and the family posed by the practice.[137] Although the option of conception by means of sexual intercourse has no means of institutional regulation by the law or medical profession there is a desire to ensure that women using technological means of conception will be 'fit' to be mothers.[138] Both the law that does not recognise the concept of social fatherhood and the desire to restrict AID to married women rest on the assumption that a woman should be under control of a man in a family and that a man need only be responsible for a child to whom he has made a genetic contribution. The legal recognition of the child is dependent on the woman's legal relation to the man, that relationship is what legitimises the presence of his semen in her vagina.

International case law has not clearly determined whether the presence of semen alone is sufficient evidence of sexual intercourse making AID equivalent to adultery, or whether there must also be evidence of penetration of the woman's vagina by a penis.[139] (Remember that the presence of semen is often necessary to prove rape or sexual assault and that sexual assault has included attacks other than penetration of vagina by penis only during the last decade.) Laws regulating custody also establish the authority of men over the mothers of their children, an authority that continues after the marriage is dissolved.[140] Recent discussion of the rights of men over their biological children when they are not married to the woman who gave birth to and cares for them would further extend the control of women by men through the control of children.[141] The law reform literature seems to point to this as a possible outcome for custody law when it considers whether the sperm donor in AID could be made legally responsible for the child as its 'father'. Custody laws are to be reformed to preserve male authority in the family for any other change would not conserve the social order, might not allow the legal system to survive the challenge of social and technical change, certainly might not be a change for the 'better'.

In vitro fertilisation poses further legal problems of ownership. Who owns the components of the biological processes that are assisted by technology, the sperm, the ova, the embryo? The ownership of the embryo has profound implications beyond the often raised questions of frozen embryos in the laboratory. If the ownership of an embryo *in vitro* is legally established, what will the status of an embryo *in vivo*? Will a man be able to prevent an abortion because he is joint owner of the implanted embryo regardless of whether the woman consents to continuing the pregnancy? Could a man take out an injunction to enforce a particular diet, non-smoking, or regular exercise on a pregnant woman as an expression of his concern for the care of his property – his share of the foetus? Such speculations reduce women to little more than ambulatory incubators, but are not as far-fetched as they might seem, for men have already gone to court in attempts to deny women abortions in several countries. Again, the legal solution to the challenge of technical change could reinforce the social control of women by men.

While the custody of a child conceived *in vitro* using the sperm and ovum of the couple who will be her biological and social parents should pose no major legal difficulties, the custody of a child born of a 'surrogate mother' is highly

137 Walters and Singer (1982), p 78.

138 Scott (1981), pp 210–11.

139 Mason (1982), p 352; Scott (1981), p 206.

140 Delphy (1976); Brown (1981); Sutton and Friedman (1982).

141 Sutton and Friedman (1982), pp 124–25.

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problematic. The hope (or is it fear?) of surrogate motherhood may be as a step in achieving the adherence of the equation of woman with mother for every woman. If a woman cannot sustain a pregnancy and adoptable babies are not available, then she and her husband could hire a woman to provide the life-support system for their genetic child – her body. A woman would need only some functioning ovarian tissue to become a mother and, of course, enough money to buy another woman's body. The naming of the hired woman as a surrogate 'mother' raises the primary question: what constitutes motherhood, a biological or social relation to the child? For the first nine months of its development both genetic parents would have the same relationship to the child – one similar to the man in conventional reproductive relationships – while the hired woman would experience the developing pregnancy with her body, in her life. When she gave birth she would give the baby to the employing couple as in a conventional adoption, severing the close relationship of the previous nine months.

Legal cases have so far involved women who were contracted to supply an ovum as well as a body for gestation. Judges have awarded custody to the birth-giving woman not the genetic 'father' and his wife when conflict has arisen, standard adoption laws apply when there is no conflict. The debate about the direction of legal regulation has focused on whether a contract between the couple and the woman would be binding and who would be the mother of the child for custody purposes (a concern similar to the issue of who is the father of the AID child, except that the surrogate would have already established a physical and social relationship with the child during the pregnancy).[142] The separation of pregnancy from childrearing has the potential to raise questions about the role of women in new ways, but only if the assumptions behind the use of the term 'mother' for both pregnant women and childrearing women are subjected to searching examination. In the absence of a critical examination technical developments and the legal responses to them may only serve to place further aspects of human reproduction under the control of specialist men and further deny the different experiences of women and men in the process of reproduction. There could also be increased pressure on women to conform to the definition of femininity that requires motherhood.

