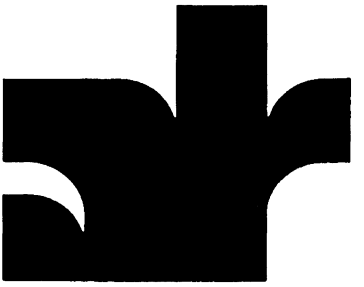

SYMPOSIUM

FEMINIST INTERVENTIONS IN INTERNATIONAL LAW: REFLECTIONS ON THE PAST AND STRATEGIES FOR THE FUTURE

*Pene Mathew, Dianne Otto and Kristen Walker**

INTRODUCTION

Since the publication of the groundbreaking article "Feminist Approaches to International Law" in the *American Journal of International Law* in 1991,[1] feminist analyses and critiques of international law have blossomed.[2] Many of these have emanated from Australia. In an international context, in 1993 the Women in International Law Interest Group of the American Society of International Law organised a day-long symposium on gender and international law, the papers of which evolved into the chapters of *Reconceiving Reality: Women and International Law*.[3] Feminist analyses have ranged over areas such as human rights, international trade, the Security Council and the use of force, to name but a few.[4] The range and depth of feminist

* Faculty of Law, University of Melbourne.

1 Charlesworth, Chinkin & Wright, "Feminist Approaches to International Law" (1991) 85 *AJIL* 613.

2 There are two useful bibliographies of feminist work in international law: "Bibliography of Selected Materials on Feminist International Legal Theory" (1993) 3 *Transnat'l L & Contemp Probs* 581; and Cook & Oosterveld, "A Select Bibliography of Women's Human Rights" (1995) 44 *Am UL Rev* 1429.

3 Dallmeyer (ed), *Reconceiving Reality: Women and International Law* (American Society of International Law, Washington DC 1993).

4 Examples of Australian feminist scholarship in international law include: Charlesworth, "The Public/Private Distinction and the Right to Development in International Law"

scholarship, together with our own interest and work in the area, inspired the idea for a symposium on Feminist Interventions in International Law, from which the articles in this issue of the *Adelaide Law Review* have come.

The symposium was held at the University of Melbourne Law School on 30 September 1996 and was attended by about 90 people from around Australia and overseas. We envisaged two purposes for the symposium: first, a stocktake on what feminist interventions in international law have achieved - a retrospective; and second, to look forward to where feminist interventions might be heading and where they might be needed. Indeed, this latter object seemed in many ways more important that the first, as many areas of international law remain impervious to feminist and other critical analyses. We wanted to bring together feminists working in various areas of international law and international relations, including not only academics but also women working with non-government organisations (NGOs) and other grassroots activists. It was also fortuitous that Christine Chinkin (London School of Economics), Shelley Wright (Law School, University of Sydney) and Hilary Charlesworth (University of Adelaide and Australian National University) would all be in Australia and able to participate in the symposium, thus emphasising the link back to their 1991 article.

Rather than follow traditional international legal categories, we decided to organise the symposium around four panels with the themes of diversity, violence, development and citizenship. The collection of published papers that follow include Christine Chinkin's opening address and papers from those panel speakers who submitted them for publication. In this introduction, we briefly summarise the unpublished papers and each of the panel discussions, and outline the strategies for future feminist interventions that were highlighted in the concluding plenary of the symposium.

Following Christine Chinkin's opening address, Hilary Charlesworth presented a paper in which she identified five responses to feminist interventions in international law. One response was to bypass feminist interventions altogether, as international legal theorists Thomas Franck and Martti Koskenniemi had done. The second was to "wink and nod" in

(1992) 12 *Aust YBIL* 190; Chinkin, "A Gendered Perspective to the Use of Force" (1992) 12 *Aust YBIL* 279; Gardam, "A Feminist Analysis of Certain Aspects of International Humanitarian Law" (1992) 12 *Aust YBIL* 265; Funder, "De Minimis Non Curat Lex: The Clitoris, Culture and the Law" (1993) 3 *Transnat'l L & Contemp Probs* 417; Otto, "Challenging the 'New World Order': International Law, Global Democracy and the Possibilities for Women" (1993) 3 *Transnat'l L & Contemp Probs* 371; Mathew, "Sovereignty and the Right to Seek Asylum: The Case of Cambodian Asylum-Seekers in Australia" (1994) 15 *Aust YBIL* 35; Walker, "An Exploration of Article 2(7) of the United Nations Charter as an Embodiment of the Public/Private Distinction in International Law" (1994) 26 *NYUJ Int'l L & Pol* 173; Wright, "Women and the Global Economic Order: A Feminist Perspective" (1995) 10 *Am UJ Int'l L & Pol'y* 861; Cass, "Navigating the New Stream: Recent Critical Scholarship in International Law" (1996) 65 *Nord J Int'l L* 341; Orford, "The Politics of Collective Security" (1996) 17 *Mich J Int'l L* 373.

