

Institution: London School of Economics and Political Science
Unit of Assessment: 20 Law
Title of case study: Incorporating feminist perspectives into international human rights law
<p>1. Summary of the impact (indicative maximum 100 words)</p> <p>International law has not in the past addressed fundamental issues of gender inequality. Chinkin's research has had impact through having been used in:</p> <ul style="list-style-type: none"> • the negotiation of the Council of Europe Convention – a legally binding treaty – on preventing and combating violence against women and domestic violence; • work with the Foreign & Commonwealth Office (FCO) in their initiative on Tackling Sexual Violence as a Tactic of War and Conflict, which resulted in the G8 declaration on preventing sexual violence in conflict; • capacity-building and the training of policy makers and law enforcement officials in Argentina to enhance women's access to justice; and • the development of the UN Recommended principles and guidelines on human rights and trafficking.
<p>2. Underpinning research (indicative maximum 500 words)</p> <p>The research applies feminist analysis to the substance, processes and institutions of public international law. It provides a detailed account of the reasons for the marginalisation of women in the formal and informal institutions of the international legal system. All the underpinning research has been produced since Chinkin joined the LSE as Professor of International Law in 1997. Chinkin's work highlights the traditional omission of women from the public sphere of international relations and shows how the residual space protected from international intervention by state sovereignty has excluded the worldwide subordination of women from international scrutiny (see, in particular, Chinkin 2000, 2002 and 2005). Far from challenging the global oppression of women, international law has legitimated their unequal position worldwide.</p> <p>The objective of the research has been to encourage policy makers to rethink and restructure the discipline of international law so that it might respond to structural bias and revise notions of what subjects are appropriate for international legal regulation and of state responsibility. The research has an obvious theoretical dimension, but it is also – since it aims to alter the construction and content of international legal principles and their application by international institutions – a practical engagement directed towards law reform (Chinkin 2001).</p> <p>While the research has addressed multiple issues within the international legal system, it has had particular application and impact in international human rights and criminal law (Chinkin 2002). It demonstrates how initiatives to protect women's rights have been largely concerned with the limited concept of equal treatment and non-discrimination on the basis of sex: i.e., with a model of equality that works most effectively for women where they participate in the public sphere, but which fails to redress or even identify the structural inequalities that prevent women actually accessing the public sphere (see Chinkin 2012a). International mechanisms have traditionally been blind to the violations of human rights, including violence committed against women because they are women (Chinkin 2012b). Historically, the notion that 'women's rights are human rights' has not been accepted, even rhetorically. The research demonstrates the need in international law for women-specific guarantees, and for on-going implementation of these guarantees through explicit procedures, with regular and consistent monitoring and evaluation (see Chinkin 2001). It also examines states' positive obligations with respect to the wrongful acts of non-state actors, in particular in family and community settings – a matter of considerable significance with respect to gender-based violence against women and international law responses to crimes committed against women, including cross-border human trafficking.</p>
<p>3. References to the research (indicative maximum of six references)</p> <p>(2000) C. Chinkin and H. Charlesworth, <i>The Boundaries of International Law: A Feminist Analysis</i> (Manchester UP). (Translated into Japanese, 2004). Awarded the American Society of</p>

International Law Award for Outstanding Creative Scholarship, 2001. Chinkin and Charlesworth were also awarded the American Society of International Law, 2006 Butcher Medal 'for outstanding contributions to the development or effective realization of international human rights law'. Available from LSE on request.

(2001) C. Chinkin, *Gender Mainstreaming in Legal and Constitutional Affairs* (Commonwealth Secretariat, Gender Management System Series). <http://eprints.lse.ac.uk/13078/>

(2002) C. Chinkin, 'Feminist Reflections on International Criminal Law', in Andreas Zimmermann (ed.), *International Criminal Law and the Current Development of Public International Law* (Berlin: Duncker & Humblot) 125-60. Available from LSE on request.

