimination against Women, in *Advancing the Human Rights of Women: Using International Human Rights Standards in Domestic Litigation*, edited by Byrnes, Andrew, Connors, Jane and Bik, Lum. London: Commonwealth Secretariat.
- *Byrnes, Andrew, Connors, Jane and Bik, Lum, eds. 1997. *Advancing the Human Rights of Women: Using International Human Rights Standards in Domestic Litigation*. London: Commonwealth Secretariat.
- Byrnes, Andrew. 2000a. Using International Human Rights Law and the Procedures to Advance Women's Human Rights. In *Women and International Human Rights Law*, edited by Askin, Kelly D. and Koenig, Dorean M. New York: Transnational Publishers, Inc.
- Byrnes, Andrew. 2000b. The Convention against Torture. In *Women and International Human Rights Law*, edited by Askin, Kelly and Koenig, Dorean M. New York: Transnational Publishers, Inc.
- Cameron, Iain. 2002. *An Introduction to the European Convention on Human Rights*, fourth edition. Uppsala: Iustus förlag.
- Campbell, Carolyn Kohrs. 1989. *Man Cannot Speak for Her. Vol. 1: A Critical Study of Early Feminist Rhetoric*. USA: Greenwood Press.
- Cançado Trindade, Antônio A. 1998. The Interdependence of All Human Rights – Obstacles and Challenges to their Implementation. *International Social Science Journal* no. 158, pp. 513–23.
- Carlson, Åsa. 2001. *Kön, kropp och konstruktion. En undersökning av den filosofiska grunden för distinktionen mellan kön och genus*. Stockholm: Brutus Östlings Bokförlag Symposium.
- Carlsson Wetterberg, Christina. 1992. Från patriarkat till genussystem – och vad kommer sedan? *KvT* no. 3, pp. 34–48.

- *Carnera Ljungström, Alexander. 2000-01. Radikalt demokrati og nomadisk ret – Spinoza, Negri og Deleuze. *Slagmark*.
- Cartwright, Dame Silva. 2000. The Committee on the Elimination of All Forms of Discrimination against Women. In *Women and International Human Rights Law*, edited by Askin, Kelly and Koenig, Dorean M. New York: Transnational Publishers, Inc.
- Cassese, Antonio. 1996. The General Assembly: Historical Perspective 1945–1989. In *The United Nations and Human Rights. A Critical Appraisal*, edited by Alston, Philip. Oxford: Clarendon Press.
- Cassese, Antonio. 2001. *International Law*. Oxford: Oxford University Press.
- Chammallas, Martha. 1999. *Introduction to Feminist Legal Theory*. New York: Aspen Law & Business.
- Chapman, Audrey, R. 1996. A “Violations Approach” for Monitoring the International Covenant on Economic, Social and Cultural Rights. *HRQ* vol. 18, no. 1, pp. 23–66.
- Charlesworth, Hilary. 1991. Customary International Law and the Nicaragua Case. *Australian Yearbook of International Law* vol. 11, pp. 1–31.
- Charlesworth, Hilary. 1992. The Private/Public Distinction and the Rights to Development in International Law. *Australian Year Book of International Law* vol. 12, pp. 190–204.
- Charlesworth, Hilary. 1993a. Alienating Oscar? Feminist Analysis of International Law. In *Reconceiving Reality: Women and International Law*, edited by Dallmeyer, Dorinda G. Washington, D. C.: The American Society of International Law.
- Charlesworth, Hilary. 1993b. Gendered States: Feminist (Re)visions of International Relations Theory. *Michigan Journal of International Law* vol. 14, no. 3, pp. 440–44.
- Charlesworth, Hilary. 1994a. Feminist Critiques of International Law and their Critics. *Third World Legal Studies*, pp. 1–16.
- Charlesworth, Hilary. 1994b. Transforming the United Men’s Club: Feminist Futures for the United Nations. *Transnational Law & Contemporary Problems* vol. 4:, pp. 420–54.
- Charlesworth, Hilary. 1995. Human Rights as Men’s Rights. In *Women’s Rights, Human Rights*, edited by Peters, Julia and Wolper, Andrea. New York and London: Routledge.
- Charlesworth, Hilary. 1996a. Women as Sherpas: Are Global Summits Useful for Women? *Feminist Studies* vol. 22, no. 3, pp. 537–47.
- Charlesworth, Hilary. 1996b. Cries and Whispers: Responses to Feminist Scholarship in International Law. *NJIL* no. 65, pp. 557–68.
- Charlesworth, Hilary. 1998. The Mid-Life Crisis of the Universal Declaration of Human Rights. *Washington and Lee Law Review* vol. 55, no. 3, pp. 81–796.
- Charlesworth, Hilary. 1999a. Feminist Methods in International Law. *The American Journal of International Law* vol. 93, no. 2; 379–94.
- Charlesworth, Hilary. 1999b. Introduction. In *Women and International Human Rights Law*, edited by Askin, Kelly D. and Koenig Dorean M. New York: Transnational Publishers, Inc.

- Charlesworth, Hilary, Chinkin, Christine and Wright, Shelley. 1991. Feminist Approaches to International Law. *The American Journal of International Law* vol. 85, pp. 613–45.
- Charlesworth, Hilary and Chinkin, Christine. 2000. *The Boundaries of International Law. A Feminist Analysis*. Manchester: Manchester University Press.
- Charlesworth, Hilary and Chinkin, Christine. 2001. Sex, Gender and September 11. *The American Journal of International Law* vol. 96, pp. 600–5.
- Charlesworth, Hilary and Wood, Mary. 2002. Women and Human Rights in the Rebuilding of East Timor. *NJIL* vol. 71, pp. 325–48.
- Chiang, Lois. 1999. Trafficking in Women. In *Women and International Human Rights Law*, edited by Askin, Kelly D. and Koenig, Dorean M. New York: Transnational Publishers, Inc.
- Chinkin, Christine. 1996. Global Summits: Democratising International Law-Making? *Public Law Review* vol. 7, pp. 208–11.
- Chinkin, Christine. 1999. A Critique of the Public/Private Dimension. *EJIL* vol. 10, no. 2, pp. 387–95.
- Chinkin, Christine. 2001. *Gender Mainstreaming in Legal and Constitutional Affairs. A Reference Manual for Governments and Other Stakeholders*. The United Kingdom: Commonwealth Secretariat.
- Chittister, Joan. 1996. *Beyond Beijing. The Next Step for Women. A Personal Journal*. Kansas City: Sheed and Ward.
- Chuang, Janie. 1998. Redirecting the Debate over Trafficking in Women: Definitions, Paradigms, and Contexts. *Harvard Human Rights Journal* vol. 11, pp. 63–107.
- Circle of Rights. Economic, Social & Cultural Rights Activism: A Training Resource* (2000), at <http://www1.umn.edu/humanrts/edumat/IHRIP/circle/modules/module1.htm> (23-09-2003).
- Clapham, Andrew. 2000. UN Human Rights Reporting. An NGO Perspective. In *The Future of UN Human Rights Treaty Monitoring*, edited by Alston, Philip and Crawford, James. UK: Cambridge University Press.
- Clark, Roger S. 1999. Human Rights Strategies of the 1960s within the United Nations: A Tribute to Late Kamleshwar Das. *HRQ* vol. 21, no. 2, pp. 308–341.
- Cohen, Stanley. 1996. Government Responses to Human Rights Reports: Claims, Denials and Counterclaims. *HRQ* vol. 1, no. 3, pp. 517–543.
- Coliver, Sandra. 1989. United Nations Machinery on Women's Rights: How Might They Better Help Women Whose Rights are Being Violated? In *New Directions in Human Rights*, edited by Lutz, Ellen L., Hannum, Hurst and Burke, Kathryn J. Philadelphia: University of Pennsylvania Press.
- Commission Communication on Incorporating Equal Opportunities for Women and Men into All Community Policies and Activities*. COM(96) 97 final.
- Community Framework Strategy on Gender Equality (2001-2005)* COM(2000) 335 final.
- *Comfort, Alex. 1963. *Sex in Society*. London: London Gerald Duckworth.
- Connell, R. W. 1995. *Masculinities*. Australia: Allen & Unwin.
- Connors, Jane. 1995. Mainstreaming Gender within the International Frame-

- work. In *Sourcebook on Feminist Jurisprudence*, edited by Barnett, Hilaire. London and Sydney: Cavendish Publishing Ltd.
- Cook, Rebecca J., ed. 1994. *Human Rights of Women. National and International Perspectives*. Philadelphia: University of Pennsylvania Press.
- Cook, Rebecca J., 1994. Womens International Human Rights Law: The Way Forward. In *Human Rights of Women. National and International Perspective*, edited by Cook, Rebecca J. Philadelphia: University of Pennsylvania Press.
- Coomaraswamy, Radhika. 1994. To Bellow Like a Cow: Women, Ethnicity, and the Discourse of Rights. In *Human Rights of Women. National and International Perspectives*, edited by Cook, Rebecca J. Philadelphia: University of Pennsylvania Press.
- Coomaraswamy, Radhika and Kois Lisa M. 1999. Violence against Women, in *Women and International Human Rights Law, vol. 1*, edited by Asking, Kelly and Koenig, Dorean. New York: Transnational Publishers, Inc.
- Copelon, Ronda. 1994. Intimate Terror. Understanding Domestic Violence as Torture. In *Human Rights of Women. National and International Perspectives*, edited by Cook, Rebecca J. Philadelphia: University of Pennsylvania Press.
- Cornell, Drucilla. 1998. *At the Heart of Freedom. Feminism, Sex and Equality*. Chichester: Princeton UP.
- Cramér, Per. 1998. *Neutralitet och europeisk integration*. Stockholm: Norstedts Juridik AB.
- Craven, Matthew. 1995. *The International Covenant on Economic, Social and Cultural Rights. A Perspective on its Development*. Oxford: Clarendon Press.
- Crawford, James. 2000. The UN Human Rights Treaty System: A System in Crisis? In *The Future of UN Human Rights Treaty Monitoring*, edited by Alston, Philip and Crawford, James. United Kingdom: Cambridge University Press.
- *Crenshaw, Kimberle. 2000. *Background paper for the Expert Meeting on Gender-related Aspects of Race Discrimination*, November 21-24, 2000.
- Crimes of Honour*. Outline report by Rapporteur Mrs. Cryer (U.K.), Committee on Equal Opportunities for Women and Men, Parliamentary Assembly, Council of Europe (AS/EGA (2002) 7 rev 2).
- Dallmeyer, Dorinda G., ed. 1993. *Reconceiving Reality: Women and International Law*. Studies in Transnational Legal Policy no. 25. Washington, D. C.: The American Society of International Law.
- Davidse, Koen 1995. The Vienna World Conference on Human Rights: Bridge to Nowhere and Bridge over Troubled Water. *Touro International Law Review* vol. 6, no. 1, at www.tourolaw.edu/Publications/InternationalLawRev/ (26-09-2003).
- Davies, Margaret. 1997. Taking the Inside Out. Sex and Gender in the Legal Subject. In *Sexing the Subject of Law*, edited by Naffine, Ngaire and Owens Rosemary J. Sydney: LBC Information Services, Sweet & Maxwell.
- DAWN Says NO TO NEGOTIATIONS for Beijing+10 and Cairo+10*, statement published at the DAWN website, at www.dawn.org.fj/ (26-09-2003).
- Deutscher, Penelope. 2000. The Declaration of Irigarayan Sexuate Rights: Performativity and Recognition. In *Feminist Perspectives on Law and Theory*,

- edited by Richardson, Janice and Sandland, Ralph. London and Sidney: Cavendish Publishing Limited.
- Donnelly, Jack. 1998. *International Human Rights, second edition*. Boulder and Oxford: Westview Press.
- Dolgopol, Ustina. 1995. Women's Voices, Women's Pain. *HRQ* vol. 17, no. 1, pp. 127–154.
- *Dormady, Valerie A. 1997. Women's Rights in International Law: A Prediction Concerning the Legal Impact of the United Nations' Fourth World Conference on Women. *Vanderbilt Journal of Transnational Law* vol. 30, pp. 97–134.
- Douglas, Mary and Hull, David, eds. 1992. *How Classification Works. Nelson Goodman among the Social Sciences*. Edinburgh: Edinburgh University Press.
- Douzinas, Costas. 2000. *The End of Human Rights. Critical Thought at the Turn of the Century*. Oxford: Hart Publishing.
- Dunlop, Joan, Kyte, Rachel and MacDonald, Mia. 1996. Women Redrawing the Map. The World after the Beijing and Cairo Conferences. *SAIS Review* vol. 16, no. 1, pp. 153–165.
- Eide, Asbjørn and Rosas, Allan. 1995. Economic, Social and Cultural Rights. A Universal Challenge. In *Economic, Social and Cultural Rights. A Textbook*. Dordrecht, Boston and London: Martinus Nijhoff Publishers.
- Eide, Asbjørn. 1998. The Historical Significance of the Universal Declaration. *International Social Science Journal* no. 158, pp. 476–497.
- Eide, Asbjørn, Krause, Catarina and Rosas, Allan, eds. 2001. *Economic, Social and Cultural Rights. A Textbook, 2nd revisited edition*. Dordrecht, Boston and London: Martinus Nijhoff Publishers.
- Ekenstam, Claes, Frykman, Jonas och Johansson, Thomas, eds. 1998. *Rädd att falla. Studier i manlighet*. Sverige: Gidlunds förlag.
- Engle, Karen. 1992a. International Human Rights and Feminism: When Discourses Meet. *Michigan Journal of International Law* vol. 13, pp. 517–610.
- Engle, Karen. 1992b. Female Subjects of Public International Law: Human Rights and the Exotic Other Female. *New England Law Review* vol. 26, no. 4, pp. 1509–1526.
- Engle, Karen. 2000. Culture and Human Rights: The Asian Values Debate in Context. *New York University Journal of International Law and Politics* vol. 32, no. 2, pp. 291–333.
- Enloe, Cynthia. 1990. *Making Feminist Sense of International Politics. Bananas, Beaches and Bases*. California: University of California Press.
- Eriksson, Maja. 1990. *The Right to Marry and to Found a Family: A World-Wide Human Right*. Uppsala: Iustus förlag.
- *Eriksson, Maja. 1994. *Skydd av mänskliga rättigheter: Det interamerikanska systemet*. Uppsala: Iustus förlag.
- Eriksson, Maja. 2000. *Reproductive Freedom. In the Context of International Human Rights and Humanitarian Law*. The Hague, Boston and London: Kluwer Law International.
- Evatt, Elizabeth. 2000. Ensuring Effective Supervisory Procedures: The Need for Resources. In *The Future of UN Human Rights Treaty Monitoring*, edited by Alston, Philip and Crawford, James. UK: Cambridge University Press.