the direction of feminist theorists. This might involve a footnote to say "yes girls, I'm aware of your work", but it avoids serious engagement with feminist theory.

Liberal critiques of the feminist project make up the third type of response. Adherents take the view that feminists should work within the existing framework of international law instead of critiquing it. As noted by Hilary, this approach is exemplified by an article by Fernando Tesón[5] and a review by Anthony D'Amato of *The Human Rights of Women*, edited by Canadian feminist Rebecca Cook.[6] In particular, Hilary focussed on D'Amato's charge that there is an inconsistency in some contributions to the book which both criticise international law for its androcentric focus and also criticise states for their failure to apply and implement international law regarding the rights of women.

The fourth kind of response was to accuse some feminist interventions of "essentialism". She described the anti-essentialist critiques as claiming that feminist interventions in international law thus far have identified blind spots in international law that are of particular concern to white western feminists and transposed these onto a global plane, assuming that all women confront the same issues. She identified two other aspects of these critiques. First, that some feminist interventions make an overly broad use of categories such as North/South, third world women/western women which imply a false homogeneity of interests. Second, that some feminist interventions make use of analytical distinctions such as the public/private dichotomy to dissect international law when such distinctions are specific to western culture, which is said to obscure the lives of women in developing countries. The fifth response identified by Hilary, which she perceived as the one adopted for the symposium, was to make room for a variety of different feminist approaches at once.

The paper focussed on a discussion of the third and fourth responses. Hilary observed that the criticisms offered by these two very different approaches illustrated the point made by the philosopher Elizabeth Gross that feminist theory was caught between the need to analyse with the same "rigour" (in male terms) the hidden gender of disciplines and the requirements of a commitment to political change.[7] This dual commitment attracts criticisms from two directions: from some feminists for co-option by patriarchal forces through participation in privileged, male-structured debates; and from the masculine academy for lack of "disinterested" scholarship and "objective" analysis. Hilary pointed out that the liberal critiques of feminist approaches ignore the fact that, while states certainly should be made to implement the promises they have made thus far to promote

5 Tesón, "Feminism and International Law: A Reply" (1993) 33 *Va J Int'l L* 647.

6 D'Amato, (1995) 89 *AJIL* 840, review of Cook (ed), *The Human Rights of Women: National and International Perspectives* (University of Pennsylvania Press, Philadelphia 1994).

7 Gross, "Conclusion: What is Feminist Theory?" in Patemen & Gross (eds), *Feminist Challenges: Social and Political Theory* (Allen & Unwin, Sydney 1986) p192.

the rights of women, international law currently offers only a partial response to women's perspectives.

In responding to the anti-essentialist critiques, Hilary acknowledged the importance of western feminists appreciating the limited perspectives of their own views and avoiding the "have we got a theory for you" approach identified by Maria Lugones.[8] However, she raised three questions about the scope and implications of the anti-essentialist critique in the particular context of international law. First, she observed that international law was developed by a very small number of colonial states and therefore operates according to distinctly liberal conceptions about the "personhood" of the state and the public/private dichotomy. Accordingly, she argued, it is entirely appropriate to critique these concepts. This is not to say that western feminist approaches are superior to other feminist approaches but that they are simply one way of exposing certain biases within international law. Second, she said that it is arguable that emphasising the diversity of women in the early stages of dialogue with traditional international lawyers undercuts the attempt to expose international law's dominant rhetoric as ignoring women's experiences. "Strategic essentialism", or putting forward a universal concept of womanhood to counter the universal (though clearly deficient and exclusive) concept of manhood espoused by international law, may be useful. Third, she argued that the anti-essentialist critiques may unwittingly give succour to uncritical cultural relativism and to the liberal critiques of feminist approaches.

