

gender issues **and international legal standards**

CONTEMPORARY PERSPECTIVES

edited by Adriana Di Stefano

ed. it

Culture, Democrazia e Diritti nel Mediterraneo

Collana curata da Adriana Di Stefano

Sulle sponde del Mediterraneo si muovono ormai da tempo imponenti flussi migratori e dunque sempre più quest'area sperimenta occasioni di dialogo e di incontro tra diverse culture. Questa situazione interroga il diritto internazionale chiedendogli risposte nuove ai problemi antichi che nascono tutte le volte in cui donne e uomini di diversa nazionalità, cittadinanza e cultura entrano in contatto fra di loro. *Culture, Democrazia e Diritti nel Mediterraneo* intende raccogliere attorno a queste quattro parole chiave i frutti della ricerca più avanzata nel campo giuridico internazionale con l'intento di contribuire a un rinnovamento delle tematiche e degli indirizzi di studio della disciplina.

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Abbreviations

ACHPR	<i>African Charter on Human and People's Rights</i>
AfriCOG	<i>Africa Center for Open Governance</i>
AU	<i>African Union</i>
CAT	<i>Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment</i>
CAVR	<i>Commission for Reception, Truth and Reconciliation</i>
CEDAW	<i>Convention on the Elimination of All Forms of Discrimination Against Women</i>
CEDAW Committee	<i>The United Nations Committee on the Elimination of Discrimination against Women</i>
CERD	<i>The United Nations Committee on the Elimination of Racial Discrimination</i>
CESCR	<i>The United Nations Committee on Economic, Social and Cultural Rights</i>
CICC	<i>The Coalition for the International Criminal Court</i>
CIPEV	<i>Commission of Inquiry into the Post-Election Violence</i>
COVAW	<i>National Coalition to Combat Violence against Women</i>
CSW	<i>Commission on the Status of Women</i>
EFA	<i>Education for All</i>
FIDA	<i>Federation of Women Lawyers</i>
GA	<i>General Assembly</i>
GBV	<i>Gender-Based Violence</i>
GMR	<i>Global Monitoring Report</i>
GR	<i>General Recommendation</i>
HRC	<i>Human Rights Council</i>
HRW	<i>Human Rights Watch</i>

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IANWGE	<i>Inter-Agency Network on Women and Gender Equality</i>
ICC	<i>International Criminal Court</i>
ICCPR	<i>International Covenant on Civil and Political Rights</i>
ICCPR-OP1	<i>Optional Protocol to the International Covenant on Civil and Political Rights</i>
ICESCR	<i>International Covenant on Economic, Social and Cultural Rights</i>
ICRC	<i>International Committee of the Red Cross</i>
ICTR	<i>International Criminal Tribunal for Rwanda</i>
ICTY	<i>International Criminal Tribunal for the former Yugoslavia</i>
IDP	<i>Internally Displaced Persons</i>
ILO	<i>International Labour Organization</i>
ILO CEACR	<i>The Committee of Experts on the Application of Convention and Recommendations</i>
KNDR	<i>Kenya National Dialogue and Reconciliation framework</i>
LNTS	<i>League of Nations Treaty Series</i>
MDGs	<i>Millennium Development Goals</i>
NGOs	<i>Non Governmental Organizations</i>
OAS	<i>Organization of American States</i>
OHCHR	<i>Office of the High Commissioner for Human Rights</i>
OP-CEDAW	<i>Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women</i>
SC	<i>Security Council</i>
TFV	<i>Trust Fund for Victims</i>
TJRC	<i>Truth, Justice and Reconciliation Commission</i>
TRC	<i>Truth and Reconciliation Commission</i>
UN	<i>United Nations</i>
UNESCO	<i>United Nations Educational, Scientific and Cultural Organization</i>
UNFPA	<i>United Nations Fund for Population Activities</i>
UNGEI	<i>United Nations Girl's Education Initiative</i>
UNTAET	<i>United Nations Transitional Administration in East Timor</i>
UNTS	<i>United Nations Treaties Series</i>
VAW	<i>Violence against Women</i>
WHO	<i>World Health Organization</i>

Editor's Preface

This book is the first collection of essays arising from work carried out in the University of Catania at the Centre of Research on International Organizations (CRIO)¹.

In 2009 the CRIO celebrated the Thirtieth Anniversary of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), with a threefold strategy: a special edition of the International Law Seminar Series, devoted to “Gender Issues and International Legal Standards”, a Call for Papers on the same topic, and a Course in the Selected Topics in Public International Law Series (STiPIL 2009) on “Reservations on the CEDAW Convention: Their Range and Effects on International Legal Standards concerning Women”, delivered by Professor Rosario Sapienza, CRIO Faculty Advisor.

