

nationalist ideas is beneficial to women, 'nationalist movements subordinate women in a particular definition of their role and place in society, [and] enforce conformity to values that are often male-defined'.<sup>20</sup> Women could find themselves dominated by foreign rule, economic exploitation and aggression, as well as by local entrenched patriarchies, religious structures and traditional rulers.

These conflicting historical perspectives highlight a significant problem for many feminists in the developing world.<sup>21</sup> Feminist and women's movements have been active in numerous developing countries<sup>22</sup> since at least the late 19th and early 20th centuries, but too often women in nationalist movements have had to choose between pressing their own concerns and seeing those concerns crushed by the weight of the overall struggle against colonial rule.<sup>23</sup> Feminists in non-Western countries and, before independence, in the nationalist movements, were open to attack from their own people for accepting decadent Western capitalism, embracing the neo-colonialism of a foreign culture, and turning away from their own culture, ideology and religion. The explicit or implicit addition was that their acceptance of Western feminist values was diverting them from the revolutionary struggle against the colonial power. In other contexts, the emancipation of women has been regarded as a communist tactic to be resisted by resort to traditional values. Problems of loyalty and priorities arise in this context that do not exist for Western feminists. Many Third World feminist movements either were begun in co-operation with nationalistic, anti-colonial movements or operate in solidarity with the process of nation building. Overt political repression is a further problem for feminism in the Third World. In non-Western cultures there may be a much greater fear and hatred of the feminine, especially when it is not strictly confined to the domestic sphere, than is apparent or expressed in Western society.

Despite differences in history and culture, feminists from all worlds share a central concern: their domination by men. Birgit Brock-Utne writes:

Though patriarchy is hierarchical and men of different classes, races or ethnic groups have different places in the patriarchy, they are united in their shared relationship of dominance over their women. And, despite their unequal resources, they are dependent on each other to maintain that domination.<sup>24</sup>

Issues raised by Third World feminists, however, require a re-orientation of feminism to deal with the problems of the most oppressed women, rather than those of the most privileged. Nevertheless, the constant theme in both Western and Third World feminism is the challenge to structures that permit male domination, although the form of the challenge and the male structures may differ from society to society. An international feminist perspective on international law will have as its goal the rethinking and revision of those structures and principles which exclude most women's voices ...<sup>25</sup>

- 
- 20 Halliday, *Hidden from International Relations: Women and the International Arena* (1988) 17 Millenium 419, 424.
- 21 See C Chinkin, 'A Gendered Perspective to the International Use of Force' (1992) 12 *Australian Yearbook International* 1.
- 22 K Jayawardena, *op cit*; cf J Chafetz and A Dworkin, *Female Revolt: Women's Movements in the World and Historical Perspective* (1986), esp Chapter 4.
- 23 See R Morgan, *Going Too Far: The Personal Chronicle of a Feminist* (1977).
- 24 Brock-Utne, *op cit*, p 500.
- 25 *Feminist Approaches to International Law*, pp 616–21.

In the second part of the article the authors argue that in terms of the 'organisational and normative structures of international law', the 'international order is virtually impervious to the voices of women'. The authors conclude that in terms of decision-making, women have yet to exert an influence in international organisations:

Women are excluded from all major decision-making by international institutions on global policies and guidelines, despite the often disparate impact of those decisions on women. Since 1985, there has been some improvement in the representation of women in the United Nations and its specialised agencies. It has been estimated, however, that 'at the present rate of change it will take almost four more decades (until 2021) to reach equality (ie 50% of professional jobs held by women)'. This situation was recently described as 'grotesque'.<sup>26</sup>

This critique is confirmed by the United Nations 1995 report, *The World's Women*, which records that:

Women have always constituted a minority of United Nations professional staff. Many women joined the United Nations after the Second World War. Later, when the organisation expanded in the 1950s, mostly men were appointed, diminishing the proportion of women in professional positions. Not until the mid-1980s would the proportion of women again reach that of the earliest years ... Women have always been better represented at entry-level than at higher levels. Although the 1980s saw more women in entry and mid-level positions, women are still well below 20% at senior levels ... Beginning in 1985 the General Assembly set goals for increased women's representation. The first goal, to have 30% women in the Secretariat by 1990, was met in 1991. The current goal is 35% by 1995, with 25% at the higher management levels. At the end of 1993, the number of women in senior management had reached only 13% ... The first woman at the highest level of the United Nations below the Secretary-General was Helvi Sipilä, appointed Assistant Secretary-General for Social Development and Humanitarian Affairs in 1972. From 1972 to 1979 there was always one woman serving at this level but never more than one for more than a few months. From 1979 to 1982 the number of women in the top echelon fluctuated between one and three, and from 1986 to 1991, between three and five. It rose to 12 in 1993-94.<sup>27</sup>

Charlesworth, Chinkin and Wright consider the significance of this under-representation of women in the United Nations:

Why is it significant that all the major institutions of the international legal order are peopled by men? Long-term domination of all bodies wielding political power nationally and internationally means that issues traditionally of concern to men become seen as general human concerns, while 'women's concerns' are relegated to a special limited category. Because men generally are not the victims of sex discrimination, domestic violence, and sexual degradation and violence, for example, these matters can be consigned to a separate sphere and tend to be ignored. The orthodox face of international law and politics, would change dramatically if their institutions were truly human in composition: their horizons would widen to include issues previously regarded as domestic – in two senses of the word. Balanced representation in international organisations of nations of

---

26 *Ibid*, p 623.

27 United Nations Report, *The World's Women* 1995 (London: HMSO, 1995), p 154.

differing economic structures and power has been a prominent theme in the United Nations since the era of decolonisation in the 1960s. The importance of accommodating interests of developed, developing and socialist nations and of various regional and ideological groups is recognised in all aspects of the UN structure and work. This sensitivity should be extended much further to include the gender of chosen representatives.<sup>28</sup>

*The Normative Structure of International Law*

In this part of the article, the authors analyse the structure of international law, revealing that the traditional – male – conceptions of the ‘public’ and ‘private’ spheres of life which have so bedevilled the quest for true equality, have permeated the international order, the consequences of which are to delimit international law’s concern with the plight of women. The authors then turn to analyse the potential for a feminist approach to international law.

*Towards a Feminist Analysis of International Law*

How can feminist accounts of law be applied in international law? Feminist legal theory can promote a variety of activities. The term signifies an interest (gender as an issue of primary importance); a focus of attention (women as individuals and as members of groups); a political agenda (real, social, political, economic and cultural equality regardless of gender); a critical stance (an analysis of ‘masculinism’ and male hierarchical power or ‘patriarchy’); a means of reinterpreting and reformulating substantive law so that it more adequately reflects the experiences of all people; and an alternative method of practising, talking about and learning the law.<sup>29</sup> Feminist method must be concerned with examining the fundamentals of the legal persuasion: the language it uses; the organisation of legal materials in predetermined, watertight categories; the acceptance of abstract concepts as somehow valid or ‘pure’; the reliance in practice on confrontational, adversarial techniques; and the commitment to male, hierarchical structures in all legal and political organisations.

Christine Littleton has said, ‘Feminist method starts with the very radical act of taking women seriously, believing that what we say about ourselves and our experience is important and valid, even when (or perhaps especially when) it has little or no relationship to what has been or is being said about us’.<sup>30</sup> No single approach can deal with the complexity of international legal organisations, processes and rules, or with the diversity of women’s experiences within and outside those structures. In this section we look at two interconnected themes developed in feminist accounts of the law that suggest new ways of analysing international law.

*Critique of Rights*

The feminist critique of rights questions whether the acquisition of legal rights advances women’s equality.<sup>31</sup> Feminist scholars have argued that, although the

---

28 *Feminist Approaches to International Law*, p 625.

29 H Wishik, ‘To Question Everything: The Enquiries of Feminist Jurisprudence’ (1985) 1 *Berkeley Women’s Law Journal* 64.