In addition to the custody questions there is the issue of the terms of a surrogacy contract; custody of the child is but one aspect of pregnancy with health insurance, smoking, diet and exercise among possible areas of regulation. This is an area with potential for many conflicts because, almost certainly if surrogacy becomes socially acceptable, poor women will be hired to have babies for wealthier couples. Class differences in attitudes toward pregnancy will become clear and with them the question of exactly what is paid for in the surrogacy agreement – must the surrogate live the life that the woman who will raise the child imagines she would live if she were pregnant? Law reformers also raise the question of who should be permitted to enter surrogacy contracts; some would exclude fertile women who want a genetic child without interruption to their careers. The only reference to the possibility of a man hiring a surrogate to provide an heir without the necessity of an emotional relationship with a woman dismisses Rorvik's[143] account on the grounds that the cloning aspect remains

142 Walters and Singer (1982), pp 97–109; Mason (1982), pp 354–56.

143 Rorvik (1978).

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unproven,[144] rather than commenting on the possibility that wealthy men might buy a child like any other commodity. Is there a covert suggestion that surrogacy should be available only to women who will be 'good mothers' and stay at home with the child? All men who have children do so without interruption to their careers or alteration to their figures, nor do they stay at home by convention to do the daily tasks associated with child care. Certainly all discussions of surrogacy assume a conventional marriage with a couple who 'reasonably' desires a child to become a conventional family. As with AID, law reform proposals to meet the challenges of IVF and surrogacy contracts uphold those conventions.

Rights and needs in the family and society

Law reform proposals operate entirely within the constraints of liberal democratic thought and so support the separation of public and private life and the family structure implied by that division. The failure to examine the concept of the family in the debates about reproductive technology, regardless of whether the technology would prevent or allow conception or childbirth has led to a confusing repetition in the use of language. The same terms are used to support both sides in the debates about the use of the technologies. The proponents of the reform or repeal of laws that criminalise abortion demand the 'right to choose' for women while the opponents assert the 'right to life' for the foetus and point out the lack of 'choice' available to it. There was considerable debate in the Australian Parliament about whether the Human Rights Commission Bill should be extended to include foetuses within the definition of humans with rights to be protected. Proponents of the broad interpretation hoped to establish a basis for Commonwealth intervention into the provision of abortion services currently covered by State laws. They claimed that the Declaration of the Rights of the Child and the International Covenant on Civil and Political Rights are open to such an interpretation in spite of specific votes to the contrary in the drafting committees.[145] The covenant does contain a revealing statement about the family in Article 23:

> The family is the natural and fundamental unit of society and is entitled to protection by society and the State.

The family is assumed to be unitary rather than an association of individuals with unequal power and thus the possibility of conflicts of interest and conflicts of rights. This and similar formulations are used to reinforce the positioning of women in families by conservatives and liberals alike. The antecedent of contemporary thought is here revealed to be the legal fiction of the unity of the wife within the husband that served to exclude women from public life in the 19th century.[146]

One outcome of new technologies of human reproduction may be the provision of further dimensions to the definition of women as mothers by providing additional means of State intervention. Already commentators have asserted that the State has an obligation to provide IVF services because childless couples have a 'right' to bear children.[147] To use the term right here is to expand the conventional thinking about rights that requires the State not to stand in the way

144 Walters and Singer (1982), p 111.

145 UNESCO, 1977, 19.

146 Sachs and Wilson (1978), p 79.

147 (1982) *The Telegraph*, 12 May.

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of the individual's exercise of her capacities so long as her activities do not cause harm. As a political right childbearing makes sense only in a State in which childbearing is an offence, not as a call for the establishment of services to reverse the effects of injury or disease. Childbearing, as a 'right' in a family perceived as a 'natural and fundamental unit of society', could become a compulsory symbol of adult good citizenship rather than an effect of heterosexual intercourse or a socially desirable option for couples. The State then would provide the means for achieving conception so good citizens could be distinguished from anti-social childless couples and individuals. The State provision of IVF or AID facilities offers the law opportunity for state-defined criteria of good motherhood which could be held up to all women. This is but a continuation of the forced choice of abortion or sterilisation by many poor women today because those services have State funding in combination with insufficient funding of childcare facilities, low welfare benefits and high unemployment.