(2005) C. Chinkin, 'Feminist Approaches to International Law: Reflections from Another Century', in Doris Buss and Ambreena Manji (eds), *International Law: Modern Feminist Approaches* (Oxford: Hart Publishing) 17-47 (with H. Charlesworth and S. Wright). <http://eprints.lse.ac.uk/23424/>

(2012a) C. Chinkin, 'Acceso a la justicia, género y derechos humanos', in *Violencia de Género Estrategias de litigio para la defense de los derechos de las mujeres* (FCO). <http://www.mpd.gov.ar/uploads/Violencia%20de%20genero.%20Estrategias%20de%20litigio%20para%20la%20defensa%20de%20los%20derechos%20de%20las%20mujeres.pdf>

(2012b) C. Chinkin, *The UN Convention on the Elimination of All Forms of Discrimination against Women: A Commentary* (co-editor with M. Freeman and B. Rudolf) (Oxford: OUP), author of pp 443-474 (violence against women). Available from LSE on request.

Evidence of quality: the 2000 book won the American Society of International Law Award for Outstanding Creative Scholarship, 2001. Chinkin and Charlesworth were also awarded the American Society of International Law, 2006, Butcher Medal 'for outstanding contributions to the development or effective realization of international human rights law'.

4. Details of the impact (indicative maximum 750 words)

Istanbul convention

Chinkin's research has had significant impact by virtue of its having led to the recognition of gender-based violence against women as a violation of international human rights law. Such violations now incur state responsibility by virtue of the Council of Europe Convention on preventing and combating violence against women and domestic violence (adopted by the Committee of Ministers, Istanbul, 2011). The Convention can be traced to the Parliamentary Assembly's decision to establish an ad hoc Committee to negotiate a legally binding instrument, clarifying and developing states' obligations with respect to preventing and combating violence against women. Chinkin was one of two scientific advisors appointed to the Committee. She worked with states' delegations (from the 47 member states of the Council of Europe and observer states), the Council of Europe Secretariat and NGOs, and she produced working papers – based on her research on the case law of the European Court of Human Rights – setting out a typology for the protection of women and the duty of due diligence. She also made multiple contributions to Committee debates and assisted in drafting the Convention provisions. (Section 5, source 2.)

The Convention is the first legally binding instrument in the world to create a comprehensive international legal framework to prevent violence, to protect victims and to end the impunity of perpetrators. It includes provisions which flow directly from Chinkin's research: e.g. article 5 ('Parties shall refrain from engaging in any act of violence against women and ensure that state authorities, officials, agents, institutions and other actors acting on behalf of the state act in conformity with this obligation. Parties shall take the necessary legislative and other measures to exercise due diligence to prevent, investigate, punish and provide reparation for acts of violence covered by the scope of this Convention that are perpetrated by non-state actors') has its basis in her long-standing argument for due diligence as a mechanism for promoting greater state accountability with a view to eliminating violence against women (see, e.g., Chinkin 2001, p. 57: 'Failure by the state to exercise due diligence to prevent and punish violence against women

constitutes a violation of human rights for which it is responsible. Implementation of national laws that address gender-based violence is one very clear and pivotal way in which women's subordination can be addressed'). In March 2012 the Prime Minister announced that the UK would sign the Convention, which he described as 'unprecedented' and 'vital' as it would 'lift the standards of protection for women across Europe'.

The impact of Chinkin's research on the drafting of the Istanbul convention is discussed in the testimonial of Liri Kopaçi-Di Michale (section 5, source 2), a Head of Division at the Secretariat General of the Council of Europe.