30 C Littleton, ‘Feminist Jurisprudence: The Difference Method Makes’ (1989) 41 *Stanford Law Review* pp 751, 764.

31 Some members of the critical legal studies movement have engaged in a parallel, but distinct, critique of rights. See eg, Tushnet, ‘An Essay on Rights’ (1984) 62 *Texas Law Review* 1363; Hyde, ‘The Concept of Legitimation in the Sociology of Law’ (1983) *Wisconsin Law Review* 379.

search for formal legal equality through the formulation of rights may have been politically appropriate in the early stages of the feminist movement, continuing to focus on the acquisition of rights may not be beneficial to women. Quite apart from problems such as the form in which rights are drafted, their interpretation by tribunals, and women's access to their enforcement, the rhetoric of rights, according to some feminist legal scholars, is exhausted.<sup>32</sup>

Rights discourse is taxed with reducing intricate power relations in a simplistic way. The formal acquisition of a right, such as the right to equal treatment, is often assumed to have solved an imbalance of power. In practice, however, the promise of rights is thwarted by the inequalities of power: the economic and social dependence of women on men may discourage the invocation of legal rights that are premised on an adversarial relationship between the rights holder and the infringer. More complex still are rights designed to apply to women only such as the rights to reproductive freedom and to choose abortion.<sup>33</sup>

In addition, although they respond to general societal imbalances, formulations of rights are generally cast in individual terms. The invocation of rights to sexual equality may therefore solve an occasional case of inequality for individual women but will leave the position of women generally unchanged. Moreover, international law accords priority to civil and political rights, rights that may have very little to offer women generally.<sup>34</sup> The major forms of oppression of women operate within the economic, social and cultural realms. Economic, social and cultural rights are traditionally regarded as a lesser form of international right and as much more difficult to implement.<sup>35</sup>

A second major criticism of the assumption that the granting of rights inevitably spells progress for women is that it ignores competing rights: the right of women and children not to be subjected to violence in the home may be balanced against the property rights of men in the home or their right to family life. Furthermore, certain rights may be appropriated by more powerful groups: Carol Smart relates that provisions in the European Convention on Human Rights on family life were used by fathers to assert their authority over ex nuptial children.<sup>36</sup> One solution may be to design rights to apply only to particular groups. However, apart from the serious political difficulties this tactic would raise, the formulation of rights that apply only to women, as we have seen in the international sphere, may result in marginalising these rights.

A third feminist concern about the 'rights' approach to achieve equality is that some rights can operate to the detriment of women. The right to freedom of religion, for example, can have differing impacts on women and men.<sup>37</sup> Freedom to exercise all aspects of religious belief does not always benefit women because many accepted religious practices entail reduced social positions and status for women. Yet attempts to set priorities and to discuss the issue have been met with

---

32 See C Smart, *Feminism and the Power of Law*, p 145; N Lacey, 'Legislation Against Sex Discrimination: Questions from a Feminist Perspective' (1987) 14 *Journal of Law and Society* 419.

33 For a discussion of the feminist ambivalence toward gendered laws such as statutory rape laws, see F Olsen, 'Statutory Rape: A Feminist Critique of Rights Analysis' (1984) 63 *Texas Law Review* 387.

34 European Convention on Human Rights and Fundamental Freedoms, Article 8.

35 See eg R Cranston, 'Are There Any Human Rights?', *Daedalus*, No 4, 1983, pp 1, 12.

36 C Smart, *Feminism and the Power of Law*, p 145.

37 Eg, International Covenant on Civil and Political Rights, Article 18.

hostility and blocking techniques. Thus, at its 1987 meeting the CEDAW<sup>38</sup> Committee adopted a decision requesting that the United Nations and the specialised agencies:

promote or undertake studies on the status of women under Islamic laws and customs and in particular on the status and equality of women in the family on issues such as marriage, divorce, custody and property rights and their participation in public life of the society, taking into consideration the principle of *El Ijtihad in Islam*.<sup>39</sup>