Hilary concluded that it is not possible to provide universal explanations for the oppression of women worldwide, but that identifying common features of women's oppression is one important strategy for feminist interventions in international law. Accordingly, she offered some tentative ideas for commencing this project. First, she endorsed Isabelle Gunning's proposals always to be explicit and honest about one's own perspective.[9] Second, there is a need for western feminists to be very careful about controlling the political agenda at an activist level. Third, it is necessary to resist fetishising diversity to the point that conversations are stifled by charges of anti-essentialism. While it is important to be self-conscious about the categories used, generalising research should not be rejected out of hand. In the context of international law, she said, it may be important to start with sameness rather than difference. She noted her agreement with Martha Nussbaum's point that there is a need to begin with a universal conception of the human being and human functioning in thinking about women in international law.[10] Diverse examples of starting

8 Lugones & Spelman, "Have we got a Theory for You! Feminist Theory, Cultural Imperialism and the Demand for 'The Woman's Voice'" (1983) 6 *Women's Stud Int'l F* 573.

9 Gunning, "Arrogant Perception, World-Travelling and Multicultural Feminism: The Case of Female Genital Surgeries" (1992) 23 *Colum Hum Rts L Rev* 189.

10 Nussbaum, "Human Capabilities, Female Human Beings" in Nussbaum & Glover (eds), *Women, Culture and Development* (Oxford University Press, Oxford 1995) p61.

points for this project could include Amartya Sen's idea of human capability[11] or Chandra Mohanty's imagined community.[12]

DIVERSITY

The diversity panel was chaired by Kris Walker (Law School, University of Melbourne) and it was devoted to the question of how feminist interventions in international law may be inclusive and encompass women's diversity, picking up on some of the issues raised by Hilary. Barbara Cummings, who has played a central role among the Aboriginal communities currently seeking redress for the suffering inflicted by the removal of children, Rebecca La Forgia and Jenny Blokland (both from the Northern Territory University Law School) presented interconnecting papers. They developed a feminist perspective on the inquiry into, and litigation concerning, the removal of Aboriginal and Torres Strait Islander children from their families, now referred to as the "Stolen Generations." Their paper appears in this volume of the *Adelaide Law Review*.

Padma Raman, presently with the Victorian Law Reform Committee, focussed on the lessons that multiculturalism's impact on law in Australia has for feminist interventions in international law which attempt to grapple with women's diversity. The paper criticised the liberal notion of multiculturalism which permits ethnic difference in "dress, dance and dinner", but which demands allegiance to a core of western values. This, it was argued, promoted the idea that "other" cultures are static and is not far removed from colonialist theories about non-western cultures. She used an intersectional analysis to examine the way stereotypes converge to construct, in mainstream perception and in law, ethnic men as super-oppressive patriarchs and ethnic women as passive victims. She argued that the spokespersons for ethnic cultures in Australia who are listened to are often men and that this has perpetuated dominant stereotypes of ethnic women as passive "signs" of culture, resulting in the acceptance by Anglo-Australia of sexist mores within ethnic communities. A particular example of this is the use of the cultural defence to violent crimes against women, where culture or ethnicity has been taken into account when determining the accused's state of mind. In cases such as these, women within the particular community are not asked whether their understandings of their "culture" condones men's arrogation of power to "discipline" women in this way. Rather, lawyers for the defence attempt to use cultural stereotypes to let the perpetrators of violence "off the hook".

Kris Walker then gave some comments from the chair on sexual preference and international law. She observed that sexual preference has been a difficult topic to place on the international agenda: 1992 saw the first openly gay speaker at a United Nations (UN)

11 Sen, "Capability and Well-Being" in Nussbaum & Sen (eds), *The Quality of Life* (Oxford University Press, Oxford 1993) p30.