Rights and needs are variously used to defend or attack uses of technology to intervene in the biological processes of reproduction. The demands of women for abortion are selfish or even anti-social according to some while the IVF programme is justified by the demands of women as a recognition of their 'need' to have children. Both arguments involve the definition of woman as mother: in one case to compel motherhood and in the other to provide a means to motherhood, a technological answer to the consequences of misdiagnosis and iatrogenic disease. Sterility is indeed a social problem for women, more so when childbearing is the only acceptable mode of acting a world divided into public and private realms. Human rights can be portrayed as excluding women's rights to abortion and perhaps even contraception while including the right to give birth, even if sterile, only from a political perspective in which rights depend on the division of society and the assumption that male-headed families constitute a 'fundamental unit'. In such a society, law reform to meet the challenge of medical technology is not discussed in the context of a critique of the social and political relations that the laws uphold; current power relations are taken as given. The demands of women for medical research into reliable woman-controlled contraception or relief from period pain cannot be heard much less met while medical research priorities are set according to the 'needs' of scientists to do exciting frontier research and their 'right' to be funded by bodies that accept those priorities.

Laws that criminalise abortion cannot be altered to acknowledge the control women have always sought to exercise over their fertility but only to hand control to a group of male-oriented specialists. The literature on law reform is singularly silent on the differing effects of the law on the lives of women and men. The literature on reproductive technology is silent about the social relations, whether familial or professional, which structure human reproduction. The consequences of the technological changes during the past 30 years will be better understood once those silences are broken and the network of power relations in which the changes are embedded are examined critically. Until such an examination is widespread the changes cannot be 'better' for women but only reinforce social relations as they exist.

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CHAPTER 12

WOMEN AND INTERNATIONAL LAW

International law has been defined as:

> … that body of law which is composed for its greater part of the principles and rules of conduct which states feel themselves bound to observe, and therefore, do commonly observe in their relations with each other, and which includes also:
>
> a the rules of law relating to the functioning of international institutions or organisations, their relations with each other, and their relations with States and individuals; and
>
> b certain rules of law relating to individuals and non-State entities so far as the right or duties of such individuals and non-State entities are the concern of the international community.[1]

In the last 50 years, the work of the permanent international organisations of international law such as the United Nations, World Health Organisation, International Labour Organisation has developed international law far beyond the traditionally adopted definition of being the law between nations alone. The commitment of the United Nations[2] and the Council of Europe[3] towards the definition, evolution and protection of human rights has created standards against which the law and practices of a State in relation to its subjects may be measured.[4] Conventions have been introduced for the advancement and protection of specific human rights.[5]

For feminist scholars the law and practice of international law in relation to the elimination of discrimination against women has proved a fertile source of study.[6] As the extracts which follow demonstrate, whilst great strides have been made in this direction, particularly in relation to State responsibility for

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1 IA Shearer, *Starke's International Law* (Butterworths, 11th edn, 1994), p 3.

2 See the Universal Declaration of Human Rights adopted by the General Assembly of the United Nations in 1948; the Covenant on Economic, Social and Cultural Rights and the Covenant on Civil and Political Rights 1966.

3 See the European Convention for the Protection of Human Rights and Fundamental Freedoms November 1950.

4 See generally, P Alston (ed) *The United Nations and Human Rights* (1992).

5 See for example, the Convention for the Suppression of Traffic in Persons and of the Exploitation or the Prostitution of Others (1950); the Convention on the Status of Refugees (1951); the Supplementary Geneva Convention for Abolishing Slavery, the Slave Trade and Institutions and Practices Similar to Slavery (1956); Convention on the Suppression and Punishment of the Crime of Apartheid (1973); the Conventions of the International Labour Organisation: Freedom of Association and Protection of the Right to Organise (1948); Right to Organise and Collective Bargaining (1949); Equal Remuneration Convention (1951); Abolition of Forced Labour (1957); Discrimination (Employment and Occupation) (1958); International Convention of the Elimination of All Forms of Racial Discrimination (1965); Convention on the Elimination of All Forms of Discrimination against Women (1979); United Nations Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief (1981); Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (1984); International Convention on the Rights of the Child (1989).

6 Rebecca J Cook and Valerie L Oosterveld record that in 1995 the bibliography on the international right to non-discrimination on the basis of sex has now expanded to include over 400 entries: *A Select Bibliography of Women's Human Rights*.

women's rights, international law and practice has to date fallen far short of achieving adequate protection of all women's rights.