The representatives of Islamic nations criticised this decision in ECOSOC and in the Third Committee of the General Assembly as a threat to their freedom of religion.<sup>40</sup> The CEDAW Committee's recommendation was ultimately rejected. The General Assembly passed a resolution in which it decided that 'no action shall be taken on decisions adopted by the Committee and request[ed that] the Committee ... review that decision, taking into account the views expressed by delegations at the first regular session of the Economic and Social Council of 1987 and in the Third Committee of the General Assembly'.<sup>41</sup> CEDAW later justified its action by stating that the study was necessary for it to carry out its duties under the Women's Convention and that no disrespect was intended to Islam.

Another example of internationally recognised rights that might affect women and men differently are those relating to the protection of the family. The major human rights instruments all have provisions applicable to the family. Thus, the Universal Declaration proclaims that the family is the 'natural and fundamental group unit of society and is entitled to protection by society and the State'.<sup>42</sup> These provisions ignore that to many women the family is a unit for abuse and violence; hence, protection of the family also preserves the power structure within the family, which can lead to subjugation and dominance by men over women and children.

The development of rights may be particularly problematic for women in the Third World, where women's rights to equality with men and traditional values may clash. An example of the ambivalence of Third World states toward women's concerns is the Banjul Charter, the human rights instrument of the organisation of African Unity.<sup>43</sup>

The Charter, unlike 'Western' instruments preoccupied with the rights of individuals, emphasises the need to recognise communities and peoples as

---

38 Convention on the Elimination of all forms of Discrimination Against Women.

39 UN Doc E/1987/SR 11 at 13, quoted in A Byrnes, Report on the Seventh Session of the Committee on the Elimination of Discrimination Against Women and the Fourth Meeting of States Parties to the Convention on the Elimination of All Forms of Discrimination Against Women (February-March 1988) at 13 *International Women's Rights Action Watch* 1988; cf An-Na'im, 'Rights of Women and International Law in the Muslim Context' (1987) 9 *Whittier Law Review* 491.

40 A Byrnes, 13 *International Women's Rights Action Watch* 1988, p 6.

41 A Byrnes *supra*, pp 6-7.

42 Universal Declaration of Human Rights, GA Res 217A (III) Article 16(3) UN Doc A/810, at 71 (1948). Cf International Covenant on Economic, Social and Cultural Rights, 16 December, 1966, Article 10(1) 993 UNTS 3; International Covenant on Civil and Political Rights, Article 23.

43 African Charter on Human and Peoples' Rights, adopted 27 June 1981. OAU Doc CAB/LEG/67/3/Rev.5, reprinted in 21 *ILM* 59 (1982) (hereinafter 'Banjul Charter'). See Wright, 'Economic Rights and Social Justice: A Feminist Analysis of Some International Human Rights Conventions' (1992) 12 *Australian Yearbook International L.*

entities entitled to rights, and it provides that people within the group owe duties and obligations to the group. 'Peoples' rights in the Banjul Charter include the right to self-determination, the right to exploit natural resources and wealth, the right to development, the right to international peace and security, and the right to a generally satisfactory environment.<sup>44</sup>

The creation of communal or 'peoples' rights, however, does not take into account the often severe limitations on the rights of women within these groups, communities or 'peoples'. The Preamble to the Charter makes specific reference to the elimination of 'all forms of discrimination, particularly those based on race, ethnic group, colour, sex, language, religion or political opinion'. Article 2 enshrines the enjoyment of all rights contained within the Charter without discrimination of any kind. But after Article 2, the Charter refers exclusively to 'his' rights, the 'rights of man'. Articles 3–17 set out basic political, civil, economic and social rights similar to those contained in other instruments, in particular the International Covenants, the Universal Declaration of Human Rights (which is cited in the Preamble) and European instruments. Article 15 is significant in that it guarantees that the right to work includes the right to 'receive equal pay for equal work'. This right might be useful to women who are employed in jobs that men also do. The difficulty is that most African women, like women elsewhere, generally do not perform the same jobs as men.