- Falk, Richard. 2002. Interpreting the Interaction of Global Markets and Human Rights. In *Globalization and Human Rights*, edited by Brysk, Alison. Berkeley, Los Angeles and London: University of California Press.
- Fellmeth, Xavier Aaron. 2000. Feminism and International Law: Theory, Methodology, and Substantive Reform. *HRQ* vol. 22, no. 3, pp. 658–733.
- Ferguson, Moira. 1993. *From Mary Wollstonecraft to Jamaica Kincaid. East Caribbean Connections*. New York: Columbia University Press.
- Finnis, John. 1980. *Natural Law and Natural Rights*. Oxford: Oxford University Press.
- Fitzpatrick, Joan. 1994. The Use of International Human Rights Norms to Combat Violence against Women. In *Human Rights of Women. National and International Perspectives*, edited by Cook, Rebecca J. Philadelphia: University of Pennsylvania Press.
- Flax, Jane. 1987. Postmodernism and Gender Relations in Feminist Theory. *Signs: Journal of Women in Culture and Society* vol. 12, no. 4, pp. 621–643.
- Folkelius, Kristina and Noll, Gregor. 1998. Affirmative Exclusion? Sex, Gender, Persecution and the Reformed Swedish Alians Act. *International Journal of Refugee Law* vol. 10, no. 4: 607–636.
- Fransson, Susanne. 2000. *Lönediskriminering. En arbetsrättslig studie av könsdiskriminierande löneskillnader och konflikten mellan kollektivavtal och lag*. Uppsala: Iustus förlag.
- Fraser, Arvonne. 1987. *The U.N. Decade for Women. Documents and Dialogue*. Boulder and London: Westview Press.
- Fraser, Arvonne. 1999. Becoming Human: The Origins and Development of Women's Human Rights. *HRQ* vol. 21, no. 4, pp. 853–906.
- From Beijing to Beijing+5. Review and Appraisal of the Implementation of the Beijing Platform for Action*. Report of the Secretary-General. 2001. New York: United Nations.
- Frostell, Katarina. 1999. Gender Difference and the Non-Discrimination Principle in the CCPR and the CEDAW. In *New Trends in Discrimination Law – International Perspectives*, edited by Hannikainen, Lauri and Nykänen, Eeva. Åbo: Kirjapaino Grafia OY.
- Fuss, Diana. 1996 [1989]. Den essentiella risken. In *Feminism*, edited by Larsson, Lisbeth. Lund: Studentlitteratur.
- Fuss, Diana. 1997. The 'Risk' of Essence. In *Feminisms*, edited by Kemp, Sandra and Squires, Judith. Oxford and New York: Oxford University Press.
- Gallagher, Anne. 1997. Ending the Marginalization: Strategies for Incorporating Women into the United Nations Human Rights System. *HRQ* vol. 19, no. 2, pp. 283–333.
- Gallagher, Anne. 2000a. Making Human Rights Treaty Obligations a Reality: Working with New Actors and Partners. In *The Future of UN Human Rights Treaty Monitoring*, edited by Alston, Philip and Crawford, James. UK: Cambridge University Press.
- Gallagher, Anne. 2000b. Contemporary Forms of Female Sexual Slavery. In *Women and International Human Rights Law, vol. II*, edited by Askin, Kelly and Koenig, Dorean M. New York: Transnational Publishers, Inc.

- Garre, Marianne. 1999. *Human Rights in Translation. Legal Concepts in Different Languages*. Copenhagen: Handelshøjskolens forlag.
- Gear, Felice D. 2001. Mainstreaming a Concern for the Human Rights of Women. In *Women, Gender and Human Rights. A Global Perspective*, edited by Agosín, Marjorie. New Brunswick, New Jersey and London: Rutgers University Press.
- Gender Analysis*, UNDP, Gender in Development Programme, Learning & Information Pack, January 2001. New York: UNDP.
- Gender and Racial Discrimination. Report of the Expert Group Meeting*, DAW, OHCHR and UNIFEM, Croatia, 21–24 November 2000. The Worlds Women 2000: Trends and Statistics. UN Doc. ST/ESA/ STAT/SER.K/16.
- Gender Integration into the Human Rights System*. Report of the Workshop, OHCHR, UN DAW and UNIFEM, Geneva, 26–28 May 1999.
- Gender Mainstreaming*, UNDP, Gender in Development Programme, Learning & Information Pack, Draft, September 2000.
- Gender Mainstreaming and Human Rights of Women: OHCHR Policy Statement. 2000. *Human Rights Review of the OHCHR, Special Issue on Women's Rights* Spring 2000.
- Gender Mainstreaming: An Overview*. 2001. New York: DAW/OSAGI.
- Gender Mainstreaming. Conceptual Framework, Methodology and Presentation of Good Practices*. Final Report of Activities of the Group of Specialists on Mainstreaming, Strasbourg, May 1998. EG-S-MS (98)2.
- Gender Mainstreaming: Strategy for Promoting Gender Equality*. 2001. New York: OSAGI.
- Gilligan, Carol. 1982. *In a Different Voice. Psychological Theory and Women's Development*. Cambridge: Harvard U. P.
- Gipperth, Lena. 1999. *Miljö kvalitetsnormer. En rättsvetenskaplig studie i regelteknik för operationalisering av miljömål*. Uppsala: Uppsala universitet.
- Glavå, Mats. 2003. Principbeskrivande undantagslagstiftning – rättskonstruktivistiska reflektioner med utgångspunkt i Britanniaprincipen och Lex Britannia. In *Nya och gamla perspektiv på transporttätten*, edited by Johansson, Svante O. Stockholm: Svenska Sjörettsföreningens Skrifter 78.
- Glover, David and Kaplan, Cora. 2000. *Genders*. London and New York: Routledge.
- Goldman, Emma. 1969 [1917]. The Traffic in Women. In *Anarchism and Other Essays*, by Goldman, Emma. New York: Dover Publications, Inc.
- Gomez, Mario. 1995. Social Economic Rights and Human Rights Commissions. *HRQ* vol. 17, no. 1, pp. 155–169.
- Goonsekere, Savitri. 1998. *A Rights-based Approach to Realizing Gender Equality*. Paper prepared in cooperation with DAW. New York: DAW.
- Gothlin, Eva. 1999. *Kön eller Genus*. Göteborg: Nationella sekretariatet för genusforskning.
- Gould, Carol C., ed. 1997. *Gender. USA: Humanities Press International, Inc.*
- Greig, Alan, Kimmel, Michael and Lang, James. 2000. *Men, Masculinities and Development. Broadening our Work Towards Gender Equality*. Gender in Development Monograph Series. Geneva: UNDP.

- Grimshaw, Patricia, Holmes, Katie and Lake, Marilyn, eds. 2001. *Women's Human Rights. International Historical Perspectives*. New York: Palgrave.
- Gruskin, Sofia and Plafker, Karen. 2000. Application of the Convention on the Rights of the Child: Are the Rights of the Child Relevant to Women's Rights? In *Women and International Human Rights Law, vol. II*, edited by Askin, Kelly and Koenig, Dorean M. New York: Transnational Publishers, Inc.
- Gunning, Isabelle. 1991. Modernizing Customary International Law: The Challenge of Human Rights. *Virginia Journal of International Law* vol. 31, pp. 211–247.
- *Gunning, Isabelle. 1991–92. Arrogant Perception, World Travelling and Multicultural Feminism: The Case of Female Genital Surgeries. *Colum. Hum. Rts. L. Rev.*, vol. 23, pp. 189–248.
- Gustafsson, Håkan. 2003. *Rättens polyvalens. En rättsvetenskaplig studie av sociala rättigheter och rättsäkerhet*. Lund: Lund Studies in Sociology of Law.
- Hacking, Ian. 1995. *Rewriting the Soul. Multiple Personality and the Sciences of Memory*. Princeton, New Jersey: Princeton.
- Hacking, Ian. 2000. *Social konstruktion av vad?* Falun: Thales.
- Hafner-Burton, Emilie and Pollack, Mark A. 2002. Gender Mainstreaming and Global Governance. *Feminist Legal Studies* vol. 10, pp. 285–98.
- Hannikainen, Lauri and Nykänen, Eeva, eds. 1999. *New Trends in Discrimination Law – International Perspectives*. Turku: Kirjapaino Grafia OY.
- Haraway, Donna. 1991. *Simians, Cyborgs, and Women. The Reinvention of Nature*. New York: Routledge.
- Harding, Sandra. 1987. Instabiliteten i den feministiska teoribildningens analytiska kategorier. *KvT* nr. 2-3, pp. 4–22.
- Harmer, Harry. 2001. *The Longman Companion to Slavery, Emancipation and Civil Rights*. Harlow: Longman.
- Haslanger, Sally. 1995. Ontology and Social Construction. *Philosophical Topics* vol. 23, no. 2, pp. 95–125.
- Hassan, Yasmeen. 2000. Stove Burning, Acid Throwing, and Honor Killings. In *Women and International Human Rights Law, vol. II*, edited by Askin, Kelly and Koenig, Dorean M. New York: Transnational Publishers, Inc.
- Head, Jeanne E. 2000a. *Pro-Life Youth Shine at "Beijing+Five"*, at www.nrlc.org/news/2000/NRL05/jeanne.html (26-09-2003).
- Head, Jeanne E. 2000b. *Abortion Advocates Suffer Major Defeat at Beijing+5: Pro-life and Pro-coalition Stops Expansion of Abortion "Rights"*, at www.nrlc.org/news/2000/NRL06/jeanne.html (26-09-2003).
- Hellum, Anne and Stewart, Julie 1999. *Women's Human Rights and Legal Pluralism in Africa. Mixed Norms and Identities in Infertility Management in Zimbabwe*. Oslo: Tano Aschehoug.
- *Hevener, Natalie. 1983. *International Law and the Status of Women*. Boulder, Colorado: Westview Press.
- Hevener Kaufman, Natalie and Lindquist, Stefanie A. 1995. Critiquing Gender-Neutral Treaty-Language: The Convention on All Forms of Discrimination against Women. In *Women's Rights, Human Rights*, edited by Peters, Julia and Wolper, Andrea. New York and London: Routledge.

- Hernández-Truyol, Berta Esperanza. 1996. Women's Rights as Human Rights – Rules, Realities and the Role of Culture: A Formula for Reform. *Brooklyn Journal of International Law* vol. xxi, no. 3, pp. 605–77.
- Hernández-Truyol, Berta Esperanza. 1999. Human Rights through a Gendered Lens: Emergence Evolution and Revolution. In *Women and International Human Rights Law. vol.1*, edited by Askin, Kelly and Koenig. New York: Transnational Publishers, Inc.
- Herrlin, Monica, ed. 1998. *Naisten ihmisoikeuksien käsikirja*. Helsinki: Kauppa-kaari OYJ.
- Higgins, Tracy E. 1996. Anti-Essentialism, Relativism, and Human Rights. *Harvard Women's Law Journal* vol. 19, pp. 89–126.
- Hilderbrand, Robert C. 1990. *Dumbarton Oaks: The Origins of the United Nations and the Search for Post-War Security*. Chapel Hill: University of North Carolina Press.
- *Hildson, Anne-Marie, MacIntyre, Martha, Mackie, Vera and Stivens, Maila, eds. 2000. *Human Rights and Gender Politics. Asia-Pacific Perspectives*. London and New York: Routledge.
- Hillgenberg, Hartmut. 1999. A Fresh Look at Soft Law. *EJIL* vol. 10, no. 3, pp. 499–515.
- Hirdman, Yvonne. 1990. Genussystemet. Ur *Demokrati och makt i Sverige*, SOU 1990:44.
- Hirdman, Yvonne. 1993. Skevläsning – till debatten om genusystem. *KvT* no. 2, pp. 57–61.
- Hirdman, Yvonne. 1998. Konstruktion och förändring. *KvT* vol. 19, no. 3-4, pp. 4–15.
- Hirschl, Ran. 2000. “Negative” Rights vs. “Positive” Entitlements: A Comparative Study of Judicial Interpretations of Rights in an Emerging Neo-Liberal Economic Order. *HRQ* vol. 22, pp. 1060–1098.
- Holt, Renee. 1991. Women's Rights and International Law: The Struggle for Recognition and Enforcement. *Canadian Journal of Gender and Law* vol. 1, pp. 117–141.
- Hooks, Bell. 1989. *Talking Back. Thinking Feminist – Thinking Black*. Boston: South End Press.
- Hooks, Bell. 1997. Feminism: A Movement to End Sexist Oppression. In *Feminisms*, edited by Kemp, Sandra and Squires, Judith. Oxford and New York: Oxford University Press.
- Howarth, David, Norval, Aletta J., and Stravarakakis, Yannis, eds. 2000. *Discourse and Political Analysis. Identities, Hegemonies and Social Change*. Manchester and New York: Manchester University Press.
- Howe, Adrian. 1994. White Western Feminism Meets International Law: Challenges/Complicity, Erasures/Encounters. *The Australian Feminist Law Journal* vol. 4, pp. 63–91.
- *Humphrey, John P. 1984. *Human Rights and the United Nations. A Great Adventure*. Dobbs Ferry, NY: Transnational.
- Integrating Human Rights with Sustainable Development: A UNDP Policy Document*. 1998. Hew York: UNDP:

- **International Campaign for Women's Human Rights 1992–1993 Report*. 1993. New York: Centre for Women's Global Leadership and Women, Inc.
- Ishay, Micheline R., ed. 1997. *The Human Rights Reader. Major Political Essays, Speeches, and Documents from the Bible to the Present*. London and New York: Routledge.
- Irigaray, Luce [translated by Martin, Alison]. 1993. *Je, tu, nous. Toward a Culture of Difference*. New York and London: Routledge.
- Irigaray, Luce [translated by Angelfors, Christina]. 1994. *Könsskillnadernas etik och andra texter*. Stockholm: Brutus Östlings förlag, Symposium AB.
- Jabri, Vivienne and O'Gorman, Eleanor, eds. 1999. *Women, Culture and International Relations*. Boulder: Lynne Rienner Publishers, Inc.
- *Jahan, Rounaq. 1995. *The Elusive Agenda. Mainstreaming Women in Development*. Dhaka/London and New Jersey: University Press Limited/Zed Books.
- Jansson, Robert, ed. 1998. *Minorities and Women*. Åbo: The Åland Islands Peace Institute/Åbo Akademis tryckeri.
- Jochnick, Chris. 1999. Confronting the Impunity of Non-State Actors: New Fields for the Promotion of Human Rights. *HRQ* vol. 21, pp. 56–79.
- Jónasdóttir, Anna and Björk, Gunnela, eds. 1994. *Teorier om patriarkatet. Betydelser, begränsningar och utvecklingslinjer*. Kvinnovetenskapligt forums skriftserie nr. 2, Högskolan i Örebro, Örebro.
- *Kaplan, Cora. 1986. *Sea Changes: Essays on Culture and Feminism*. London: Verso.
- Kemp, Sandra and Squires, Judith, eds. 1997. *Feminisms*. Oxford and New York: Oxford University Press.
- Kennedy, David. 1995. An Autumn Weekend: An Essay on Law and the Everyday Life. In *After Identity. A Reader in Law and Culture*. London and New York: Routledge.
- Kennedy, David. 2000. When Renewal Repeats: Thinking Against the Box. *New York University Journal of International Law and Politics* 32/2, pp. 335–500.
- Kerruish, Valerie. 1990. *Jurisprudence as Ideology*. London and New York: Routledge.
- Koukoulis-Spiliotopoulos, Sophia. 1999. From Formal to Substantive Gender Equality. Are International and Community Law Converging? *Revue Européenne de droit public* vol. 11, no. 2, pp. 515–536.
- Kouvo, Sari. 2003. Internationell handel med kvinnor för sexuella ändamål – kunskap, ansvar och konsumentmakt. In *Nya och gamla perspektiv på transporträtten*, edited by Johansson, Svante O. Stockholm: Svenska Sjärrättsföreningens Skrifter 78.
- Kouvo, Sari. 2004 (forthcoming). Equality through Human Rights: Nordic and International Feminist Perspectives on Rights. In *Nordic Equality at a Crossroads: Feminist Legal Studies Coping with Difference*, edited by Svensson, Eva-Maria, Pylkkänen, Anu och Niemi-Kiesiläinen, Johanna. Great Britain: Ashgate.
- Kouvo, Sari and Svensson, Eva-Maria. 2000. Staten, grundlagen och sexualiteten: Pornografidebatten och statens ansvar för demokratins idéer. In *Samballets*

- demokratiska värdegrund. En fråga om mångfald, olikhet, men lika värde, rapport 1 från Värdegrunden Göteborgs universitet*, edited by Andersson, Bo. Landskrona: Värdegrunden.
- Koskenniemi, Martti. 1989. *From Apology to Utopia. The Structure of International Legal Argument*. Helsinki: Lakimiesliiton Kustannus.
- Koskenniemi, Matti. 2001. *The Gentle Civilizer of Nations: The Rise and Fall of International Law 1870–1960*. Cambridge: Cambridge University Press.
- Klabbers, Jan. 2001. Institutional Ambivalence by Design: Soft Organizations in International Law. *NJIL* vol. 70, pp. 403–421.
- Lacey, Nicola. 1998. *Unspeakable Subjects. Feminist Essays in Legal and Social Theory* Oxford: Hart Publishing.
- Lake, Marilyn. 1996. Female Desires: The Meaning of World War II. In *Feminism & History*, edited by Scott, Joan Wallache. New York: Oxford University Press.
- Lake, Marilyn. 2001. From Self-Determination via Protection to Equality via Non-Discrimination: Defining Women's Rights at the League of Nations and the United Nations. In *Women's Rights and Human Rights. International Historical Perspectives*, edited by Grimshaw, Patricia, Holmes, Katie and Lake, Marilyn. New York: Palgrave.
- Laqueur, Thomas. 1990. *Making Sex. Body and Gender from the Greeks to Freud*. Cambridge, Massachusetts and London, England: Harvard University Press.
- Lauretis, Teresa de. 1993. Upping the anti [sic] in feminist theory. In *The Cultural Studies Reader*, edited by Doring, Simon. London and New York: Routledge.
- Leckie, Scott. 1998. Another Step Towards Indivisibility: Identifying the Key Features of Violations of Economic, Social and Cultural Rights. *HRQ* vol. 20, no. 1, pp. 81–124.
- Leckie, Scott. 2000. The Committee on Economic, Social and Cultural Rights: Catalyst for Change in a System Needing Reform. In *The Future of UN Human Rights Treaty Monitoring*, edited by Alston, Philip and Crawford, James. UK: Cambridge University Press.
- Lempinen, Miko. 1999. *Consultative Relationship between the United Nations and Non-Governmental Organizations*. Finland: Institute for Human Rights, Åbo Academy University.
- Lempinen, Miko. 2001. *Challenges Facing the System of Special Procedures of the United Nations Commission on Human Rights*. Finland: Institute for Human Rights, Åbo Academy University.
- Lerwall, Lotta. 2001. *Könsdiskriminering. En analys av nationell och internationell rätt*. Uppsala: Iustus förlag.
- Lewis, Hope. 1995. Between *Irua* and “Female Genital Mutilation”: Feminist Human Rights Discourse and the Cultural Divide. *Harvard Human Rights Journal* vol. 8, pp. 1–55.
- Lijnzaad, Liesbeth. 1995. *Reservations to UN Human Rights Treaties. Ratify and Ruin? Dordrecht, Boston and London: Martinius Nijhoff Publishers*.
- Lloyd, Genevieve. 1993. *The Man of Reason. 'Male' and 'Female' in Western Philosophy* (second edition). London: Routledge.

- Lorber, Judith. 2000. Using Gender to Undo Gender. *Feminist Theory* vol. 1, no. 1, pp. 79–95.
- Lorentzi, Ulrika. 2001. *Gör det jämt! Att integrera jämställdhet i verksamheten*. Stockholm: Fritzes Offentliga Publikationer.
- Lovecy, Jill. 2002. Gender Mainstreaming and the Framing of Women's Rights in Europe: The Contribution of the Council of Europe. *Feminist Legal Studies* vol. 10, pp. 271–283.
- Lucas, Colin. 1998. Nobles, Bourgeois and the Origins of the French Revolution. In *The French Revolution. Recent Debates and New Controversies*, edited by Kates, Gary. London and New York: Routledge.
- Lundström, Karin. 1999. *Jämlikhet mellan kvinnor och män i EG-rätten. En feministisk analys*. Uppsala: Iustus förlag.
- Luopajarvi, Katja. 2001. *Extrajudicial, Summary or Arbitrary Executions – The Scope of the Mandate of the Special Rapporteur*. Åbo: Institute for Human Rights, Åbo Akdemi University.
- MacKinnon, Catharine A. 1987. *Feminism Unmodified. Discourses on Life and Law*. Cambridge and London: Harvard University Press.
- MacKinnon, Catharine A. 1989. *Toward a Feminist Theory of the State*. Cambridge and London: Harvard University Press.
- Macklin, Audrey. 1995. Refugee Women and the Imperative of Categories. *HRQ* vol. 17, no. 2, pp. 213–277.
- Makkonen, Timo. 2002. *Multiple, Compound and Intersectional Discrimination: Bringing the Experiences of the Most Marginalized to the Fore*. Institute for Human Rights, Åbo Academy University, Finland.
- Marks, Stephen P. 1998. From the “Single Confused Page” to the “Decalogue for Six Billion Persons”: The Roots of the Universal Declaration in the French Revolution. *HRQ* vol. 20, no. 3, pp. 459–514.
- Marks, Susan. 1994. Nightmare and Noble Dream: 1993 World Conference on Human Rights. *The Cambridge Law Journal*, pp. 54–62.
- Mayer, Ann Elizabeth. 1995. Cultural Particularism as a Bar to Women's Rights: Reflections on the Middle Eastern Experience. In *Women's Rights Human Rights. International Feminist Perspectives*, edited by Peters, Julia and Wolper, Andrea. New York and London: Routledge.
- Mazey, Sonia. 2000. Introduction: Integrating Gender – Intellectual and ‘Real World’ Mainstreaming. *Journal of European Public Policy* vol. 7, no. 3, pp. 333–45.
- Mazey, Sonia. 2001. *Gender Mainstreaming in the EU. Principles and Practice*. The UK: Kogan Page Limited.
- Mazey, Sonia. 2002. Gender Mainstreaming Strategies in the EU: Delivering on an Agenda? *Feminist Legal Studies* vol. 10, pp. 227–240.
- Mbere, Nomtuse. 1996. The Beijing Conference: A South African Perspective. *SAIS Review* 16.1, pp. 167–178.
- McClimans, Else Leona. 1996. Kvinner, juss og menneskerettigheter – hvor går vi fra Beijing? *Retferd* vol. 19, no. 72, pp. 78–82.
- McCrudden, Christopher, ed. 1991. *Anti-Discrimination Law*. England: Dartmouth Publishing Company.

- McDougal, Myres S., Lasswell, Harold D. and Chen, Lung-Chu. 1980. *Human Rights and the World Public Order. The Basic Policies of an International Law of Human Dignity*. New Haven and London: Yale University Press.
- McKean, Warwick. 1983. *Equality and Discrimination under International Law*. Oxford: Oxford University Press.
- **Meeting in Mexico: The Story of the World Conference of the International Women's Year*. 1975. New York. UN.
- Mendoza, Breny. 2002. Transnational Feminism in Question. *Feminist Theory* vol. 3, no. 3, pp. 295–314.
- Mikkelsen, Britha, Freeman, Ted, Keller, Bonnie et al. 2001. *Mainstreaming Gender Equality. SIDA's Support for the Promotion of Gender Equality in Partner Countries*. SIDA Evaluation Report 2001/01.
- Milner, Wesley T. 2002. Economic Globalization and Human Rights: An Empirical Analysis. In *Globalization and Human Rights*, edited by Brysk, Alison. Berkeley, Los Angeles and London: University of California Press.
- Millett, Kate. 1971 [1969]. *Sexual Politics*. London: Rupert Hart-Davis Ltd.
- Moghadam, Valentine M., ed. 1994. *Identity Politics and Women. Cultural Reassertions and Feminisms in International Perspective*. Boulder: Westview Press.
- Mohanty, Chandra Talpade. 1991. *Third World Women and the Politics of Feminism*. Bloomington: Indiana University Press.
- Moi, Toril. 1997. Vad är en kvinna? Kön och Genus i feministisk teori. *Res Publica* no. 1-2, pp. 71–158.
- Morsink, Johannes. 1999. *The Universal Declaration of Human Rights. Origins, Drafting and Intent*. Philadelphia: University of Pennsylvania Press.
- Moser, Caroline O. N., Törnqvist, Annika and van Bronkhorst, Bernice. 1998. *Mainstreaming Gender and Development in the World Bank. Progress and Recommendations*. Washington: The World Bank.
- Moshan, Sari. 1998. Comment: Women, War and Words: The Gender Component in the Permanent International Criminal Court's Definition of Crimes against Humanity. *Fordham International Law Journal* vol. 22, no. 1, pp. 154–184.
- Müller, Joachim, ed. 2001. *Reforming the United Nations. The Quiet Revolution*. The Hague, London and Boston: Kluwer Law International.
- Mänskliga rättigheter i Sverige – en kartläggning. Sweden: DS 2001:10.
- Naffine, Ngaire. 1990. *Law and the Sexes. Explorations in Feminist Jurisprudence*. Singapore: Allen & Unwin.
- Naffine, Ngaire and Owens, Rosemary J., eds. 1997. *Sexing the Subject of Law*. Sydney: LBC Information Services, Sweet & Maxwell.
- Nanda, Ved P. and McKnight, Dawn P. 2000. The International Convention on All Forms of Racial Discrimination. In *Women and International Human Rights Law, vol. II*, edited by Askin, Kelly and Koenig, Dorean M. New York: Transnational Publishers, Inc.
- Nesiah, Vasuki. 1993. Toward a Feminist Internationality: A Critique of U.S. Feminist Legal Scholarship. *Harvard Women's Law Journal* vol. 16, pp. 189–210.
- Newman, Louise Michele. 1999. *White Women's Rights. The Racial Origins of Feminism in the United States*. New York and Oxford: Oxford University Press.