In the articles which follow, Hilary Charlesworth, Shelley Wright and Christine Chinkin examine the gendered nature of international law structures and question the application of international law norms – dominated by Western liberal perceptions and concepts – to Third World countries. It is the authors' submission that Western feminism, with its insistence on the extension of legal rights to ensure gender equality, misunderstands the feminist concerns of the Third World. The historical legacy of colonialism and post-colonialist nationalist raise special concerns. Western feminism needs, from this analysis, to expand its horizons and understandings to incorporate the women of the Third World. The internationally recognised rights to 'development' and 'self-determination' are examined by the authors and their potential for improving the status of women considered. Also analysed is the manner in which 'public/private' characterisations[7] exclude women from the protection of international law which focuses on groups of peoples in a gender-neutral manner.

The second extract is from the United Nations' Report, *The World's Women 1995: Trends and Statistics*. The Report highlights the need for women employees at the upper levels of the United Nations' organisations. The underrepresentation of women identified by the United Nations itself, is also considered by Charlesworth, Wright and Chinkin in their article.

Gender-based violence against women forms the focus of the next extract from the United Nations' Report. The Report catalogues domestic violence, rape and the sexual abuse of children throughout the world, together with forced prostitution and trafficking in women, the violence perpetrated against migrant domestic workers and the sexual abuse and rape of women during armed conflict.

It is violence against women on an international scale – its manifestations and settings – which forms the subject of Jane Connor's first article in this chapter. Jane Connors analyses the strategies which have been adopted by international law agencies to eliminate the multiple aspects of gender-based violence, and evaluates their successes and weaknesses. The 'public/private' split is also considered, and the pressing need for a deconstruction of the concepts discussed. The author concludes with an identification of the critical areas for action to further eradicate gender-based violence against women.

In Geraldine Van Bueren's extract, the role of international law in the protection of the rights of family members towards the close of the twentieth century are evaluated. The author analyses the potential for further protection against domestic violence by bringing it within the international law concepts of 'torture or cruel, inhuman or degrading treatment'. The author also analyses the problems posed in the elimination of cruel cultural practices against children such as female circumcision. The author analyses the traditional categorisations of rights under international law into civil and political on the one hand, and

7 Considered in Chapter 5.

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economic, social and cultural rights on the other hand. It is her submission that whilst international law is experienced and well fitted for the protection of the former, there has been a traditional and well-documented unwillingness to extend the protection of law to economic, social and cultural rights – the very rights which have most relevance for women and children around the globe.

In *Women, Feminism and International Human Rights Law – Methodological Myopia, Fundamental Flaws or Meaningful Marginalisation?* Andrew Byrnes subjects the 'mainstream' of international human rights law to critical analysis from a feminist perspective. The author argues that the application of feminist legal methods to international law would bring about a greater awareness of and sensitivity to the issue of gender. International law, he argues, has traditionally failed to recognise the particular risks which women face. The failure to recognise the importance of gender, the reliance on the 'public/private' dichotomy and the implications of so doing are analysed. The author also examines the emergent and potentially fundamentally important concept of State responsibility for the acts of private individuals and its potential for women victims of private violence.

The final article by Jane Connors analyses recent developments in international law and its agencies in bringing the question of gender into the mainstream of international law. The language of human rights, she argues, has a particular moral authority, but the recognition of women's international human rights have been too long ignored. Nevertheless, as the author documents, there have been significant developments in 'mainstreaming' women's human rights. There remain many challenges for the future: the gender imbalance within the United Nations and its organisations; the difficulties in conceptualisation of rights into civil and political and economic and social and the need to broaden and modify the existing framework of international law agencies to fully recognise the special problems faced by women throughout the world.

FEMINIST APPROACHES TO INTERNATIONAL LAW[8]

Hilary Charlesworth, Christine Chinkin and Shelley Wright[9]

The authors commence the article with an overview of feminist jurisprudence, including a discussion of the 'sameness/difference' debate, considered in Chapter 6. Attention is then turned to the manner in which women's 'different voice' is apparently mirrored in the Third World. The differing historical and political backgrounds between First and Third World countries is also examined to reveal differing concerns of woman in differing societies but also the unifying situation of all women.

Feminist and Third World Challenges to International Law

Are women's voices and values already present in international law through the medium of the Third World? The divisions between developed and developing

8 (1991) 85 *American Journal of International Law* 613. The article has been abridged and footnotes edited.

9 At the time of writing, respectively, Senior Lecturer, University of Melbourne Law School; Senior Lecturer, University of Sydney Law School; and Lecturer, University of Sydney Law School.