The CEDAW was in fact adopted by the United Nations General Assembly some 30 years ago, on 18 December 1979, and boasts a near universal ratification. To date, 186 countries have ratified the Convention and 99 of these countries have ratified the 1999 Optional Protocol recognizing the competence of the Committee on the Elimination of Discrimination against Women to examine complaints from individuals or groups concerning issues in the implementation of CEDAW.

The Convention's Thirtieth Anniversary provided a wonderful occasion to celebrate its achievements, among which was the truly remarkable progress made in national implementation throughout the world.

Now, the Convention is often referred to as a legal instrument which provides women with a powerful tool in helping

them work towards equality with men, not only in terms of the fight against discrimination but also in terms of the positive action taken to secure equal opportunities for them; this conforms to the definition of discrimination in article 1 of the CEDAW, which is stated as «any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field».

In view of this, lectures concentrate on discrimination both in education (art. 10) and in employment (art. 11), two areas of interest which show scope for beneficial and productive interaction with the strategies of two International Organizations, UNESCO and ILO, respectively.

But, since the idea of discrimination lies at the heart of the Convention, one may wonder if it is possible to state that VAW is, indeed, a form of discrimination. The answer may be found in the General Recommendation No. 19 (1992) of the CEDAW Committee, which states that although the CEDAW 1979 in fact fails to address VAW explicitly, it does fall under the notion of discrimination,

discrimination includes gender-based violence, that is, 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 of such acts, coercion and other deprivations of liberty. Gender-based violence may breach specific provisions of the Convention, regardless of whether those provisions expressly mention violence².

Therefore, though men also suffer violence, the *discrimination* issue lies precisely in the fact that VAW affects women “because” they are women, or affects them “disproportionately”.

We felt that these topics, dealing with women's rights in the context of public and private life, could be a good starting point to approach the wider perspective of the general project on Gender Issues and International Legal Standards. We felt this would be especially appropriate since, from an historical point of view, women's legal claims and feminism were the first issues to be broached in terms of gender problems advocacy in International Law.

But, with this initiative, we also intend to pay tribute to a novel theoretical approach to international law known as the "feminist approach", which has been and still is a critical reconstruction of international law, piercing the veil and denouncing silences by legal theory which previously purported to be gender neutral³.

Feminist approaches in fact tend to suggest that the problem is not female discrimination in itself, but rather the prevailing idea we share of the role women are to play in society. In other words, the real problem with discrimination against women seems to be not only the discrimination, but also the fact that legal and political institutions in our societies are not "women friendly", because they were very largely devised by men for men and women simply did not come into the equation. Feminist scholars have denounced the apparently plausible but ultimately specious "gender neutral" approach of Human Rights Law as inadequate to cope with the real problems women are confronted with, often on a daily basis.

In recent years, indeed, feminist scholars and activists have adopted new perspectives in this direction and «women have begun to break into international law, and they have brought to it the same feminist clarity of vision that has begun to transform domestic legal discourse»⁴, though, of course, these initiatives are not immune from some theoretical clashes⁵.

Conceptualized in this way, the feminist approach appears then as a strong critical attack on the opacity of a gender-neutral approach to international law, joining other schools of thought in the ongoing process of clarifying concepts and ideas, so typical to modern scholarship.

This volume is an edited collection of some of the papers submitted, and a selection of the lectures delivered in the International Law Seminar Series. Distinguished scholars from different backgrounds, mainly jurists, have accepted our proposals, and I want to grasp the opportunity here to thank them all for their most valuable contribution to our endeavour.

As said before, the book includes a number of papers focusing on three of the most debated topics among gender issues: Violence against Women, Women and Labour Issues and Women and Education.

It is a truism that in places all over the world there are women exposed to the most atrocious forms of violence. On this subject we have a paper contributed by Prof. Christine Chinkin, from the London School of Economics and Political Science, one of the most renowned scholars in the field of feminist legal studies, and further papers by three of the most promising scholars in this field: Ilaria Bottigliero, from the University of Lund, a former researcher at the Dag Hammarskjöld Centre for Human Rights; Rachael Lorna Johnstone, from the University of Akureyri, Iceland, and Isabella Castrogiovanni, formerly a researcher with UNICEF, working on several assignments based around Gender issues.

Labour Issues are the focus of the paper submitted by Prof. Anne Trebilcock, former ILO Legal Adviser and currently at the University of Paris X Nanterre La Défense, while Dr. Kishore Singh, from the UNESCO Education Division, concentrates on educational concerns.

From all this papers there still emerges a picture of fierce discrimination against women and, in response to this situation, a call for a strong commitment not only to furthering the cause of equality, but to highlighting the pressing need for a real consideration of women's concerns and problems.