12 Mohanty, "Introduction: Cartographies of Struggle: Third World Women and the Politics of Feminism" in Mohanty, Russo & Torres (eds), *Third World Women and the Politics of Feminism* (Indiana University Press, Bloomington 1991) p4.

forum, at the UN Sub-Comission on Minorities. More recently, the International Lesbian and Gay Association has been denied consultative status by the UN's Economic and Social Council. She said sexual preference is not necessarily dealt with in a desirable manner at the international level. In responding to the *Toonen* complaint about Tasmania's anti-sodomy laws, the UN Human Rights Committee emphasised the right to privacy, a problematic concept, rather than the right to equality. She also noted that lesbians are often absent from discussions about sexual preference, although lesbians and gay men are now gaining visibility in the international arena, particularly in the area of human rights. She suggested several strategies for the future: first, that all of us, not just gay men and lesbians, need to speak about the unspeakable - sexual preference; second, that tolerance is a back-handed approach, since it assumes the abhorrent nature of that which is tolerated; third, that westerners need to consider non-western ways of identifying as gay or lesbian and to recognise the effects of colonialism on sexuality in developing countries (which often included criminalisation and moral and religious condemnation); fourth, a convention on sexuality might be desirable; and, finally, domestic implementation strategies, such as the Sexuality Discrimination Bill currently before the Australian Senate need to be pursued.

The discussion following the papers raised several issues. The first point addressed was the need for feminist interventions in international law to deal with international law's foundations in colonialism. Second, it was commented that there was a need to be vigilant about the impact of globalisation on the human rights agenda, particularly globalisation's tendency to suppress the assertion of solidarity and equity rights. Third, the question of essentialism was discussed. Points raised on this issue included the viability of coalition politics to put forward a united front when required; the need for a forum for feminists to discuss difference; and the ability of women activists to choose strategies appropriate to their interests from a variety of discourses. Finally, the workshop addressed the lessons to be drawn from the "Stolen Generations". It was commented that the practice of taking children from their families was a denial of women's rights and their role in Aboriginal and Islander communities. It was also said that there were other ways in which government initiatives had ignored Aboriginal women, for example, the focus on patrilineal descent in issues relating to land ownership and culture. The colonialist emphasis on "authentic" Aboriginality was also discussed, and the denial of access to archival material to indigenous peoples on the basis of the paternalistic fear that the material would be destroyed, resulting in decisions by public servants as to what is relevant.

VIOLENCE

The violence panel, chaired by Pene Mathew (Law School, University of Melbourne), addressed violence against women and international law's incomplete recognition of this issue.

Yumi Lee, from the Women's International League for Peace and Freedom, spoke about the conceptualisation and representation of violence in UN documents. Tina Dolgopol (Flinders University School of Law) analysed the Dayton Accords on the ending of the war in the Former Yugoslavia. She argued that the Accords failed to acknowledge women, despite the brutal targeting of women as a weapon of war during the conflict. Both these papers appear in this volume of the *Adelaide Law Review*.

Judith Gardam (Law School, University of Adelaide) addressed the obstacles to women's protection from human rights abuses raised by the boundaries between refugee law, international humanitarian law and human rights law. Her paper addressed three issues. First, the boundaries between different branches of international law have failed to reflect the experiences of women. The law relating to armed conflict focuses on protection of combatants and civilians during the conflict, but neglects to deal with the continuing burdens on women after the conflict has ended. Supposedly, the aftermath of armed conflict is left to human rights law and refugee law, however, these do not adequately deal with women's experiences either. Second, the law relating to armed conflict perpetuates the notion that women are appendages of others. For example, international humanitarian law conceptualises women in their capacities as mothers, when they are pregnant, and as sexual objects. The current focus on sexual violence in war as a result of the conflict in the Former Yugoslavia has not redressed this problem and raises further problems as it may induce a sense of complacency that women in armed conflict are protected. Other issues which need to be considered include the effect of economic sanctions and the failure to deal with women in other conflicts such as in Rwanda. Third, the doctrine of "military necessity" prevents the realisation of protection for women in armed conflict. It ensures that the military, which is a predominantly male institution, has the final say as to what may be justifiable in times of war.

Karyn Anderson, a member of the Australian Committee of Investigation into War Crimes, described the Committee's experience working to direct women's evidence about crimes committed against them in the Former Yugoslavia to the ad hoc International Criminal Tribunal. She outlined many problems associated with ensuring that women's evidence was received. Among these problems are the reluctance of women to report crimes of sexual assault, the question of confidentiality for witnesses versus due process for the accused, and the need for follow-up support for witnesses. Issues of substantive law were also dealt with, such as the need for rape to be prosecuted as a grave breach of international humanitarian law, and not only as a crime against humanity which raises difficulties where rape is not directed at a woman because of her ethnicity. Her paper concluded with the assessment that the Committee's work was one strategy for pursuing the eradication of violence against women and ensuring a change of attitudes towards women. However, she cautioned that it was important to avoid objectifying women's experiences through their participation as witnesses in the judicial process.