- Nicholson, Linda J., ed. 1990. *Feminism/Postmodernism*. New York and London: Routledge.
- *Nicholson, Linda. 1994. Interpreting Gender. *Signs* vol. 19, pp. 79–105.
- Niemi, Heli and Scheinin, Martin. 2002. *Reform of the United Nations Human Rights Treaty Body System Seen from the Developing Country Perspective*. Åbo: Institute for Human Rights, Åbo Akademi University.
- Nieminen, Liisa. 1990. *Perusoikeuksien emansipatoriset mahdollisuudet?* Helsinki: Lakimiesliiton kustannus.
- Nikolay, Renata. 1994. Cairo Conference invokes the Empowerment of Women. *The Human Rights Briefs*, Centre for Human Rights and Humanitarian Law at Washington College of Law, American University, at www.wcl.american.edu/hrbrief/v2i1/cairo21.htm (27-09-2003).
- Nousiainen, Kevät. 1993. Juridiskt språk och nationalitet. *Retfærd*, vol. 16, no. 4, pp. 60–72.
- Nousiainen, Kevät, Gunnarsson, Åsa, Lundström, Karina and Niemi-Kiesiläinen, Johanna, eds. 2001. *Responsible Selves. Women in the Nordic Legal Culture*. England: Ashgate Publishing Ltd.
- Nousiainen, Kevät och Pylkkänen, Anu. 2001. *Sukupuoli ja oikeuden yhdenvertaisuus*. Helsinki: Forum Iuris.
- Nordborg, Gudrun, ed. 1995. *13 kvinnoperspektiv på rätten*. Uppsala: Iustus förlag.
- Numhauser-Henning, Ann, ed. 2000. *Perspektiv på likabehandling och diskriminering*. Lund: Juristförlaget i Lund.
- Nussbaum, Martha C. 1999. *Sex and Social Justice*. New York and Oxford: Oxford University Press.
- Obiora, Ameda L. 1997. The Little Foxes that Spoil the Vine: Revisiting the Feminist Critique of Female Circumcision. *Canadian Journal of Women and the Law* vol. 9, no. 2, pp. 46–73.
- O'Donovan, Declan. 1996. The Economic and Social Council. In *The United Nations and Human Rights. A Critical Appraisal*, edited by Alston, Philip. Great Britain: Clarendon Paperbacks.
- Offen, Karen, Roach Pierson, Ruth and Randell, Jane, eds. 1991. *Writing Women's History. International Perspectives*. Bloomington and Indianapolis: Indiana University Press.
- Offen, Karen. 2000. *European Feminisms 1700–1950. A Political History*. California: Stanford University Press.
- Offen, Karen. 2001. Women's Rights or Human Rights? International Feminism between the Wars. In *Women's Rights and Human Rights. International Historical Perspectives*, edited by Grimshaw, Patricia, Holmes, Katie and Lake, Marilyn. New York: Palgrave Publishers Ltd.
- O'Flaherty, Michael. 2002. *Human Rights and the UN: Practice before the Treaty Bodies*. Netherlands: Kluwer Law International.
- O'Hare, Ursula A. 1997. Ending the 'Ghettoisation': The Right of Individual Petition to the Women's Convention. *Web Journal of Current Legal Issues*.
- Oloka-Onyango, J. and Tamala, S. 1995. "The Personal is Political" or Why

- Women's Rights are Indeed Human Rights: An African Perspective on International Feminism. *HRQ* vol. 17, no. 4, pp. 691–731.
- Olsen, Frances. 1993. International Law: Feminist Critiques of the Public/ Private Distinction. In *Reconceiving Reality: Women and International Law*, edited by Dallmeyer, Dorinda G. Washington D. C.: The American Society of International Law.
- O'Neill, William and Bye, Vegard. 2002. *From High Principles to Operational Practice. Strengthening OHCHR Capacity to Support UN Country Teams to Integrate Human Rights in Development Programming*. Geneva: OHCHR.
- Ovey, Clare and White, Robin. 2002. *(Jacobs & White) The European Convention on Human Rights*. Oxford: Oxford University Press.
- Opsahl, Torkel. 1996. The Human Rights Committee. In *The United Nations and Human Rights. A Critical Appraisal*, edited by Alston, Philip. Great Britain: Clarendon Paperbacks.
- Orford, Anne. 1997. Locating the International: Military and Monetary Interventions after the Cold War. *Harvard International Law Journal* vol. 38, no. 2, pp. 443–485.
- Orford, Anne. 1998a. Embodying Internationalism: The Making of International Lawyers. *The Australian Yearbook of International Law* vol. 19, pp. 1–34.
- Orford, Anne. 1998b. Contesting Globalization: A Feminist Perspective on the Future of Human Rights. *Transnational Law & Contemporary Problems* vol. 8, pp. 171–98.
- Orford, Anne. 1999. Muscular Humanitarianism: Reading the Narratives of the New Interventionism. *EJIL* vol. 10, no. 4, pp. 679–711.
- Orford, Anne. 2002. Feminism, Imperialism and the Mission of International Law. *NJIL* vol. 71, pp. 275–296.
- OSAGI Fact Sheet No. 1*. 2001. New York: United Nations.
- Otto, Dianne. 1996a. Nongovernmental Organizations in the United Nations System: The Emerging Role of International Civil Society. *HRQ* vol. 18, no. 1, pp. 107–141.
- Otto, Dianne. 1996b. Subalternity and International Law: The Problems of Global Community and the Incommensurability of Difference. *Social & Legal Studies* vol. 5, no. 3, pp. 337–364.
- Otto, Dianne. 1996c. Holding up Half the Sky, but for Whose Benefit? A Critical Analysis of the Fourth World Conference on Women. *Australian Feminist Law Journal*, vol. 7, pp. 7–28.
- Otto, Dianne. 1997a. Rethinking the Universality of Human Rights Law. *Columbia Human Rights Law Review* vol. 29, no. 1, pp. 1–46.
- Otto, Dianne. 1997b. Rethinking Universals: Opening Transformative Possibilities in International Human Rights Law. *The Australian Yearbook of International Law* vol. 18, pp. 1–36.
- Otto, Dianne. 1998. Everything is Dangerous: Some Post-structural Tools for Rethinking the Universal Knowledge Claims of Human Rights Law. *Australian Journal of Human Rights* vol. 5, no. 1, pp. 17–47.
- Otto, Dianne. 1999. A Post-Beijing Reflection on the Limitations and Potential of Human Rights Discourse for Women. In *Women and International Human*

- Rights Law, vol. 1*, edited by Askin, Kelly and Koenig, Dorean. Ardsley: Transnational Publishers Inc.
- Otto, Dianne. 2000. Handmaidens, Hierarchies and Crossing the Public-Private Divide in the Teaching of International Law. *Melbourne Journal of International Law* vol. 1, pp. 35–69.
- Otto, Dianne. 2002. “Gender Comment”: *Why does the UN Committee on Economic, Social and Cultural Rights Need a General Comment on Women?* University of Melbourne, Faculty of Law, Public Law and Legal Theory, Research Paper No. 31.
- Pace, John C. 1998. The Development of Human Rights Law in the United Nations, Its Control and Monitoring Machinery. *International Social Science Journal* no. 158, pp. 499–511.
- Partsch, Joseph Karl. 1996. The Committee on the Elimination of Racial Discrimination. In *The United Nations and Human Rights. A Critical Appraisal*, edited by Alston, Philip. Great Britain: Clarendon Paperbacks.
- Pateman, Carole. 1988. *The Sexual Contract*. Great Britain: Polity Press.
- Pentikäinen, Merja. 1999. *The Applicability of the Human Rights Model to Address Concerns and the Status of Women*. Helsinki: Forum Iuris, Publications of the Faculty of Law, University of Helsinki.
- Pentikäinen, Merja, ed. 2000. *EU-China Dialogue. Perspectives on Human Rights – With Special Reference to Women*. Finland: Juridica Laponica no. 23.
- Perry, Michael. 1997. Are Human Rights Universal? The Relativist Challenge and Related Matters. *HRQ* vol. 19, no. 3, pp. 461–509.
- Peters, Julia and Wolper, Andrea, eds. 1995. *Women’s Rights Human Rights. International Feminist Perspectives*. New York and London: Routledge.
- Petersen, Hanne. 1999. Peripheral Perspectives on Musical Orders. *Cardozo Law Review* vol. 20; 1683–1694.
- Pettman, Jan Jindy. 1996. *Worlding Women. A Feminist International Politics*. London and New York: Routledge.
- Phillips, Robin. 1999. Violence in the Workplace: Sexual Harassment. In *Women and International Human Rights Law, vol. 1*, edited by Askin, Kelly and Koenig, Dorean. New York: Transnational Publishers, Inc.
- Pietilä, Hilikka and Vickers, Jeanne. 1990. *Making Women Matter. The Role of the United Nations, Third Edition*. London and New Jersey: Zed Books Ltd.
- Poe, Steven S., Wendel-Blunt, Dierdre and Ho, Karl. 1997. Global Patterns in the Achievement of Women’s Human Rights to Equality. *HRQ* vol. 19, no. 4, pp. 813–835.
- Pollis, Adamantia. 1996. Cultural Relativism Revisited: Through a State Prism. *HRQ* vol. 18, no. 2, pp. 316–344.
- *Pope, Barbara Corrado. 1987. The Influence of Rousseau’s Ideology of Domesticity. In *Connecting Spheres: Women in the Western World 1500 to the Present*, edited by Boxer, Marilyn and Quateart, Jean H. New York: Oxford University Press.
- Pratt, Kathleen M. and Fletcher, Laurel E. 1994. Time for Justice: The Case for International Prosecutions of Rape and Gender-Based Violence in the Former Yugoslavia. *Berkeley Women’s Law Journal* vol 9, pp. 77–102.

- Preis, Ann-Belinda S. 1996. Human Rights as Cultural Practise: An Anthropological Critique. *HRQ* vol. 18, no. 2, pp. 286–315.
- Puig de la Bellacasa, Maria. 2000. The sex/gender in European French-speaking contexts. In *The Making of European Women's Studies*, edited by Braidotti, Rosi and Vonk, Esther. Utrecht: ATHENA/Drukkerij Zuidam & Uithof.
- Quinn, John. 1996. The General Assembly into the 1990s. In *The United Nations and Human Rights. A Critical Appraisal*, edited by Alston, Philip. Great Britain: Clarendon Paperbacks.
- Raevaara, Eeva. 2002. Contextualizing, Travelling, Transferring: How Can We Study and Use Concepts of Gender Equality in a Transnational Setting? In *Subjekt, politik och könskonstruktion: det jämställda Norden som framtidsverkstad. Rapport från en nordisk forskningskonferens 28.2 – 1.3.2002, Stockholm*, edited by Karstensen, Guro. Oslo: Nikk Småskrifter no. 8.
- Razavi, Shahra and Miller, Carol. 1995. Gender Mainstreaming: A Study of Efforts by the UNDP, the World Bank and the ILO to Institutionalize Gender Issues. *UNRISD Occasional Papers* no. 4.
- Rai, Shirin M., ed. 2000. *International Perspectives on Gender and Democratisation*. Great Britain: MacMillan Press Ltd.
- Rao, Arati. 1995. The Politics of Gender and Culture in International Human Rights Discourse. In *Women's Rights Human Rights. International Feminist Perspectives*, edited by Peters, Julia and Wolper, Andrea. New York and London: Routledge.
- Reanda, Laura. 1996. The Commission on the Status of Women. In *The United Nations and Human Rights. A Critical Appraisal*, edited by Alston, Philip. Oxford: Clarendon Paperbacks.
- Rehof, Lars Adam. 1993. *The Guide to the Travaux Préparatoires of the United Nations Convention on the Elimination of All Forms of Discrimination Against Women*. Dordrecht/Boston/London: Martinus Nijhoff Publishers.
- Report of the Expert Group Meeting on the Development of Guidelines for the Integration of Gender Perspectives into the United Nations Human Rights Activities and Programmes*. UNIFEM, Geneva 3–7 July 1995.
- Roberts, Adam and Kingsbury, Benedict, eds. 1994. *United Nations, Divided World. The UN's Role in International Relations, Second Edition*. Oxford: Clarendon Press.
- Rogers, Gerry. 1994. The Vienna Tribunal. *Canadian Women's Studies/ Les Cahiers de la Femme* vol. 15, no. 2-3, pp. 129–132.
- Romany, Celina. 1993. Women as *Alians*: A Feminist Critique of the Public/Private Distinction in International Human Rights Law. *Harvard Human Rights Journal* vol. 6, pp. 87–125.
- Romany, Celina. 1994. State Responsibility Goes Private. A Feminist Critique of the Private/Public Distinction in International Human Rights Law. In *Human Rights of Women. National and International Perspectives*, edited by Cook, Rebecca J. Philadelphia: University of Pennsylvania Press.
- Romany, Celina. 2000. Themes for a Conversation on Race and Gender in International Human Rights Law. In *Global Critical Race Feminism. An Inter-*

- national Reader*, edited by Wing, Adrien Katherine. New York and London: New York University Press.
- Rosenberg, Tiina. 2002. *Queerfeministisk agenda*. Stockholm: Atlas.
- Roth, Brad. 2002. The CEDAW as a Collective Approach to Women's Rights. *Michigan Journal of International Law* vol. 24, no. 1, pp. 187–225.
- Roth, Kenneth. 1994. Domestic Violence as an International Human Rights Issue. In *Human Rights of Women. National and International Perspectives*, edited by Cook, Rebecca J. Philadelphia: University of Pennsylvania Press.
- Roth Walsh, Mary, ed. 1997. *Women, Men and Gender. Ongoing Debates*. New Haven & London: Yale University Press.
- Rubin, Gayle. 1975. The Traffic in Women: Notes on the 'Political Economy' of Sex. In *Toward an Anthropology of Women*, edited by Reiter, Rayna R. New York: Monthly Review Press.
- Rubin, Gayle. 1984. Thinking Sex: Notes for a Radical Theory of the Politics of Sexuality. In *Pleasure and Danger: Exploring Female Sexuality*, edited by Vance, Carol S. Boston: Routledge & Kegan Paul.
- Saboul, Albert. 1998. The French Revolution in the History of the Contemporary World. In *The French Revolution. Recent Debates and New Controversies*, edited by Kates, Gary. London and New York: Routledge.
- Samuels, Harriet. 1999. Hong Kong on Women, Asian Values and the Law. *HRQ* vol. 21, no. 3, pp. 707–734.
- Sand, Inger-Johanne. 2001. Changes in the Functions and the Relations of Law and Politics. Europeanization, Globalization and the New Technologies. *ARENA Report No. 1/2001*.
- Sandler, Joanne. 1997. *The UNIFEM's Experiences in Mainstreaming for Gender Equality*. UNIFEM paper presented to the UNICEF Meeting of Gender Focal Points, 5–9 May 1997.
- Salecl, Renata. 1994. *The Spoils of Freedom. Psychoanalysis and Feminism after the Fall of Communism*. London and New York: Routledge.
- Schalkwyk, Johanna, Thomas, Helen and Woroniuk, Beth. 1996 *Mainstreaming: A Strategy for Achieving Equality between Women & Men. A Think Piece*.
- Scheinin, Martin. 1992. Mänskliga rättigheter som legalstrategi. *Retfærd* no. 59, pp. 3–14.
- Scheinin, Martin. 1998. Sexual Rights as Human Rights – Protected under Existing Human Rights Treaties? *Nordic Journal of International Law* vol. 67, no. 1, pp. 17–35.
- Scheinin, Martin. 1999. Women's Economic and Social Rights as Human Rights. Conceptual Problems and Issues of Practical Implementation. In *New Trends in Discrimination Law – International Perspectives*, edited by Hannikainen, Lauri and Nykänen, Eeva. Turku: Kirjapaino Grafia OY.
- Schneider, Elizabeth M. 1991. The Dialectic of Rights and Politics: Perspectives from the Women's Movement. In *Feminist Legal Theory. Readings in Law and Gender*, edited by Bartlett, Katharine T. and Kennedy, Rosanne. Boulder: Westview Press.
- Scott, Joan. 1991. Gender: A Useful Category of Historical Analysis. In *Women's*