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nations (and between socialist and non-socialist states) have generated a lively debate over the universality of principles of international law. One consequence of decolonisation has been the great increase in the number of independent States, particularly in Africa and Asia. These States have challenged both substantive norms of international law and the traditional law-making processes as either disadvantageous to them or inadequate to their needs. The impact of this challenge to assumptions about the objective neutrality of norms by showing them to support Western values and interests has been substantial. Developing States have also emphasised decision-making through negotiation and consensus, and through the use of non-traditional methods of law-making such as the 'soft law' of General Assembly resolutions.[10] These techniques find some parallel in the types of dispute resolution sometimes associated with the 'different voice' of women. In his study of American diplomacy in the first half of this century, George Kennan implied that non-Western views of international relations and the feminine were linked:

> If … instead of making ourselves slaves of the concepts of international law and morality, we would confine these concepts to the unobtrusive, almost feminine function of the gentle civiliser of national self-interest in which they find their true value – if we were able to do these things in our dealings with the peoples of the East, then, I think, posterity might look back upon our efforts with fewer and less troubled questions.[11]

This apparent similarity between the perspective culturally identified with women and that of developing nations has been studied in a different context. In *The Science Question in Feminism* Sandra Harding notes the 'curious coincidence of African and feminine "world views"' and examines them to determine whether they could be the basis of a 'successor', alternative view of science and epistemology.[12] Harding observes the association of the feminine with the second half of the set of conceptual dichotomies that provide the essential framework for traditional, enlightenment science and epistomology: 'Reason vs emotion and social value, mind vs body, culture vs nature, self vs others, objectivity vs subjectivity, knowing vs being'.[13] In the generation of scientific truth, the 'feminine' parts of these dichotomies are considered subordinate. Harding then notes the similarity of this pattern and the description of the 'African world view' identified by scholars in other disciplines. This world view is characterised by a 'conception of the self as intrinsically connected with, as part of, both the community and nature'.[14] The attribution to women and Africans of 'a concept of the self as dependent on others, as defined through relationships to others, as perceiving self-interest to lie in the welfare of the relational complex' permits the ascription to these groups of an ethic based on preservation of relationships and an epistomology uniting 'hand, brain and

10 See Chinkin, 'The Challenge of Soft Law: Development and Change in International Law' (1989) 38 *ICLQ* 850; Bedjaoue, 'Poverty of the International Legal Order', in *International Law: A Contemporary Perspective* pp 152, 157–58 (R Falk, F Kratochjwil and S Mendlovitz (eds) 1985).

11 G Kennan, *American Diplomacy 1900–1950*, pp 53–54 (1953); *cf* Jackquette, 'Power as Ideology: A Feminist Analysis', in J Stiehm (ed), *Women's Views of the Political World of Men* (1984), pp 9, 22.

12 S Harding, *The Science Question in Feminism* (1986), pp 173–74.

13 *Ibid*, p 170.

14 *Ibid*, pp 172–73; see also C MacKinnon, *Feminism Unmodified* (Harvard University Press, 1987), pp 39–40.

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heart'. These perceptions contrast with the 'European' and male view of the self as autonomous, separate from nature and from others, and with its associated ethics of 'rule-governed adjudication of competing rights between self-interested, autonomous others' and its view of knowledge as an entity with a separate, 'objective' existence.[15]

There are problems in identifying these subordinate voices. For example: How far are these world views the product of colonial and patriarchal conceptual schemes? Are they in fact generally held by the groups they are ascribed to? How accurate are contrasting schemata in capturing reality? Harding argues that the linkage of the two discourse may nevertheless be useful as providing 'categories of challenge' – that is, naming 'what is absent in the thinking and social activities of men and Europeans' and stimulating analysis of how social orders based on gender and race can come into being.

More general analogies have been drawn between the position of Third World States and that of women. Both groups are said to encounter the paternalist attitude that they must be properly trained to fit into the world of developed countries and men, respectively.[16] Both feminists and developing nations have also resisted assimilation to prevailing standards and have argued for radical change, emphasising co-operation rather than individual self-advancement.[17] Both groups have identified unilinear structures that allow their systematic domination and the development of apparently generally applicable theories from very narrow perspectives.