Pene Mathew invited discussion from the panel audience, noting at least five themes arising from the papers: the conceptualisation of violence; the problematic boundaries within international law; the question of ensuring women are included in international legal developments; the focus on the symptoms rather than root causes of sexual violence; and the objectification of women in international legal discourse. The question of trafficking in women and the impact of the debate between feminists concerning whether prostitution is forced or chosen were discussed. Further, the boundaries between different areas of international law were criticised, particularly in relation to the law's role after a conflict has ended. The comment was made that, in some cases, the motivation for dealing with the aftermath of a conflict is suspect, as with the question of compensation claims for women rape victims in Kuwait, which had been pursued in order to demonise Iraq. It was also said that there was often no real desire on the part of the international community to deal with the aftermath of conflict, thus the Dayton Accords referred to the need for "rehabilitation" but did not elaborate. The boundaries between international law and international relations were explored. It was noted that the focus on the state in both disciplines leads to a blind spot in relation to civil conflicts. There was discussion of the essentialism debate among feminists working in international relations and what lessons international lawyers might draw from it. The question of the application of the law of armed conflict to international organisations, especially to UN peacekeepers, was also raised. Finally, the important role of women's NGOs in putting women on the international legal agenda was acknowledged.

DEVELOPMENT

The development panel was chaired by Deborah Cass (Law School, Australian National University) and three papers were presented. First, Lizanne Bennett, the Women's Officer with the Australian Services Union, spoke on the development of the International Labour Organisation (ILO) convention on homeworking and Australia's subsequent failure to support the Convention following the change in the Federal Government in 1996. Homeworking, or outwork, as it is often known in Australia, impacts disproportionately upon women and has been the subject of work by the ILO over a number of years. Under the previous Labor Government, Australia had had a significant involvement in the ILO and in the drafting of the Homeworking Convention. However, in 1996 Australia gave its voting seat on the ILO to South Korea, and it has failed to ratify the Convention.

Second, Janet Hunt, Executive Director of the Australian Council for Overseas Aid, spoke on the role of women's NGOs in promoting women's development and human rights, particularly in the Asia-Pacific region. She highlighted the work of women's NGOs in the Philippines, Thailand, Indonesia, Fiji and other Asian and Pacific countries. She also discussed the importance of international fora such as the Nairobi and Beijing World Conferences on Women, which brought together women's NGOs from around the world to address issues such as poverty, inequality, violence, political participation and peace. She concluded that women's NGOs have had a considerable impact on both international and

national issues, but that there remained areas where gender was still ignored, in particular, international trade and other economic issues. Janet highlighted the need for women's groups to continue to advocate for women and to participate in trade and economic discussions.

Finally, Krysti Guest, whose paper is included in this volume of the *Adelaide Law Review*, considered how economic, social and cultural rights are being defined in the context of an international political economy dominated by Northern-based transnational corporations and an ethos of "free" market capitalism.

Discussion following the panel presentations centred on the strategies which could be used to bring gender into the debates around international economic and monetary issues, given the current failure of mainstream international organisations, particularly the Bretton Woods institutions, to consider women in formulating policy. Various suggestions were made, many focussing on the need for Northern women's NGOs to take a more active role on economic issues, both domestically and internationally. So, for example, it was suggested that the Homeworking Convention be the subject of domestic lobbying and a public awareness campaign in order to persuade the Australian Government to ratify it. At the international level, it was observed that, post-Beijing, a group called "Women's Eyes on the Bank" has been established to monitor the activities of the World Bank. There seemed to be general agreement that institutions such as the International Monetary Fund and the World Bank are among the most impervious to change and pose great difficulty in terms of achieving feminist change. The new World Trade Organisation will be equally difficult. There was also an interesting exchange over the role of capitalism in women's oppression and the need to influence the economic activities and policies of governments and multinational corporations as well as those of international organisations.

Shelley Wright, who took on the role of chair in Deborah Cass's absence, made some concluding observations on strategies aimed at propelling women's issues onto the mainstream agenda: greater use of and emphasis on the Convention on the Elimination of Discrimination Against Women (CEDAW); networking between women's NGOs, environmental NGOs and indigenous NGOs; improving women's access to credit; and seeking greater NGO input into regional institutions such as Asia Pacific Economic Cooperation (APEC).