- Studies International. Nairobi and Beyond*, edited by Rao, Aruna. New York: The Feminist Press at the City University of New York.
- Scott, Joan Wallache. 1996. *Only Paradoxes to Offer. French Feminists and the Rights of Man*. USA: Harvard University Press.
- Scott, Joan Wallache., Kaplan, Cora and Keates, Debra, eds. 1997. *Transitions, Environments, Translations. Feminisms in International Politics*. London and New York: Routledge.
- Schweld, Egon. 1966. The International Convention on the Elimination of All Forms of Racial Discrimination. *International and Comparative Law Quarterly* vol. 15, pp. 996–1068.
- Segal, Lynne. 1999. *Why Feminism? Gender, Psychology and Politics*. Cambridge: Polity Press.
- Segerlund, Lisbeth. 2002. *The Responsibility for Human Rights and Social Issues, NGOs and a Development towards a New Regulatory Framework*. Paper presented at MR-dagarna 18–19 November 2002, Stockholm.
- Seidler, Victor J. 1994. *Unreasonable Men. Masculinity and Social Theory*. London and New York: Routledge.
- Sen, Gita and Corrêa, Sonia. 2000. *Gender Justice and Economic Justice – Reflections on the Five Year reviews of the UN Conferences of the 1990s*. Paper prepared for UNIFEM in preparation for the five-year review of the Beijing Platform for Action, at www.undp.org/unifem (30-06-2001).
- *Shotwell, James T, ed. 1934. *The Origins of the International Labour Organization, vol. 2*. New York: Columbia University Press.
- Sikkink, Kathryn. 2001. Historical Persecutors to Modern Campaigns to Women's Human Rights: Campaigns against Footbinding and Female Circumcision. In *Women and International Human Rights Law: Toward Empowerment*, edited by Askin, Kelly D. and Koenig, Dorean M. New York: Transnational Publishers, Inc.
- Smart, Carol. 1989. *Feminism and the Power of Law*. London and New York: Routledge.
- Smart, Carol. 1995. *Law, Crime and Sexuality. Essays in Feminism*. London: Sage Publications Ltd.
- Smith, Jackie, Pagnucco, Ron and Lopez, George A. 1998. Globalizing Human Rights: The Work of Transnational Human Rights NGOs during the 1990s. *HRQ* vol. 20, pp. 379–412.
- Smith, Rhona K. M. 2003. *Textbook on International Human Rights*. Oxford: Oxford University Press.
- Soboul, Albert. 1998. The French Revolution and History of the Contemporary World. In *The French Revolution. Recent Debates and New Controversies*, edited by Kates, Gary. London and New York: Routledge.
- Sousa Santos, Boaventura. 1995. *Towards a New Common Sense: Law, Science and Politics in the Paradigmatic Transition*. London and New York: Routledge.
- Spilipoulou Åkermark, Athanasia. 1996. *Justifications of Minority Protection in International Law*. Uppsala: Uppsala University.
- Spilipoulou Åkermark, Athanasia. 1999. Minority Women: International Protection and the Problem of Multiple Discrimination, in *New Trends in Dis-*

- crimination Law – International Perspectives*, edited by Hannikainen, Lauri and Nykänen, Eeva. Finland: Publications of Turku Law School, vol. 3, No. 1.
- Spivak, Gayatri Chakravorty. 1999. *A Critique of Postcolonial Reason. Toward a History of the Vanishing Present*. Massachusetts and England: Harvard University Press.
- Stammers, Niel. 1999. Social Movement and the Social Construction of Human Rights. *HRQ* vol. 21, pp. 980–1008.
- Stang Dahl, Tove [translated by Craig, Ronald L.]. 1988. *Women's Law*. Oslo: Norwegian University Press.
- Stark, Barbara. 1996. International Human Rights Law, Feminist Jurisprudence, and Nietzsche's "Eternal Return": Turning the Wheel. *Harvard Women's Law Journal* vol. 19, pp. 169–199.
- Stark, Barbara. 2000a. Bottom Line Feminist Theory: The Dream of a Common Language. *Harvard Women's Law Journal* vol. 23, pp. 227–246.
- Stark, Barbara. 2000b. The International Covenant on Economic, Social and Cultural Rights as a Resource for Women. In *Women and International Human Rights Law, vol. II*, edited by Askin, Kelly and Koenig, Doreen M. New York: Transnational Publishers, Inc.
- Stienestra, Deborah. 1994. *Women's Movements and International Organizations*. UK: The MacMillan Press Ltd.
- Stoller, Robert. 1968. *Sex and Gender. On the Development of Masculinity and Femininity*. New York: Science House.
- Stoller, Robert. 1975. *Sex and Gender, vol. II: The Transsexual Experiment*. London: The Hogarth Press and the Institute of Psycho-Analysis.
- Strzelewicz, Willy. 2001 [1943]. *De mänskliga rättigheternas historia. Från den amerikanska oavhängighetsförklaringen till våra dagar*. Stockholm: Ordfront Förlag.
- Sullivan, Donna. 1995. The Public/Private Distinction in International Human Rights Law. In *Women's Rights, Human Rights*, edited by Peters, Julia and Wolper, Andrea. New York and London: Routledge.
- Sullivan, Donna. 1997. *Integration of Women's Rights into the Work of the Special Rapporteurs*. New York: UNIFEM.
- Sullivan, Donna. 1999. Trends in the Integration of Women's Human Rights and Gender Analysis in the Activities of the Special Mechanisms In *Gender Integration into the Human Rights System*, Report of the Workshop, UNOG, 26 to 28 May 1999. New York and Geneva: OHCHR, DAW and UNIFEM.
- Svensson, Eva-Maria. 1995. Vems tryckfrihet – hans, hennes eller hans och hennes? In *13 kvinnoperspektiv på rätten*, edited by Nordborg, Gudrun. Uppsala: Iustus förlag.
- Svensson, Eva-Maria. 1997. *Genus och rätt. En problematisering av föreställningen om rätten*. Uppsala: Iustus. Förlag.
- Svensson, Eva-Maria. 2001a. *Genusforskning inom juridiken*. Stockholm: Högskoleverket.
- Svensson, Eva-Maria. 2001b. Sex Equality: Changes in Politics, Jurisprudence and Feminist Legal Theory. In *Responsible Selves. Women in the Nordic Legal*

- Culture*, edited by Nousianen, Kevät, Gunnarsson, Åsa, Lundström, Karin and Niemi-Kiesiläinen, Johanna. England: Ashgate Publishing Ltd.
- Svensson, Eva-Maria. 2003. Visionen om en jämställd transporträtt. In *Nya och gamla perspektiv på transporträtten*, edited by Johansson, Svante O. Stockholm: Svenska Sjörettsföreningens Skrifter 78.
- Tanaka. 2002 [1966]. Dissenting Opinion of Judge Tanaka, South West Africa Cases (Second Phase). In *Basic Documents on Human Rights, 4th edition*, edited by Blowndie, Ian and Goodwin-Gill, Guy S. Oxford: Oxford University Press.
- *Tanesini, Alessandra. 1994. Whose Language? In *Knowing the Difference: Feminist Perspectives in Epistemology*, edited by Lennon, Kathleen and Whitford, Margaret. New York: Routledge.
- Tarnoff, Kurt. 1994. Population and Development: The 1994 Cairo Conference. *CRS Report for Congress*, at [www.NCSEonline.org/NLE/CRSreports/General\(27-09-2003\)](http://www.NCSEonline.org/NLE/CRSreports/General(27-09-2003)).
- Taylor, Paul and Groom A. J. R., eds. 2000. *The United Nations at the Millennium. The Principle Organs*. London and New York: Continuum.
- Tesón, Fernando R. 1993. Feminism and International Law: A Reply. *Virginia Journal of International Law* vol. 33, no. 3, pp. 647–684.
- The Optional Protocol: Text and Materials*. 2000. DAW, DESA. New York: UN Publications.
- The Status of Ratification of the Principal International Human Rights Treaties as of 21 August 2002*, www.unhchr.ch/pdf/report.pdf (26-09-2003).
- The United Nations and the Advancement of Women 1945–1995*. 1995. The Blue Book Series vol. VI, Dept. of Public Information, United Nations, New York.
- Thompson, Denise. 1989. The ‘Sex/Gender’ Distinction: A reconsideration. *Australian Feminist Studies* vol. 10, pp. 23–31.
- Tistounet, Eric. 2000. The Problem of Overlapping among different Treaty Bodies. In *The Future of UN Human Rights Treaty Monitoring*, edited by Alston, Philip and Crawford, James. UK: Cambridge University Press.
- Tomaševski, Katarina. 1993. *Women and Human Rights*. London & New Jersey: Zed Books Ltd.
- Tomaševski, Katarina. 1998a. Rights of Women: From Prohibition to Elimination of Discrimination. *International Social Science Journal* no. 158, pp. 545–558.
- Tomaševski, Katarina. 1998b. *A Primer on CEDAW for International Development Co-operation Personnel*. Stockholm: SIDA.
- Tomaševski, Katarina. 1998c. *Integration of a Gender Perspective into United Nations Technical Cooperation in Human Rights*, working paper, UN doc. GLO/97/AHB/24. Geneva: OHCHR
- Transforming Health Systems: Gender and Rights in Reproductive Health. A Training Manual for Health Managers*. Geneva: Department of Reproductive Health & Research, World Health Organization.
- Trinh, Minh-ha T. 1989. *Woman, Native, Other. Writing Postcoloniality and Feminism*. Bloomington and Indianapolis: Indiana University Press.
- Trinh, Minh-ha T. 1991. *When the Moon Waxes Red. Representation, Gender and Cultural Politics*. London & New York: Routledge.

- Trotman, James C. 2002. *Multiculturalism: Roots and Realities*. Bloomington: Indiana University Press.
- Twining, William. 2000. *Globalisation & Legal Theory*. London, Edinburgh and Dublin: Butterworths.
- UNDP *Human Development Report 1995*. New York: UNDP.
- United Nations Handbook 2001*. New Zealand: The Ministry of Foreign Affairs and Trade.
- Walker, Kristen. 2001. Moving Gayly Forward? Lesbian, Gay and Transgender Human Rights in Europe. *Melbourne Journal of International Law* vol. 2, pp. 122–143.
- Walter, Lynn, ed. 2001. *Women's Rights. A Global View*. Westport: Greenwood Press.
- Warner, Daniel, ed. 1997. *Human Rights and Humanitarian Law. The Quest for Universality*. The Hague, Boston and London: Martinus Nijhoff Publishers.
- Weedon, Chris. 1999. *Feminism, Theory and the Politics of Difference*. Oxford and Massachusetts: Blackwell Publishing.
- Weerelt, Patrick van. 2000. *The Application of a Human Rights-based Approach to Development Programming. What is the Added Value?*, at www.undp.org/governance/hurist.htm (2003-07-22).
- Weerelt, Patrick van. 2001. *A Human Rights-based Approach to development programming in UNDP – Adding the Missing Link*, at www.undp.org/governance/hurist.htm (2003-07-22).
- *West, Robin. 1991. Jurisprudence and Gender. In *Feminist Legal Theory*, edited by Bartlett, K. T. and Kennedy R. Boulder: Westview Press.
- Wetherell, Margaret, Taylor, Stephanie and Yates, Simeon J. eds. 2001. *Discourse Theory and Practice. A Reader*. Great Britain: SAGE Publications Ltd.
- Wetterberg, Tomas. 2002. *Vill man ha jämställdhet? Slutrapport för projekt Män och jämställdhet*. Stockholm: Regeringskansliet.
- White, John V. and Blakesley, Christopher L. 2000. Women or Rights: How Should Women's Rights be Conceived and Implemented. In *Women and International Human Rights Law*, edited by Askin, Kelly D. and Koenig, Dorean M. New York: Transnational Publishers, Inc.
- *Whittick, Arnold. 1979. *Women into Citizen*. London: Athenaeum with Frederick Muller.
- Widerberg, Karin. 1998. Translating Gender. *NORA* vol. 6, no. 2, pp. 133–8.
- Williams, Patricia. 1991. *The Alchemy of Race and Rights*. Cambridge: Harvard University Press.
- Wing, Adrian Katherine, ed. 1997. *Critical Race Feminism. A Reader*. London & New York: New York University Press.
- Wing, Adrien Katherine and de Carvahlo, Eunice P. 1995. Black South African Women: Toward Equal Rights. *Harvard Human Rights Journal* vol. 8, pp. 57–100.
- Wing, Adrian Katherine, ed. 2000. *Global Critical Race Feminism. An International Reader*. New York and London: New York University Press.
- Winther Jørgensen, Marianne and Phillips, Louice. 2000. *Diskursanalys som teori och metod*. Lund: Studentlitteratur.

- Wittig, Monique. 1992. *The Straight Mind and Other Essays*. Hertfordshire: Harvester Wheatsheaf.
- Wollstonecraft, Mary. [1792] 1997. *Till försvar för kvinnans rättigheter*. Stockholm: Ordfront förlag.
- Wollstonecraft, Mary. 1792. *A Vindication of the Rights of Women*. Electronic source, at www.bartleby.com/144/ (27-09-2003)
- Women 2000 / Integrating a Gender Perspective into UN Human Rights Work*. 1998. New York: DAW.
- Wood Wetzel, Janice. 1993. *The World of Women. In Pursuit of Human Rights*. Hampshire: The MacMillan Press Ltd.
- Vorenberg, Michael. 2001. *Final Freedom: The Civil War, the Abolition of Slavery and the Thirteenth Amendment*. Cambridge and New York: Cambridge University Press.
- Wright, Shelley. 2002. The Horizon of Becoming. Culture, Gender and History after September 11. *NJIL* vol. 71, pp. 215–253.
- Wylie, Gillian. 2003. Women's Rights and a 'Righteous War'. *Feminist Theory* vol. 4, no. 2, pp. 217–23.
- Yearbook of the United Nations 1975*. New York: UN.
- Zweigert, Konrad and Kötz, Hein [translated from Geman by Weir, Tony]. 1992. *Introduction to Comparative Law*. Oxford: Clarendon Press.
- Österdahl, Inger. 2002. *Implementing Human Rights in Africa. The African Commission on Human and Peoples' Rights and Individual Communications*. Uppsala: Iustus förlag.