Articles 17 and 18 and the list of duties contained in Articles 27–29 present obstacles to African women's enjoyment of rights set out elsewhere in the Charter. Article 17(3) states that '[t]he promotion and protection of morals and traditional values recognised by the community shall be the duty of the State'. Article 18 entrusts the family with custody of those morals and values, describing it as 'the natural unit and basis of society'. The same article requires that discrimination against women be eliminated, but the conjunction of the notion of equality with the protection of the family and 'traditional' values poses serious problems. It has been noted in relation to Zimbabwe and Mozambique that:

[t]he official political rhetoric relating to women in these southern African societies may be rooted in a model derived from Engels, via the Soviet Union, but the actual situation they face today bears little resemblance to that of the USSR. In Zimbabwe particularly, policy-makers are caught between several ideological and material contradictions, which are especially pertinent to women-oriented policies. The dominant ideology has been shaped by two belief-systems, opposed in their conceptions of women. Marxism vies with a model deriving from precolonial society, in which women's capacity to reproduce the lineage, socially, economically and biologically, was crucial and in which lineage males controlled women's labour power.<sup>45</sup>

This contradiction between the emancipation of women and adherence to traditional values lies at the heart of and complicates discussion about human rights in relation to many Third World women. The rhetoric of human rights, on both the national and the international levels, regards as equal citizens, as 'individuals' subject to the same level of treatment and the same protection as

---

44 Banjul Charter *supra* Articles 20, 21, 22, 23, 24.

45 Jacobs and Tracy, 'Women in Zimbabwe: Stated Policies and State Action', in *Women, State Ideology: Studies From Africa and Asia* (11 Afshar ed 1988) pp 28, 29, 30.

men. But the discourse of 'traditional values' may prevent women from enjoying any human rights, however they may be described.<sup>46</sup>

Despite all these problems, the assertion of rights can exude great symbolic force for oppressed groups within a society and it constitutes an organising principle in the struggle against inequality. Patricia Williams has pointed out that for blacks in the United States, 'the prospect of attaining full rights under the law has always been a fiercely motivational, almost religious, source of hope'.<sup>47</sup> She writes:

'Rights' feels so new in the mouths of most black people. It is still so deliciously empowering to say. It is a sign for and a gift of self-hood that is very hard to contemplate restructuring ... at this point in history. It is the magic wand of visibility and invisibility, of inclusion and exclusion, of power and no power ...<sup>48</sup>

The discourse of rights may have greater significance at the international level than in many national systems. It provides an accepted means to challenge the traditional legal order and to develop alternative principles. While the acquisition of rights must not be identified with automatic and immediate advances for women, and the limitations of the rights model must be recognised, the notion of women's rights remains a source of potential power for women in international law. The challenge is to rethink that notion so that rights correspond to women's experiences and needs.

#### *The Public/Private Distinction*

The gender implications of the public/private distinction were outlined above. Here we show how the dichotomy between public and private worlds has undermined the operation of international law, giving two examples.

#### *The Right to Development*<sup>49</sup>

The right to development was formulated in legal terms only recently and its status in international law is still controversial. Its proponents present it as a collective or solidarity right that responds to the phenomenon of global interdependence, while its critics argue that it is an aspiration rather than a right.<sup>50</sup> The 1986 United Nations Declaration on the Right to Development describes the content of the right as the entitlement 'to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedom can be fully realised'. Primary responsibility for the creation of conditions favourable to the right is placed on states:

states have the right and the duty to formulate appropriate national development policies that aim at the constant improvement of the well-being of the entire population and of all individuals, on the basis of their active, free

---

46 See Amos and Parnar, 'Challenging Imperial Feminist' (1984) 17 *Feminist Rev* 3, 15.

47 Williams, 'Alchemical Notes: Reconstructing Ideals from Deconstructed Rights' (1987) 22 *Harvard CR-CL L Rev* 401, 417.