Thus far, however, the 'different voice' of developing nations in international law has shown little concern for feminist perspectives. The power structures and decision-making processes in these societies are every bit as exclusive of women as in Western societies and the rhetoric of domination and subjugation has not encompassed women, who remain the poorest and least privileged.[18] Thus, at the United Nations Mid-Decade for Women Conference in Copenhagen in 1985, an Indian delegate could argue that since he had experienced colonialism, he knew that it could not be equated with sexism.[19] Although the developing nations' challenge to international law has been fundamental, it has focused on disparities in economic position and has not questioned the silence of half the world's population in the creation of international law or the unequal impact of rules of international law and many of its assumptions may have had an adverse effect on the development of a gender-based analysis of international law precisely because of the further level of confrontation it is assumed such an analysis would cause.

Feminism in the First and Third Worlds

An alternative, feminist analysis of international law must take account of the differing perspectives of First and Third World feminists. Third World feminists operate in particularly difficult contexts. Not only does the dominant European male discourse of law, politics and science exclude the kind of discourse characterised by the phrase 'a different voice', both female and non-European,

15 *Ibid*, p 171.

16 Brock Utne, 'Women and Third World Countries: What Do We Have in Common?' (1989) 12 *Women's Stud International F*, pp 495, 496–97.

17 *Ibid*, p 497.

18 K Jayawardena, *Feminism and Nationalism in the Third World* (1986); C Enloe, *Making Feminist Sense of International Politics: Bananas, Beaches and Bases* (1989), pp 42–64.

19 Quoted in C Bunch, *Passionate Politics* (1987), p 297.

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but also feminist concerns in the Third World are largely ignored or misunderstood by Western feminists. Western feminism began as a demand for the right of women to be treated as men. Whether in campaigns for equal rights or for special rights such as the right to abortion, Western feminists have sought guarantees from the State that, as far as is physically possible, they will be placed in the same position as men. This quest does not always have the same attraction for non-Western women. For example, the Western feminist preoccupation with a woman's right to abortion is of less significance to many Third World women because population-control programmes often deny them the chance to have children. Moreover, 'non-positivist' cultures, such as those of Asia and Africa, are just as masculinist, or even more so, than the Western cultures in which the language of law and science developed. In the context of international law (and, indeed, domestic law), then, Third World feminists are obliged to communicate in the Western rationalist language of the law, in addition to challenging the intensely patriarchal 'different voice' discourse of traditional non-European societies. In this sense feminism in the Third World is doubly at odds with the dominant male discourse of its societies.

The legacy of colonial rule has been particularly problematic for many women in the Third World. Local women were seen as constituting a pool of cheap labour for industries, agriculture and domestic service, and local men were often recruited to work away from their families. Local women also provided sex to the colonisers, especially where there was a shortage of women from home. To local men, the position of their women was symbolic of and mirrored their own domination: while colonialism meant allowing the colonial power to abuse colonised women, resistance to colonialism encompassed reasserting the colonised males' power over their women.

Nationalist movements typically pursued wider objectives than merely to transfer power from white colonial rules to indigenous people: they were concerned with restructuring the hierarchies of power and control, reallocating wealth within society, and creating nothing less than a new society based on equality and non-exploitation. It was inevitable that feminist objectives, including the restructuring of society across gender lines, would cause tension when set beside nationalist objectives that sounded similar but so frequently discounted the feminist perspective.

Nevertheless, local women were needed in the fight against colonialism, which imposed numerous restrictions on them. The Sri Lankan feminist Kumari Jaywardena has shown that for many nationalists the objective of overthrowing colonial rule required both the creation of a national identity around which people could rally and the institution of internal reforms designed to present themselves as Western and 'civilised', and therefore worthy of self-rule. Thus, both the colonisers and the local men demanded that local women be modelled on Western women. On the one hand, 'ladylike' (Western) behaviour was regarded as a 'mainstay of imperialist behaviour', as 'feminine respectability' taught the colonised and colonists alike that 'foreign conquest was right and necessary'. On the other hand, many local males believed that 'women needed to be adequately Westernised and educated in order to enhance the modern and 'civilised' image of their country'. Of course, the model handed down by Western civilisation embraced all the restrictions imposed on Western women.

The need to rally around a national identity, however, required that local women, even while being groomed on the Western model, also take it upon themselves to be 'the guardians of national culture, indigenous religion and family traditions'. These institutions in many instances repressed women. Halliday points out that, despite the belief that the spread of nationalism and

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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'.[20] 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.[21] Feminist and women's movements have been active in numerous developing countries[22] 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.[23] 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.[24]

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 …[25]

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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.