Web Pages

europa.eu.int/comm/justice_home/unit/charte/index_en.html (25-09-2003)
history.acusd.edu/gen/20th/truman45.html (25-09-2003)
history.acusd.edu/cdr2/BYRD/CONFEREN/YALTA_CO.TXT (28-09-2003)
seattletimes.nwsourc.com/trinity/articles/part1.html (25-09-2003)
www.bartleby.com/144/13.html (25-09-2003)
www.dawn.org.fj/ (27-09-2003)
www.douglassarchives.org/clin_a64.htm (28-09-2003)
www.ilo.org/public/english/about/history.htm (25-09-2003)
www.ilo.org/dyn/gender/gender.home (28-09-2003)
www.ilo.org/public/english/about/mandate.htm (25-09-2003)
www.library.miami.edu/gov/intro (25-09-2003)
www.oas.org/CIM/english/Conventions.htm (27-09-2003)
www.soas.ac.uk/honourcrimes/ (23-09-2003)
www.sdn.undp.org/gender (28-09-2003)
www.thebody.com/un aids/men/contents.html (12-01-2004)
www.udhr50.org/ (25-09-2003)
www.undp.org/gender (28-09-2003)
www.sdn.undp.org/gender/programmes/men/ (12-01-2004)
www.undp.org/governance/humanrights.htm (28-09-2003)
www.undp.org/governance/hurist.htm (28-09-2003)
www.unfpa.org/gender (28-09-2003)
www.unhchr.ch/development/hurist.html (09-01-2004)
www.unhchr.ch/html/menu2/2/chrmem.htm (28-09-2003)
www.unhchr.ch/html/menu2/2/chrbur.htm (28-09-2003)
www.unhchr.ch/html/hchr.htm (23-09-2003)
www.unhchr.ch/tbs/doc.nsf (23-09-2003)
www.unhchr.ch/html/conf.htm (23-09-2003)
www.unhchr.ch/html/menu2/2/sc.htm (16-01-2004)
www.unhchr.ch/html/menu2/2/chr.htm (16-01-2004)
www.unhchr.ch/html/50th/50anniv.htm (25-09-2003)
www.unhchr.ch/html/menu6/2/fs14.htm (25-09-2003)
www.unhchr.ch/udhr/navigate/alpha.htm (25-09-2003)
www.unhchr.ch/pdf/report.pdf (27-09-2003)
www.unifem.org (28-09-2003)
www.unicef.org/gender/index.html (12-01-2004)
www.un.org/Depts/dhl/reform.htm (13-01-2004)

www.un.org/documents/st.htm (23-09-2003)
www.un.org/esa/coordination/ecosoc/about.htm (23-09-2003)
www.un.org/ga/57/about.htm (23-09-2003)
www.un.org/Overview/growth.htm (23-09-2003)
www.un.org/reform/ (12-01-2004)
www.un.org/reform/track2/hilights.htm (22-05-2002)
www.un.org/reform/refdoc.htm (28-09-2003)
www.un.org/dhl/resguide/scact2000.htm (15-10-2002)
www.un-instraw.org/en/research/mensroles/index.html (12-01-2004)
www.un.org/womenwatch/daw/csw/critical#bpfa (09-12-2003)
www.un.org/womenwatch/daw/csw/critical#gender (09-12-2003)
www.un.org/womenwatch/daw/daw/ (23-09-2003)
www.un.org/womenwatch/daw/csw/members (28-09-2003)
www.un.org/womenwatch/daw/csw/critical.htm #concerns (25-03-2003)
www.un.org/womenwatch/osagi/gendermainstreaming.htm (12-01-2004).
www.un.org/womenwatch/daw/egm/men-boys2003/aidememoire.html
 (28-09-2003)
www.un.org/womanwatch/ianwge (28-09-2003)
www.who.int/reproductive-health/gender/tools.html (28-09-2003)
www.who.int/reproductive-health/gender/modules.html (28-09-2003)
www.who.int/reproductive-health/mps/index.htm (28-09-2003)
www.who.int/health_topics/gender (28-09-2003)
www.worldbank.org/gender (28-09-2003)
www.z.lst.se/jamsthet/jamtegrering.php (28-09-2003)

Interviews

Interview Nos. 1–15.¹

¹ A confidential list with names and titles of the persons who were interviewed for this thesis is held by the author or this thesis.

Official Documents

The official documents entries marked with a star (*) are secondary references.

Main UN Treaties, Declarations and Platforms of Action¹

UN Charter 1945

Statute of the International Court of Justice 1945

Universal Declaration on Human Rights 1948

Convention on the Suppression of Traffic in Women and Children 1950

Convention on the Political Rights of Women 1952

Protocol amending the Slavery Convention 1953 [1926]

Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery 1956

Convention on the Nationality of Married Women 1957

Declaration on the Granting of Independence to Colonial Territories and Peoples 1960

Convention on the Consent to Marriage, Minimum age of Marriage and Registration of Marriages 1962

Declaration on the Elimination of All Forms of Racial Discrimination 1963

Convention on the Elimination of All Forms of Racial Discrimination 1965

International Covenant on Economic, Social and Cultural Rights 1966

International Covenant on Civil and Political Rights 1966

Optional Protocol to the International Covenant on Civil and Political Rights 1966

Declaration on the Elimination of Discrimination against Women 1967

Proclamation of Teheran 1968

Convention on the Elimination of All Forms of Discrimination against Women 1979

Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment 1984

¹ The chronological list includes the main law and soft law documents referred to in this thesis.

Declaration on the Human Rights of Individuals who are not Nationals in the Country in Which they Live 1985
 Nairobi Forward-Looking Strategies 1985
 Convention on the Rights of the Child 1989
 International Convention on the Protection of All Migrant Workers and Members of Their Families 1990
 Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities 1992
 Declaration on the Elimination of All Forms of Violence against Women 1993
 Vienna Declaration and Programme of Action 1993
 Cairo Declaration and Programme of Action 1994
 Beijing Declaration and Platform for Action 1995
 Rome Statute of the International Criminal Court 1998
 Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women 1999
 Durban Declaration and Programme of Action 2000
 UN Millennium Declaration 2000
 Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography 2000
 Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict 2000

UN Documents²

World Conference and Related Documents

A/Conf.157/1 Provisional agenda of the World Conference on Human Rights
 A/Conf.157/2 Adoption of the final document of the World Conference on Human Rights
 A/Conf.157/3/Add.2 Observations et recommandations intéressantes le projet et le document final
 A/Conf.157/3/Add. 3 Suggestion concernant le projet de document final
 A/Conf.157/22 Address of the Secretary-General of the United Nations
 A/Conf.157/23 Vienna Declaration and Programme of Action
 A/Conf.157/24 Report of the World Conference on Human Rights
 A/Conf.157/PC/46/Add.5-9 Recommendations concerning the provisional agenda
 A/Conf.157/PC/57 Regional preparatory meetings of the World Conference on Human Rights
 A/Conf.157/AFRM/14-A/Conf.157/PC/57 Report of the Regional Meeting for Africa

² In order for the UN document bibliography to be useful I have chosen to categorize the documents per institution or per theme depending on how and where the documents have been used in this thesis.

A/Conf.157/LACRM/15-A/Conf.157/PC/58 Report of the Regional Meeting for Latin America and the Caribbean-San José Declaration
 A/Conf.157/ASRM/8-A/Conf.157/PC/59 Report of the Regional Meeting for Asia
 A/Conf.157/PC.60/Add.2-7 Analytical studies on the six objectives of the World Conference on Human Rights
 A/Conf.157/PC.63/Add.2 Note verbale by the Permanent Mission of Iraq
 A/Conf.157/PC.63/Add.5 Déclaration présentée par des organisations non gouvernementales
 A/Conf.157/PC/87 Exposé de la position de la Communauté Européenne et de ses Etats Membres

A/Conf.171/13 (1994) Report of the International Conference on Population and Development
 A/Conf.171/13/Add.1 Report annexes I to IV.

A/Conf.177/20 (1995) Report of the Fourth World Conference on Women
 A/Conf.177/L.1 Draft Beijing Platform for Action
 A/Conf.177/L.2 Report of the Informal Contact Group on Gender
 A/Conf.177/L.2, Annex
 A/Conf.177/L.3 Informal consultations on the draft platform

A/S-23/10/Rev.1 (2000) Report of the Ad Hoc Committee of the Whole of the Twenty-Third Special Session of the General Assembly

The Security Council

S/Res/1261 (1999) Children and armed conflict
 S/Res/1265 Protection of civilians in armed conflict

S/Res/1296 (2000) Protection of civilians in armed conflict
 S/Res/1314 Children and armed conflict
 S/Res/1325 Women and peace and security
 S/Res/1333 The situation in Afghanistan
 S/PRST/2000/7 Maintenir de la paix et de la sécurité
 S/PV.4208 Statements from the morning and afternoon sessions concerning women and peace and security

S/Res/1366 (2001) The role of the Security Council in the prevention of armed conflict
 S/Res/1368 Threats to international peace and security caused by terrorist acts
 S/Res/1379 Children and armed conflict
 S/Res/1383 The situation in Afghanistan

S/Res/1419 (2002) The situation in Afghanistan

S/Res/1431 The International Criminal Tribunal for Rwanda
S/Res/1438 Threats to international peace and security caused by terrorist acts
S/Res/1440 Threats to international peace and security caused by terrorist acts
S/Res/1449 The establishment of the list of candidates for judges on the International Tribunal for Rwanda
S/Res/1450 Threats to international peace and security caused by terrorist acts

The UN General Assembly (UN GA)

A/Pv.29 (1946) An Open Letter to the World's Women

UNGA Res. 640 (VII) (1952) The Convention on the Political Rights of Women

*UNGA Res. 1991B (XVIII) (1963) Question on the equitable representation on the Security Council and the ECOSOC

*UNGA Res. 2106 (XX) (1965) The CERD

*UNGA Res. 2200 A (XXI) (1966) The ICCPR and the ICESCR

UNGA Res. 2263 (XXII) (1967) The DEDAW

UNGA Res. 2847 (XXVI) (1971) The enlargement of the ECOSOC

UNGA Res. 3520 (XXX) (1975) The World Conference of the International Women's Year

*A/32/218/Add.1 (1977)

A/Res/33/185 (1978) Preparations for the World Conference of the UN Decade for Women

A/Res/34/180 (1979) The CEDAW

A/34/PV.107 Discussions regarding the CEDAW

A/Res/35/175 Alternative approaches and ways and means within the UN system for improving the effective enjoyment of human rights and fundamental freedoms

A/Res/38/117 (1983) Reporting obligations of the States Parties to the international Covenants of human rights

A/39/484 (1984) Report of the meeting of the persons chairing the human rights treaty bodies

*A/Res/39/46 The CAT

*A/C.3/39/SR.65

A/Res/42/105 (1987) Reporting obligations under UN instruments on human rights

A/44/98, annex (1989) Report of the meeting of the persons chairing the human rights treaty bodies

A/Res/44/25 The CRC

A/Res/44/76 Elderly women

A/45/636, annex (1990) Report of the meeting of the persons chairing the human rights treaty bodies

*A/Res/45/85 Effective implementation of international instruments on human rights, including reporting obligations under international instruments on human rights

A/Res/45/155 The World Conference on Human Rights

A/Res/45/158 The International Convention on the Protection of the Rights of all Migrant Workers and Members of Their Families

A/Res/46/111 (1991) Effective implementation of international instruments on human rights, including reporting obligations under international instruments on human rights

A/Res/46/116 The World Conference on Human Rights

A/47/628 (1992) Report of the meeting of the persons chairing the human rights treaty bodies

A/Res/47/122 The World Conference on Human Rights

A/48/38 (1993) Report of the CEDAW Committee

A/48/44 Report of the CAT Committee

A/Res/48/108 The Implementation of the Nairobi Forward-looking Strategies for the Advancement of Women

A/Res/48/120 The Effective implementation of international instruments on human rights, including reporting obligations under international instruments on human rights

A/Res/48/121 The World Conference on Human Rights

A/Res/48/141 The High Commissioner for the promotion and protection of all human rights

A/49/38 (1994) Report of the CEDAW Committee

A/49/44 Report of the CAT Committee

A/49/537 Report of the meeting of the persons chairing the human rights treaty bodies

A/49/650 Report of the Special Rapporteur on the situation of human rights in Afghanistan

A/Res/49/175 The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families

A/50/36 (1995) Report of the UN High Commissioner for Human Rights
A/50/38 Report of the CEDAW Committee
A/50/505 Report of the meeting of the persons chairing the human rights treaty bodies
A/50/567 Report of the Special Rapporteur on the situation of human rights in Afghanistan
A/Res/50/203 Follow-up to the Fourth World Conference on Women and full implementation of the Beijing Declaration and the Platform for Action

A/51/36 (1996) Report of the UN High Commissioner for Human Rights
A/51/38 Report of the CEDAW Committee
A/51/322 Report of the Third Committee on the outcome of the Beijing conference
A/51/457 Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions
A/51/481 Report of the Special Rapporteur on the situation of human rights in Afghanistan
A/51/482 Report of the meeting of the persons chairing the human rights treaty bodies
A/51/950 Report of the Secretary-General on renewing the UN
A/Res/51/69 Follow-up to the Fourth World Conference on Women and full implementation of the Beijing Declaration and Platform for Action
A/Res/51/118 Comprehensive implementation of and follow-up to the Vienna Declaration and Programme of Action

A/52/36 (1997) Report of the UN High Commissioner for Human Rights
A/52/38 Report of the CEDAW Committee
A/52/493 Report of the Special Rapporteur on the situation of human rights in Afghanistan
A/52/507 Report of the meeting of the persons chairing the human rights treaty bodies
A/Res/52/100 The Fourth World Conference on Women follow-up, including the Beijing Declaration and Platform of Action
A/Res/52/117 The Fiftieth anniversary of the Universal Declaration of Human Rights

A/53/36 (1998) Report of the UN High Commissioner for Human Rights
A/53/38 Report of the CEDAW Committee
A/53/125 Report of the meeting of the persons chairing the human rights treaty bodies
A/53/372 Report of the UN High Commissioner for Human Rights on the implementation of the Vienna Programme
A/53/539 Report of the Special Rapporteur on the human rights situation in Afghanistan
A/Res/53/120 The Fourth World Conference on Women follow-up, including the Beijing Declaration and Platform of Action

A/Res/53/166 The Vienna Declaration and Programme of Action
A/Res/53/168 The 50th anniversary of the Universal Declaration of Human Rights