48 *Ibid* at 431. See also Schneider, 'The Dialectic of Rights and Politics: Perspectives From the Women's Movement' (1986) 61 *NYU Law Review* 589. Compare Hardwig, 'Should Women Think in Terms of Rights?' (1984) 94 *Ethics* 441.

49 For a fuller discussion see H Charlesworth, 'The Public/Private Distinction and the Right to Development in International Law' (1992) 12 *Australian Yearbook of International Law*.

50 Eg I Brownlie, 'The Rights of Peoples in Modern International Law', in J Crawford (ed), *The Rights of Peoples* (1988).

and meaningful participation in development and in the fair distribution of the benefits resulting therefrom.<sup>51</sup>

The right is apparently designed to apply to all individuals within a State and is assumed to benefit women and men equally: the Preamble to the Declaration twice refers to the Charter exhortation to promote and encourage respect for human rights for all without distinction of any kind such as of race or sex. Moreover, Article 8 of the Declaration obliges states to ensure equality of opportunity for all regarding access to basic resources and fair distribution of income. It provides that 'effective measures should be undertaken to ensure that women have an active role in the development process'.

Other provisions of the Declaration, however, indicate that discrimination against women is not seen as a major obstacle to development or to the fair distribution of its benefits. For example, one aspect of the right to development is the obligation of states to take 'resolute steps' to eliminate 'massive and flagrant violations of the human rights of peoples and human beings'. The examples given of such violations include apartheid and racial discrimination but not sex discrimination.<sup>52</sup>

Three theories about the causes of underdevelopment dominate its analysis: shortages of capital, technology, skilled labour and entrepreneurship; exploitation of the wealth of developing nations by richer nations; and economic dependence of developing nations on developed nations.<sup>53</sup> The subordination of women to men does not enter this traditional calculus. Moreover, 'development' as economic growth above all takes no notice of the lack of benefits or disadvantageous effects this growth may have on half of the society it purports to benefit.

One aspect of the international right to development is the provision of development assistance and aid. The UN General Assembly has called for international and national efforts to be aimed at eliminating 'economic deprivation, hunger and disease in all parts of the world without discrimination' and for international co-operation to be aimed, *inter alia*, at maintaining 'stable and sustained economic growth' increasing concessional assistance to developing countries, building world food security and resolving the debt burden.<sup>54</sup>

Women and children are more often the victims of poverty and malnutrition than men.<sup>55</sup> Women should therefore have much to gain from an international right to development. Yet the position of many women in developing countries has deteriorated over the last two decades: their access to economic resources has been reduced, their health and educational status has declined, and their work burdens have increased.<sup>56</sup> The generality and apparent universal applicability of

---

51 GA Res 41/128, Article 2(3) (4 December 1986).

52 *Ibid*, Article 5.

53 Thomas and Skeat, 'Gender in Third World Development Studies: An Overview of An Underview' (1990) 28 *Australian Geographical Stud* 5, 11; see also J Hanshall Momsen and J Townsend, *Geography of Gender in the Third World* 16 (1987).

54 GA Res, 41/133 (4 December 1986).

55 See M Waring, *Counting for Nothing* (1988).

56 See United Nations, *World Survey on the Role of Women in Development* 19–20 (1986); J Henshall and J Townsend, *op cit*; *Nairobi Review, Review and Appraisal of the Implementation of the Nairobi Forward-Looking Strategies for the Advancement of Women*, UN Doc e/CN.6/1990/5.



the right to development, as formulated in the UN Declaration, is undermined by the fundamentally androcentric nature of the international economic system and its reinforcement of the public/private distinction. Of course, the problematic nature of current development practice for Third World women cannot be attributed simply to the international legal formulation of the right to development. But the rhetoric of international law both reflects and reinforces a system that contributes to the subordination of women.

Over the last 20 years, considerable research has been done on women and Third World development.<sup>57</sup> This research has documented the crucial role of women in the economies of developing nations, particularly in agriculture. It has also pointed to the lack of impact, or the adverse impact, of 'development' on many Third World women's lives. The international legal order, like most development policies, has not take this research into account in formulating any aspect of the right to development.