CITIZENSHIP

The fourth panel of the symposium was chaired by Dianne Otto (Law School, University of Melbourne) and it examined the partial and precarious nature of women's citizenship in nation state and global polities. Looking at this issue in the context of post Cold War globalisation, the first speaker, Jan Pettman (Department of Politics, Australian National University), asked whether it was an appropriate aim to seek inclusion in traditional structures and definitions of citizenship. She noted how globalisation is dramatically

shifting power and wealth away from the preserve of the state and scrambling earlier identity categories. Many women are "out of place", living and working beyond the legal reach of the countries of their ostensible citizenship. This points us to the question of the rights of non-citizens and, as Jan pointed out, suggests that feminists develop transnational solidarities, spaces and identities for women which are mobile and multiple rather than seeking inclusion in outmoded, singular notions of citizenship.

Pene Mathew was the second panelist. She examined the efficacy of international refugee law as a response to denial of citizenship for women and looked specifically at the new Australian guidelines on gender in determining refugee status as an example of a response to feminist interventions in international law. Pene's prognosis for the guidelines was a mixed bag. On the one hand, they include consideration of the actions of "private" (non-state) actors and broaden the notion of what is considered to be "political". These are important advances as much of the "persecution" experienced by women falls outside the gendered notion of what constitutes the public realm and is excluded by dominant conceptions of politics. On the other hand, the new guidelines do not adequately deal with the ways in which women might constitute a "particular social group". Further, domestic violence remains excluded from the broadened definition of "torture and other cruel, inhuman or degrading treatment or punishment". This is symptomatic of a failure to deal with violence that is endemic in western states and illustrates the ease with which certain violations are condemned because they are characterised as "culturally" specific, such as dowry murder.

The third panelist was Susan Brennan, solicitor at Minter Ellison and current Joint President of the Young Women's Christian Association (YWCA), an active international NGO. She critically analysed the international feminist campaign aimed at states adopting an Optional Protocol (individual complaints mechanism) to CEDAW. Susan pointed to the disjunction between academic caution about what rights discourse has to offer women and the contrasting enthusiastic promotion by many feminist activists of the potential of human rights mechanisms to make a real difference to women's status. She suggested that constructive interaction between these two feminist camps was essential in order effectively to extend the gendered boundaries of human rights discourse while also remaining aware of its limitations.

In the ensuing discussion, it was recognised that feminist attempts to challenge the exclusionary effects of international legal and political discourse have met with strong resistance and that gendered violence is an important structural aspect of maintaining the denial of full citizenship to women. It was generally agreed that post Cold War globalisation necessitated a reconceptualisation of the idea of citizenship and that the development of transnational alliances was a high priority for feminists.

STRATEGIES FOR FUTURE FEMINIST INTERVENTIONS

In the final plenary session of the symposium, Hilary Charlesworth, Christine Chinkin and Shelley Wright presented an overview of the strategies which had been suggested in the panel discussions and then reorganised them into five main strategic outcomes. First, they concluded, the symposium underlined the importance of multiple feminist strategies. In particular, participants had agreed that human rights strategies should not be rejected. Among the advantages of human rights discourse that had been identified during the day were: providing opportunities for the narration and recording of women's experience; opening up dialogue at the international level; developing the unexplored potential of CEDAW, for example with respect to how the "appropriate measures/means" provisions in articles 2, 3 and 5 might be interpreted; and as a means of insisting on the practical extension of human rights protections to women.

The second strategy which emerged was the continuing importance of theorising and addressing the "root causes" of women's oppression. Some of the causes highlighted during the day were gendered violence, capitalism, armed conflict, the forced movement of many women including refugees and migrant (including undocumented) workers, militarism, ongoing colonialism, the nation state and popular representations of women.

Thirdly, the importance of interconnecting theory and practice was emphasised in a number of ways. In particular, feminist theorists must develop ways of linking with grass roots women's organisations. The fourth strategy related to the third in that it emphasised the necessity to recognise and respect the diversity of feminist viewpoints, theories and practices. The difficulties associated with conversing across differences in power must be addressed by developing specific dialogic strategies which do not result in domination and silencing. Finally, the need for feminist reconceptualisations of key concepts and institutions was stressed, including "citizenship", the "nation state" and economic and trade structures.