A/54/36 (1999) Report of the UN High Commissioner for Human Rights
A/54/38 Report of the CEDAW Committee
A/54/805 Report of the meeting of the persons chairing the human rights treaty bodies
A/Res/54/133 Traditional practices affecting the health of women and girls
A/Res/54/135 Improvement of the situation of women in rural areas
A/Res/54/141 Follow-up to the Fourth World Conference on Women and full implementation the Beijing Declaration and the Platform for Action

A/55/38 (2000) Report of the CEDAW Committee
A/55/44 Report of the CAT Committee
A/Res/55/2 The Millennium Declaration
A/Res/55/66 Elimination of crimes against women committed in the name of honour
A/Res/55/71 Follow-up to Fourth World Conference on Women and the outcome of the 23rd special session of the General Assembly
A/Res/55/78 The girl child
A/Res/55/162 Follow-up to the outcome of the Millennium Summit
A/Res/S-23/3 The General Assembly Resolution on Further Actions and Initiatives to Implement the Beijing Declaration and Platform for Action

A/56/36 (2001) Report of the UN High Commissioner for Human Rights
A/56/38 Report of the CEDAW Committee
A/56/44 Report of the CAT Committee
A/56/326 Report of the Secretary-General, Road map towards the implementation of the Millennium Declaration
A/56/576 Report of the Third Committee on the Advancement of women
A/56/583/Add.1 Report of the Third Committee on human rights questions
A/Res/56/95 Support by the UN system of the efforts of Governments to promote and consolidate new or restored democracies
A/Res/56/125 The Critical situation of the INSTRAW
A/Res/56/126 Situation of older women in society
A/Res/56/127 Improvement of the status of women in the UN system
A/Res/56/128 Traditional or customary practices affecting the health of women and girls
A/Res/56/129 Improvement of the situation of women in rural areas
A/Res/56/130 The UNIFEM
A/Res/56/131 Violence against women migrant workers
A/Res/56/132 Follow-up to the Fourth World Conference on Women and full implementation of the Beijing Declaration and Platform for Action and the outcome of the 23rd special session of the General Assembly

- A/Res/56/143 Torture and other cruel, inhuman or degrading treatment or punishment
- A/Res/56/144 International covenants of human rights
- A/Res/56/145 The International Convention on the Protection of the Rights of all Migrant Workers and Members of Their Families
- A/Res/56/147 Human rights education
- A/Res/56/149 Enhancement of international cooperation in the field of human rights
- A/Res/56/150 The right to development
- A/Res/56/153 Strengthening UN actions in the field of human rights through the promotion of international cooperation and the importance of non-selectivity, impartiality and objectivity
- A/Res/56/155 The right to food
- A/Res/56/156 Human rights and cultural diversity
- A/Res/56/157 Elimination of all forms of religious intolerance
- A/Res/56/158 National institutions for the promotion and protection of human rights
- A/Res/56/160 Human rights and terrorism
- A/Res/56/161 Human rights in the administration of justice
- A/Res/56/162 Effective promotion of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities
- A/Res/56/163 Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms
- A/Res/56/164 Protection of and assistance to internally displaced persons
- A/Res/56/166 Human rights and mass exoduses
- A/Res/56/167 UN Decade for Human Rights Education
- A/Res/56/168 Comprehensive and integral international convention to promote and protect the rights and dignity of persons with disabilities
- A/Res/56/169 Situation of human rights in Cambodia
- A/Res/56/170 Protection of migrants
- A/Res/56/171 Situation of human rights in the Islamic Republic of Iran
- A/Res/56/172 Situation of human rights in parts of South-Eastern Europe
- A/Res/56/173 Situation of human rights in the Democratic Republic of the Congo
- A/Res/55/174 Situation of human rights in Iraq
- A/Res/56/175 Situation of human rights in the Sudan
- A/Res/56/176 Question of human rights in Afghanistan
- A/Res/56/188 Women in development
- A/Res/56/207 Implementation of the First UN Decade for the Eradication of Poverty (1997–2006), including the proposal to establish a world solidarity fund for poverty eradication
- A/Res/56/211 Integrated and coordinated implementation of and follow-up to the outcomes of the major UN conferences and summits in the economic and social fields
- A/Res/56/222 Special session of the General Assembly on children

- A/Res/56/230 Subregional Centre for Human Rights and Democracy in Central Africa
- A/Res/56/231 Situation of human rights in Myanmar
- A/Res/56/232 Use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination
- A/Res/56/265 Third Decade to Combat Racism and Racial Discrimination
- A/Res/56/266 Comprehensive implementation of and follow-up to the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance
- A/Res/56/267 Measures to combat contemporary forms of racism and racial discrimination, xenophobia and related intolerance
- A/57/18 (2002) Report of the CERD Committee
- A/57/36 Report of the UN High Commissioner for Human Rights
- A/57/38 Report of the CEDAW Committee
- A/57/44 Report of the CAT Committee
- A/57/75-E/2002/57 Report of the Secretary-General on the integrated and coordinated implementation of and follow-up to the outcomes of the major United Nations conferences and summits, including the Millennium Summit
- A/57/270 Report of the Secretary-General on the follow-up to the outcome of the Millennium Summit
- A/57/387 Report of the Secretary-General on Strengthening the United Nations: An Agenda for Further Change
- A/57/399 Note by the Secretary-General, Human rights questions: implementation of human rights instruments
- A/57/496 Report of the Secretary-General on the Third United Nations Conference on the Least Developed Countries
- A/Res/57/270 Integrated and coordinated implementation of and follow-up to the outcomes of the major United Nations conferences and summits in the economic and social fields

ECOSOC and its Substantial Commissions

ECOSOC

*ECOSOC Res. 5(I) (1946)

*ECOSOC Res. 11 (II) (1946)

*ECOSOC Res. 48 (IV) (1947)

*ECOSOC Res. 845 (XXXII) (1961)

*ECOSOC Res. 1147 (XLI) (1966)

ECOSOC Res. 1235 (XLII) (1970) Commission on Human Rights and the Subcommission on Prevention of Discrimination and Protection of Minorities

are authorized to examine information relevant to gross violations of human rights and fundamental freedoms.

ECOSOC Res. 1303 (XLVIII) (1970) Procedure for dealing with communications relating to violations of human rights and fundamental freedoms

*E/Res/1979/36

*E/1982/34

*E/Res/1984/37

E/1986/8 System-wide equality plan for the advancement of women

E/Res/1986/71 System-wide equality plan for the advancement of women

*E/Res/1987/2

*E/Res/1987/22

*E/Res/1990/15

*E/Res/1990/48

*E/Res/1991/18

*E/Res/1992/20

ECOSOC Agreed Conclusions 1995/1 on the coordinated follow-up of the UN world conferences

E/1995/86 Report of the Secretary-General on the coordinated follow-up

ECOSOC Agreed Conclusions 1996/1 on poverty eradication

E/1996/2 The ECOSOC 1996 Agenda

E/1996/61 Eradication of poverty

E/Res/1996/6 Follow-up to the Fourth World Conference on Women

ECOSOC 1997 Report

ECOSOC Agreed Conclusions 1997/2 on gender mainstreaming

E/Res/1997/61 Implementation and follow-up of major UN conferences

E/1997/SR.21 Gender mainstreaming

E/1997/SR.22 Gender mainstreaming

E/1998/19 World conference follow-up

E/1998/60 Coordination of policies and activities of specialized agencies and other bodies of the UN system related to follow-up to UN world conferences

E/1998/64 Implementation of the agreed conclusions of 1997 on mainstreaming the gender perspective

E/Res/1998/43 Mainstreaming a gender perspective into all policies and programmes in the UN system

ECOSOC Agreed Conclusions 2000/2 on the integrated follow-up to UN world conferences

E/Res/2000/9 Situation of women and girls in Afghanistan

E/2001/27 – E/CN.6/2001/14 Report of the 45th Session on the Commission on the Status of Women

E/2001/73 Note by the Secretary-General on the implementation of agreed conclusions 2000/2 on the integrated and coordinated conference follow-up

E/Res/2001/1 Triennial comprehensive policy review of operational activities for development of the UN system

E/Res/2001/2 The situation of and assistance to Palestinian women

E/Res/2001/3 Discrimination against women and girls in Afghanistan

E/Res/2001/4 Proposal for a multi-year programme of the work for the Commission on the Status of Women

E/Res/2001/5 Agreed conclusions of the Commission on the Status of Women on thematic issues

E/Res/2001/21 Integrated and coordinated implementation of and follow-up to major UN conferences and summits

E/Res/2001/22 Integrated and coordinated implementation of and follow-up to major UN conferences and summits

E/Res/2001/28 Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples by the specialized agencies and the international institutions associated with the UN

E/Res/2001/37 Global Code of Ethics for Tourism

E/Res/2001/38 Human rights education

E/Res/2001/41 Mainstreaming a gender perspective into all policies and programmes in the UN system

E/Res/2001/42 Global campaign for poverty eradication

E/2001/L.21 Draft resolution submitted by the Vice President of the ECOSOC (Myanmar)

*E/2001/L.24/Rev.1

E/2001/L.28 Draft resolution submitted by Portugal and India (HIV)

*E/2001/L.29 Draft resolution submitted by Andorra, Australia, Belgium, Brazil et cetera (Gender mainstreaming)

E/2001/L.32 Draft resolution submitted by the Vice President of the ECOSOC (Global code of ethics)

E/2001/L.33 Draft resolution on Human Rights Education

E/2001/L.41 Draft resolution submitted by the Vice President of the ECOSOC (Integrated follow-up to the world conferences)

E/2001/L.42 Draft resolution submitted by the Vice President of the ECOSOC (Global campaigning for poverty eradication)

*E/2001/SR.43

E/Res/2002/4 Situation of women and girls in Afghanistan
E/Res/2002/23 Mainstreaming a gender perspective into all policies and programmes in the UN system

The Commission on Human Rights and Its Special Procedures, Including the Sub-Commission on the Promotion and Protection of Human Rights

*E/CN.4/Res/1982/29

*E/CN.4/Res/1991/30

E/CN.4/Res/1992/72 Extrajudicial, summary and arbitrary executions
E/CN.4/Sub.2/1992/4 Preparations for the Vienna conference

E/CN.4/1993/122 Report of the 49th Session of the Commission on Human Rights

E/CN.4/Res/1993/8 Rape and abuse of women in the territory of the former Yugoslavia

E/CN.4/Res/1993/46 Integrating the human rights of women into the human rights mechanisms

E/CN.4/Res/1993/71 Extrajudicial, summary or arbitrary executions

E/CN.4/1994/7 Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions

E/CN.4/Res/1994/45 Question on the integration of the human rights of women throughout the UN system

E/CN.4/Res/1994/95 World Conference on Human Rights

*E/CN.4/1994/SR.49

*E/CN.4/1994/SR.51/Add.1

*E/CN.4/1994/SR.60

E/CN.4/1995/42 Preliminary report submitted by the Special Rapporteur on violence against women

E/CN.4/1995/61 Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions

E/CN.4/1995/93 Draft Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights

E/CN.4/1995/98 Report of the UN High Commissioner for Human Rights

E/CN.4/1995/176-E/1995/23 Report of the Commission on Human Rights

E/CN.4/Res/1995/20 Violence against Women

E/CN.4/Res/1995/25 Traffic in women and girls

E/CN.4/Res/1995/85 Elimination of violence against women

E/CN.4/Res/1995/86 Question of integrating the human rights of women throughout the UN system

E/CN.4/Res/1995/93 Evaluation of the human rights programme of the United Nations system, in accordance with the Vienna Declaration and Programme of Action

E/CN.4/1996/53 Report of the Special Rapporteur on violence against women
E/CN.4/1996/105 and Annex Note by the Secretariat transmitting the Report of an Expert Group Meeting on the Development of Guidelines for the Integration of Gender Perspectives into the Human Rights Activities and Programmes and the Report

E/CN.4/1996/177-E/1996/23 Report of the Commission on Human Rights

E/CN.4/Res/1996/17 Violence against women migrant workers

E/CN.4/Res/1996/24 Traffic in women and girls

E/CN.4/Res/1996/48 Question of integrating the human rights of women throughout the UN system

E/CN.4/Res/1996/49 The elimination of violence against women

E/CN.4/Res/1996/74 Extrajudicial, summary or arbitrary executions

E/CN.4/Res/1996/83 Evaluation of the human rights programme of the UN, in accordance with the Vienna Declaration and Programme of Action

E/CN.4/1997/3 Report of the meeting of Special Rapporteurs

E/CN.4/1997/40 Report of the Secretary-General on integrating the human rights of women throughout the UN System

E/CN.4/1997/47 Report of the Special Rapporteur on violence against women

E/CN.4/1997/60 Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions

E/CN.4/1997/98 Report of the High Commissioner for Human Rights: building a partnership for human rights

E/CN.4/1997/150-E/1997/23 Report of the Commission on Human Rights on its 53rd Session

E/CN.4/Res/1997/13 Violence against women migrant workers

E/CN.4/Res/1997/19 Traffic in women and girls

E/CN.4/Res/1997/43 Integrating the human rights of women throughout the UN system

E/CN.4/Res/1997/44 The elimination of violence against women

E/CN.4/Res/1997/61 Extrajudicial, summary or arbitrary executions

E/CN.4/Res/1997/69 Comprehensive implementation of and follow-up to the Vienna Declaration and Programme of Action

E/CN.4/1998/1 Provisional Agenda

E/CN.4/1998/45 Report of the meetings of the special rapporteurs

E/CN.4/1998/49 Report of the Secretary-General on the question of integrating the human rights of women throughout the UN system