The distinction between the public and private spheres operates to make the work and needs of women invisible. Economic visibility depends on working in the public sphere and unpaid work in the home or community is categorised as 'unproductive, unoccupied, and economically inactive'.<sup>58</sup> Marilyn Waring has recently argued that this division, which is institutionalised in developed nations, has been exported to the developing world, in part through the United Nations System of National Accounts (UNSNA).<sup>59</sup>

The UNSNA, developed largely by Sir Richard Stone in the 1950s, enables experts to monitor the financial position of States and trends in their national development and to compare one nation's economy with that of another. It will thus influence the categorisation of nations as developed or developing and the style and magnitude of the required international aid. The UNSNA measures the value of all goods and services that actually enter the market and of other non-market production such as government services provided free of charge. Some activities, however, are designated as outside the 'production boundary' and are not measured. Economic reality is constructed by the UNSNA's 'production boundaries' in such a way that reproduction, child care, domestic work and subsistence production are excluded from the measurement of economic productivity and growth.<sup>60</sup> This view of women's work as non-work was nicely summed up in 1985 in a report by the Secretary-General to the General Assembly: 'Overall socio-economic perspective of the world economy to the year 2000'. It said: 'Women's productive and reproductive roles tend to be compatible in rural areas of low-income countries, since family agriculture and cottage industries keep women close to the home, permit flexibility in working conditions and require low investment of the mother's time'.<sup>61</sup> [Authors' emphasis.]

The assignment of the work of women and men to different spheres, and the consequent categorisation of women as 'non-producers,' are detrimental to women in developing countries in many ways and make their rights to

---

57 The first major study was E Boserup, *Woman's Role in Economic Development* (1970). See also Thomas and Skeat, *op cit*.

58 M Waring, *Counting for Nothing* (1988), p 13.

59 *Ibid*, p 27.

60 *Ibid*, pp 83, 27, 25.

61 UN Doc A/40/519, para 210, at 99 (1985).

development considerably less attainable than men's. For example, the operation of the public/private distinction in international economic measurement excludes women from many aid programmes because they are not considered to be workers or are regarded as less productive than men. If aid is provided to women, it is often to marginalise them: foreign aid may be available to women only in their role as mothers, although at least since 1967 it has been recognised that women are responsible for as much as 80% of the food production in developing countries.<sup>62</sup> The failure to acknowledge women's significant role in agriculture and the lack of concern about the impact of development on women mean that the potential of any right to development is jeopardised from the start.

Although the increased industrialisation of the Third World has brought greater employment opportunities for women, this seeming improvement has not increased their economic independence or social standing and has had little impact on women's equality. Women are found in the lowest-paid and lowest-status jobs, without career paths; their working conditions are often discriminatory and insecure.<sup>63</sup> Moreover, there is little difference in the position of women who live in developing nations with a socialist political order.<sup>64</sup> The dominant model of development assumes that any paid employment is better than none and fails to take into account the potential for increasing the inequality of women and lowering their economic position.

As we have seen, the international statement of the right to development draws no distinction between the economic position of men and of women. In using the neutral language of development and economics, it does not challenge the pervasive and detrimental assumption that women's work is of a different – and lesser – order than men's. It therefore cannot enhance the development of the group within developing nations that is most in need. More recent UN deliberations on development have paid greater attention to the situation of women. Their concerns, however, are presented as quite distinct, solvable by the application of special protective measures, rather than as crucial to development.

#### *The Right to Self-Determination*

The public/private dichotomy operates to reduce the effectiveness of the right to self-determination at international law. The notion of self-determination as meaning the right of 'all peoples' to 'freely determine their political status and freely pursue their economic, social and cultural development'<sup>65</sup> is flatly contradicted by the continued domination and marginalisation of one sector of the population of a nation-state by another. The treatment of women within groups claiming a right to self-determination should be relevant to those claims. But the international community's response to the claims to self-determination of the Afghan and Sahrawi people, for example, indicates little concern for the position of women within those groups.