In this connection – both as an academic researcher in the field of international law, and myself a woman – I am particularly grateful to Professor Rosario Sapienza, who succeeded so notably in

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putting together this panel of distinguished scholars, and to each and everyone of them for their generous and thought-provoking contributions to our research theme.

All papers were finalized as of 31 December 2009.

Catania, 29 January 2010

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Chairperson of the Gender Issues
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Gender Issues and International Legal Standards

Notes

¹ The Centre of Research on International Organizations (CRIO) was established in 2008 as part of a special teaching program for English speaking students at the University of Catania. The Program consists of a background course (registered as Selected Topics in the Public International Course), an International Law Seminar Series, and research activities conducted by senior students within the framework of CRIO. In its first year, 2008, the Program was devoted to “The Extraterritorial Reach of Human Rights Treaties in a Humanitarian Context” and opened with a *Lectio Magistralis* delivered by Georges Abi Saab.

² See General Recommendation No. 19 (1992) on Violence Against Women at <<http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom19>>. The links between human rights and violence against women are further elaborated in the UN Declaration against Violence Against Women 1993, see <[http://www.unhcr.ch/huridocda/huridoca.nsf/\(Symbol\)/A.RES.48.104.En?OpenDocument](http://www.unhcr.ch/huridocda/huridoca.nsf/(Symbol)/A.RES.48.104.En?OpenDocument)>.

³ C. Chinkin, *Feminism, Approach to International Law*, Max Planck Encyclopaedia of Public International Law, *ad vocem*, <<http://www.mpepil.com/ViewPdf/epil/entries/law-9780199231690-e701.pdf?stylesheet=EPIL-display-full.xml>>.

⁴ R.E. Brooks, *Feminist Justice at Home and Abroad. Feminism and International Law: an Opportunity for Transformation*, *Yale Journal of Law and Feminism*, (2002), p. 345 et seq., at p. 351. See also H. Charlesworth, C. Chinkin, S. Wright, *Feminist Approaches to International Law*, *American Journal of International Law*, (1991), p. 613 et seq.

⁵ In fact one has to note that, when it comes to understanding what femaleness is or rather should be, compared and contrasted with maleness, things seem to become much more complicated and difficult, because, to put it in the words of Christine Chinkin «In reality people have multiple, intersecting identities – for example racial and ethnic identities, nationality, age, religion, disability, sexuality, education and class. Sex or gender cannot be considered in isolation from these other identities, all of which shape a person’s or a group of persons’ experiences». And that is why what she calls *Post-modern feminisms* «question the possibility of any universal theoretical claims and instead stress the importance of particularity, contextuality and multiple identities» and «There is a concern about a *feminist imperialism*, the accusation that women from the North are seeking to *civilize* women from the South without perceiving their own privileged position as closer to the centres of power and influence». See, in this connection, C. Chinkin, *Feminism* cit., § 13. See also A.P. Harris, *Race and Essentialism in Feminist Legal Theory*, *Stanford Law Review*, (1990), p. 581 et seq.; M.C. Nussbaum, *In Defense of Universal Values*, *Idaho Law Review*, (2000), p. 379 et seq.; L. Volpp, *Feminism v. Multiculturalism*, *Columbia Law Review*, (2001), p. 1181 et seq.

Gender Issues and International Legal Standards

Contemporary Perspective

The CEDAW Committee and Violence against Women¹

Christine Chinkin

1. Introduction: the Women's Convention

2009 sees the 30th anniversary of the Convention on the Elimination of All Forms of Discrimination, popularly known as the Women's Convention, described by the UN Secretary-General as the «landmark treaty in the struggle for women's rights». Adoption of the Convention during the UN's Decade for Women 1975-85 was in recognition of the reality that despite the prohibition on discrimination on the basis of sex in the UN Charter (articles 1 (3), 55 and 56), the International Covenant on Civil and Political Rights (articles 2, 3 and 26) and the International Covenant on Economic, Social and Cultural Rights (articles 2 and 3) such discrimination continued to exist in all countries and specific legal prohibition needed to be directed towards those areas where it most impacted upon women's lives. The Convention was drafted by the UN Commission on the Status of Women and was adopted by the UN General Assembly in December 1979. States parties condemn discrimination against women and shall take appropriate measures to eliminate discrimination against women in public life, employment, education, access to healthcare services, access to credit, sport and other facilities. In addition – and exceptionally – it requires equality between women and men within the private sphere of the family, the location of significant discrimination against women.

The Convention came into force in 1981 and today has 186 states parties, second only to the Convention on the Rights of the Child in terms of widespread adherence². The Committee on