E/CN.4/1998/54 Report of the Special Rapporteur on violence against women

- E/CN.4/1998/68 Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions
- E/CN.4/1998/104 Report of the UN High Commissioner for Human Rights on the comprehensive implementation of the Vienna Declaration and Programme of Action
- E/CN.4/1998/122 Report of the UN High Commissioner for Human Rights on the follow-up to the World Conference on Human Rights
- E/CN.4/1998/177-E/1998/23 Report of the Commission on Human Rights
- E/CN.4/Res/1998/17 Violence against women migrant workers
- E/CN.4/Res/1998/33 Question of the realization in all countries of the economic, social and cultural rights contained in the Universal Declaration and in the ICESCR
- E/CN.4/Res/1998/51 Integrating the human rights of women throughout the UN system
- E/CN.4/Res/1998/56 Fiftieth anniversary of the Universal Declaration of Human Rights
- E/CN.4/Res/1998/68 Extrajudicial, summary or arbitrary executions
- E/CN.4/Res/1998/78 Comprehensive implementation and the follow-up to the Vienna Declaration and Programme of Action
- E/CN.4/1999/3 Report of the meeting of the special rapporteurs
- E/CN.4/1999/9 Report of the UN High Commissioner for Human Rights
- E/CN.4/1999/39 Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions
- E/CN.4/1999/40 Report of the Special Rapporteur on the situation of human rights in Afghanistan
- E/CN.4/1999/49 Preliminary Report of the Special Rapporteur on the right to education
- E/CN.4/1999/67 Report of the Secretary-General on integrating the human rights of women throughout the UN system
- E/CN.4/1999/67/Add.1 Integrating the human rights of women into the mechanisms of the UN
- E/CN.4/1999/68 Report of the Special Rapporteur on violence against women
- E/CN.4/1999/167-E/1999/23 Report of the Commission on Human Rights
- E/CN.4/Res/1999/35 Extrajudicial, summary or arbitrary executions
- E/CN.4/Res/1999/40 Traffic in women and girls
- E/CN.4/Res/1999/41 Integrating the human rights of women throughout the UN system
- E/CN.4/Res/1999/42 Elimination of violence against women
- E/CN.4/2000/1 Provisional agenda
- E/CN.4/2000/3 Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions
- E/CN.4/2000/5 Report of the meeting of special rapporteurs, representatives, experts and chairpersons

- E/CN.4/2000/6 Report of the Special Rapporteur on the right to education
- E/CN.4/2000/33 Report of the Special Rapporteur on the human rights situation in Afghanistan
- E/CN.4/2000/67 Report of the Secretary-General on integrating the human rights of women throughout the UN system
- E/CN.4/2000/68 Report of the Special Rapporteur on violence against women
- E/CN.4/2000/167-E/2000/23 Report of the Commission on Human Rights
- E/CN.4/2000/118-E/CN.6/2000/8 Joint work plan of the Division for the Advancement of Women and the Office of the High Commissioner for Human Rights
- E/CN.4/Res/2000/13 Women's equal ownership, access to and control over land and the equal rights to own property and to adequate housing
- E/CN.4/Res/2000/31 Extrajudicial, summary or arbitrary executions
- E/CN.4/Res/2000/44 Traffic in women and girls
- E/CN.4/Res/2000/45 Elimination of violence against women
- E/CN.4/Res/2000/46 Integrating the human rights of women throughout the UN system
- E/CN.4/Sub.2/2000/18 Report of the Secretary-General on the situation of women and girls in Afghanistan
- E/CN.4/2001/1 Provisional agenda
- E/CN.4/2001/9 and Corr. 1 Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions
- E/CN.4/2001/16 Report of the High Commissioner on the follow-up to the World Conference on Human Rights
- E/CN.4/2001/43 Report of the Special Rapporteur on the Situation of Human Rights in Afghanistan
- E/CN.4/2001/52 Report of the Special Rapporteur on the right to education
- E/CN.4/2001/70-E/CN.6/2001/3 Joint work plan of the Office of the Special Advisor on Gender Issues and the Advancement of Women, the Division for the Advancement of Women and the Office of the High Commissioner for Human Rights
- E/CN.4/2001/71 Report of the Secretary-General on integrating the human rights of women throughout the UN system
- E/CN.4/2001/73 Report of the Special Rapporteur on violence against women
- E/CN.4/Res/2001/34 Women's equal ownership, access to and control over land and the equal rights to own property and to adequate housing
- E/CN.4/Res/2001/45 Extrajudicial, summary or arbitrary executions
- E/CN.4/Res/2001/48 Traffic in women and girls
- E/CN.4/Res/2001/49 Elimination of violence against women
- E/CN.4/Res/2001/50 Integrating the human rights of women throughout the UN system
- E/CN.4/Sub.2/2001/28 Report of the Secretary-General on the situation of women and girls in the territories occupied by Afghan armed groups

- E/CN.4/2002/1 Provisional agenda
 E/CN.4/2002/43 Report of the Special Rapporteur on the situation of human rights in Afghanistan
 E/CN.4/2002/60 Report of the Special Rapporteur on the right to education
 E/CN.4/2002/74 Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions
 E/CN.4/2002/81 Report of the Secretary-General on integrating the human rights of women throughout the UN system
 E/CN.4/2002/83 Report of the Special Rapporteur on violence against women
 E/CN.4/2002/200-E/2002/23 Report of the Commission on Human Rights
 E/CN.4/Res/2002/19 Situation of human rights in Afghanistan
 E/CN.4/Res/2002/36 Extrajudicial, summary or arbitrary execution
 E/CN.4/Res/2002/49 Women's equal ownership, access to and control over land and the equal rights to own property and to adequate housing
 E/CN.4/Res/2002/50 Integrating the human rights of women throughout the UN system
 E/CN.4/Res/2002/51 Traffic in women and girls
 E/CN.4/Res/2002/52 Elimination of violence against women
 E/CN.4/Res/2002/68 Racism, racial discrimination, xenophobia and ?????? tolerance
- E/2003 (early version) Report of the Secretary-General on integrating the human rights of women throughout the UN System
 E/CN.4/2003/1/Add.1 Provisional agenda
 E/CN.4/2003/3 Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions
 E/CN.4/2003/9 Report of the Special Rapporteur on the right to education
 E/CN.4/2003/39 Report of the Special Rapporteur on the situation of human rights in Afghanistan
 E/CN.4/2003/72 Report of the Secretary-General on integrating the human rights of women throughout the UN system
 E/CN.4/2003/75 Report of the Special Rapporteur on violence against women
 E/CN.4/Res/2003/22 Women's equal ownership, access to and control over land and the equal rights to own property and to adequate housing
 E/CN.4/Res/2003/44 Integrating the human rights of women throughout the UN system
 E/CN.4/Res/2003/45 Elimination of violence against women

The Commission on the Status of Women

- E/CN.6/1992/13-E/1992/74 Report of the Commission on the Status of Women
 E/CN.6/Res/36/1 (1992) Advancement of women and the family
 E/CN.6/Res/36/3 (1992) Women in decision-making bodies
 E/CN.6/Res/36/4 (1992) Integration of elderly women into development
 E/CN.6/Res/36/5 (1992) Women and development

E/CN.6/1993/18-E/1993/27 Report of the Commission on Human Rights
E/CN.6/Res/37/4 (1993) Integration of the human rights of women

E/CN.6/1994/11 Follow-up to the Human Rights Conference
E/CN.6/Res/38/2 (1994) Mainstreaming the human rights of women

E/CN.6/1995/14-E/1995/26 Report of the Commission on the Status of
Women

E/CN.6/1995/5/Add.1-5 Reports from the regional preparatory meetings for
the Beijing Conference

E/CN.6/Res/39/3 (1995) Integration of women in the Middle East peace process

E/CN.6/Res/39/5 (1995) Mainstreaming the human rights of women

E/CN.6/Res/39/6 (1995) Traffic in women and girls

E/CN.6/Res/39/8 (1995) Integration of displaced rural women into
development processes

E/CN.6/Res/40/3 (1996) Mainstreaming the human rights of women

E/CN.6/1997/2 Report of the Secretary-General on the follow-up to the World
Conference on Human Rights and review of mainstreaming a gender per-
spective within the UN system

E/CN.6/1997/9-E/1997/27 Report of the Commission on the Status of Women

E/CN.6/Res/41/1 (1997) Release of women and children taken hostage in armed
conflicts, including those subsequently imprisoned

E/CN.6/Res/41/2 (1997) Older women, human rights and development

E/CN.6/Res/41/4 (1997) Violence against women migrant workers

E/CN.6/Res/41/5 (1997) Traffic in women and girls

E/CN.6/Res/41/6 (1997) Mainstreaming a gender perspective into all policies
and programmes in the UN system

E/CN.6/1999/10-E/1999/27 Report of the Commission on the Status of
Women

E/CN.6/2001/1 Provisional agenda

E/CN.6/2001/2/Add.1 The situation of women and girls in Afghanistan

E/CN.6/2001/14-E/2001/27 Report of the Commission on the Status of Women

E/CN.6/Res/45/2 (2002) Mainstreaming a gender perspective into all policies
and programmes of the UN system

E/CN.6/2002/2 Report of the Secretary-General on the follow-up to and im-
plementation of the Fourth World Conference on Women and to the Special
Session of the General Assembly Entitled Women 2000: Gender Equality,
Development and Peace for the 21st Century, and especially on mainstre-
aming a gender perspective in the entities of the UN system

E/CN.6/2002/13-E/2002/27 Report of the Commission on the Status of
Women

The UN Human Rights Treaty Monitoring Bodies

HRI/GEN/2/Rev.1 Compilation of guidelines on the form and content of the reports to be submitted by States Parties (Basic reference document)

HRI/MC/1996/1 Provisional agenda and annotations, chairpersons' meeting

HRI/MC/1998/6 Report of the Secretary-General on integrating the gender perspective into the work of the UN treaty bodies

CERD Committee general recommendations nos. 1-28 (1972-2002)

CERD/C/70/Rev.5 (2000) General Reporting Guidelines

CERD/C/60/CO/1 (Austria)

CERD/C/60/CO/4 (Croatia)

CERD/C/60/CO/5 (Denmark)

CERD/C/60/CO/10 (Papua New Guinea)

CERD/C/304/Add.91 (France)

CERD/C/304/Add.92 (Zimbabwe)

CERD/C/304/Add.93 (Denmark)

CERD/C/304/Add.94 (Malta)

CERD/C/304/Add.95 (Spain)

CERD/C/304/Add.96 (Tonga)

CERD/C/304/Add.98 (Estonia)

CERD/C/304/Add.99 (Lesotho)

Human Rights Committee general comments nos. 1-29 (1981-2001)

CCPR/C/66/GUI/Rev.2 Consolidated Guidelines for State Reports under the ICCPR

CCPR/CO/69/KWT

CCPR/CO/72/PRK

CCPR/CO/74/SWE

CCPR/CO/75/VNM

CCPR/CO/75/YEM

CCPR/CO/79/Add. 3 (Belgium)

CCPR/CO/79/Add.9 (Burundi)

CCPR/CO/79/10 (Senegal)

CCPR/CO/79/Add.25 (Iran)

CCPR/CO/79/Add.30 (Romania)

CCPR/CO/79/Add.34 (El Salvador)

CCPR/CO/79/Add.39 (Cyprus)

CCPR/CO/79/Add.43 (Tunisia)

CCPR/CO/79/Add.48 (Paraguay)

CCPR/CO/79/Add.52 (Ukraine)

CCPR/CO/79/Add.62 (Zambia)

CCPR/CO/79/Add.67 (Peru)

CCPR/C/79/Add.2 (Ukraine)

CCPR/CO/79/Add.86 (Belarus)

CCPR/CO/79/Add.87 (Lithuania)

CCPR/CO/79/Add.103 (Austria)
 CCPR/CO/79/Add.104 (Chile)
 CCPR/CO/79/Add.122 (Republic of Korea)

ICESCR Committee general comments nos. 1–10 (1989–1998)

E/CN.12/1993/7 (Iran)
 E/CN.12/1993/16 (Mexico)
 E/CN.12/1994/4 (Romania)
 E/CN.12/1994/9 (Gambia)
 E/CN.12/1994/16 (Austria)
 E/CN.12/1995/17 (Algeria)
 E/CN.12/1995/22
 E/CN.12/1/Add.8 (Finland)
 E/CN.12/1/Add.13 (Russian Federation)
 E/CN.12/1/Add.70 (Sweden)
 E/CN.12/1/Add.71 (Algeria)
 E/CN.12/1/Add.72 (France)
 E/CN.12/1/Add.74 (Colombia)
 E/CN.12/1/Add.77 (Ireland)
 E/CN.12/1/Add.81 (Slovakia)
 E/CN.12/1/Add.82 (Poland)
 E/CN.12/1/Add.83 (Georgia)

CEDAW Committee general recommendations nos. 1–24 (1986–1999)
 CEDAW/C/7/Rev.3 Guidelines for the Preparation of Reports by States Parties

CAT Committee general comment no. 1 (1997)
 CAT/C/CR/28/2 (Luxembourg)
 CAT/C/CR/28/3 (Norway)
 CAT/C/CR/28/7 (Uzbekistan)

CRC Committee reports of general days of discussion, document compiled by the
 UN High Commissioner on Human Rights.

CRC Committee general comments nos. 1–5 (2001–2003)
 CRC Committee general recommendations nos. 1–6 (1998–2003)
 CRC/C/15/Add.1 (Bolivia)
 CRC/C/15/Add.5 (Egypt)
 CRC/C/15/Add.9 (El Salvador)
 CRC/C/15/Add.18 (Pakistan)
 CRC/C/15/Add.22 (Chile)
 CRC/C/15/Add.27 (Paraguay)
 CRC/C/15/Add.31 (Poland)
 CRC/C/15/Add.36 (Nicaragua)
 CRC/C/15/Add.40 (Sri Lanka)
 CRC/C/15/Add.45 (Portugal)

CRC/C/15/Add.54 (Lebanon)
CRC/C/15/Add.59 (Cyprus)
CRC/C/15/Add.62 (Uruguay)
CRC/C/15/Add.67 (Ethiopia)
CRC/C/15/Add.71 (New Zealand)
CRC/C/15/Add.76 (Algeria)
CRC/C/15/Add.80 (Uganda)
CRC/C/15/Add.85 (Ireland)
CRC/C/15/Add.94 (Iraq)
CRC/C/15/Add.99 (Belize)
CRC/C/15/Add.103 (Barbados)
CRC/C/15/Add.108 (Nicaragua)
CRC/C/15/Add.112 (Mexico)
CRC/C/15/Add.117 (Costa Rica)
CRC/C/15/Add.121 (Grenada)
CRC/C/15/Add.126 (Norway)
CRC/C/15/Add.130 (Surinam)
CRC/C/15/Add.136 (Tajikistan)
CRC/C/15/Add.141 (Comoros)
CRC/C/15/Add.146 (Lithuania)
CRC/C/15/Add.150 (Dominican Republic)
CRC/C/15/Add.160 (Kenya)
CRC/C/15/Add.165 (Gambia)
CRC/C/15/Add.178 (Belgium)
CRC/C/15/Add.185 (Spain)
CRC/C/15/Add.190 (Sudan)
CRC/C/15/Add.194 (Poland)