The violation of the territorial integrity and political independence of Afghanistan by the Soviet Union when it invaded that country in 1979, and other strategic, economic, and geopolitical concerns, persuaded the United States of the

---

62 S Charlton, *Women in Third World Development* (1984), p 61.

63 See Molyneux, 'Women's Emancipation under Socialism: A Model for the Third World' (1982) 9 *World Dev* 1019.

64 See Thomas and Skeat *op cit*, p 11.

65 International Covenant on Civil and Political Rights, Article 1; International Covenant on Economic, Social and Cultural Rights, Article 1.

legality and morality of its support for the Afghan insurgents.<sup>66</sup> In deciding to support the rebels, the United States did not regard the policies of the mujahidin with respect to women as relevant.<sup>67</sup> The mujahidin are committed to an oppressive, rural, unambiguously patriarchal form of society quite different from that espoused by the socialist Soviet-backed regime. Indeed, Cynthia Enloe notes that '[o]ne of the policies the Soviet-backed government in Kabul pursued that so alienated male clan leaders was expanding economic and educational opportunities for Afghanistan's women'.<sup>68</sup> A consequence of the continued support for the insurgents was the creation of a vast refugee flow into Pakistan. Of these refugees, 30% were women and 40% were children under 13.<sup>69</sup> The *mullahs* imposed a strict fundamentalist regime in the refugee camps, which confined women to the premises, isolated them, and even deprived them of their traditional rural tasks. There is no indication that any different policy would be followed if the *mujahidin* were successful and able to form a government in Afghanistan. Indeed, this marginalisation and isolation of Afghan women is being projected into the future, as the educational services provided by the UN High Commissioner for Refugees are overwhelmingly for boys.<sup>70</sup> The vital impact of education on women and its effect in undermining male domination have been well documented.<sup>71</sup>

Morocco's claims to Western Sahara and the Polisario resistance to those claims have led to the establishment of Sahrawi refugee camps in Algeria that are mainly occupied by women and children. In these camps, however, women have been able to assert themselves: they have built hospitals and schools, achieved high rates of literacy, and supported 'the right of the woman and the mother' as well as the 'fight for independence'.<sup>72</sup> The international community, through the International Court of Justice and the General Assembly, has reiterated the right of the people of Western Sahara to self-determination.<sup>73</sup> Despite this legal support, the Sahrawis' only backing comes from Algeria, while Morocco is backed, *inter alia*, by France and the United States. The determination of these women to keep alive a 'democracy, based on proportional representation, with centralised and equal distribution, full employment [and] social and political parity between the sexes' in the adverse conditions of refugee camps has received little international support.

The international community recognises only the right of 'peoples' to self-determination, which in practice is most frequently linked to the notion of the independent state. Women have never been viewed as a 'people' for the purposes of the right to self-determination. In most instances, the pursuit of self-

66 See Reisman, 'The Resistance in Afghanistan is Engaged in a War of National Liberation' (1987) 81 *AJIL* 906.

67 By contrast, the United States used the repression of women in Iran after the 1979 revolution as an additional justification for its hostility to the Khomeini regime.

68 C Enloe, *Making Feminist Sense of International Politics: Bananas, Beaches and Bases* (1989), P 587.

69 *New York Times*, 27 March 1988, p 16, col 1.

70 *Ibid.* The total enrolment in UN schools is 104,000 boys and 7,800 girls.

71 See eg, K Jayawardena, *op cit*, pp 17–19.

72 As demonstrated by the objectives of the Women's Union, founded in 1974. Cumming, 'Forgotten Struggle for the Western Sahara', *New Statesman*, 20 May 1988, p 14. ('Women are at the heart of the revolution; their own struggle for rights doesn't have to wait until the war is over, the two are indivisible.')

73 *Western Sahara Case*, 1975 ICJ Rep 12 (Advisory Opinion of 16 October).