Sexual Violence in Armed Conflict

In 2009, the UN Office of the High Commissioner for Human Rights (OHCHR) introduced a programme on access to justice for women, post-conflict. The accompanying Report on The Protection of Economic, Social and Cultural Rights Post-Conflict (2009), written by Chinkin and drawing on her research on sexual violence in armed conflict, was presented at an expert meeting of the OHCHR in Geneva and became a key component of the programme. The research has also been used by the OHCHR for interventions at the International Criminal Court: this is discussed in the testimonial of Madeleine Rees (section 5, source 3), a former representative of the OHCHR. Chinkin has also drawn on this research in assisting the FCO with the UK's initiative on Tackling Sexual Violence as a Tactic of War and Conflict. Following the announcement of this initiative by the Foreign Secretary, William Hague, in June 2012, Chinkin was invited to the FCO to discuss the approach that should be taken (section 5, source 8). Chinkin further contributed to the UK's strategy as one of the speakers at the conference organised by the FCO on this subject in November 2012 (section 5, source 7). At the G8 meeting in April 2013, the UK used its presidency to agree a declaration on preventing sexual violence in conflict.

Improving access to justice for women in Argentina

In 2012 Christine Chinkin was invited by the Public Defender's Office, Argentina to present her research and to work with judges, defenders and prosecutors of the federal and provincial justice systems on programmes that would contribute to developing legal means and strategies for enhancing women's access to justice. The impact is evidenced by the testimonials of the projects officer of the British Embassy in Buenos Aires and the Ministerio Publico de la Defensa in Argentina (section 5, sources 4 and 5).

Combating trafficking

Chinkin's research was a major influence on the development of the UN *Recommended principles and guidelines on human rights and human trafficking* (section 5, source 1). These guidelines have been adopted by the UN General Assembly and are used by all UN agencies and most states that have subsequently adopted national plans of action on combating trafficking. The impact of Chinkin's research on the guidelines is evidenced by the acknowledgement in the introduction to the guidelines, and by the testimonial of Madeleine Rees (section 5, source 3), former representative of the OHCHR and now Secretary General of the Women's International League for Peace and Freedom: "The OHCHR developed the Recommended Principles and Guidelines on Trafficking in Human Beings, which is seen as the core human rights guide on approaches to anti trafficking. Professor Chinkin was a contributor and her research was a major influence on the wording and concepts of the Guidelines. Adopted by the UN General Assembly, the Guidelines are used by all UN agencies and by most states which have subsequently drafted national plans of action on combating human trafficking. The OHCHR convened a major conference on how to prosecute the users of women in the context of trafficking. Professor Chinkin drafted a concept paper [section 5, source 6] on how this could be done applying the jurisprudence from the international ad hoc criminal tribunals and the European Court of Human Rights.... This paper has been used in advocacy with governments in the Balkans and with the UK and the models adopted have incorporated some of the elements elucidated."

Why the impact matters. The consequence of Chinkin's research having had the impact demonstrated in this study is that, in the contexts of the four international human rights projects detailed in this section, the protection of women's rights – including the rules combating trafficking

of and violence against women – have been significantly recognised and improved.

5. Sources to corroborate the impact (indicative maximum of 10 references)

All sources listed below can also be seen at: <https://apps.lse.ac.uk/impact/case-study/view/39>

1. Recommended principles and guidelines on human rights and human trafficking: Commentary (New York and Geneva: UN Publications, 2010), p.4:

http://works.bepress.com/cgi/viewcontent.cgi?article=1014&context=anne_gallagher

OHCHR wishes to thank the individuals and organizations that provided comments, suggestions and support for the preparation of the Commentary, in particular Christine Chinkin, who undertook preliminary work on this subject in 2004.

2. Head of Division at the Secretariat General of the Council of Europe: “Chinkin ... acted as scientific advisor to the Council of Europe Ad Hoc Committee on preventing and combating violence against women and domestic violence (CAHVIO) from April 2009 to January 2011. This committee was set up following a decision by the Committee of Ministers of the Council of Europe in December 2008 to prepare a legally binding instrument in the field of violence against women and domestic violence.... Chinkin drafted research papers, assisted with the re-drafting of the provision of the draft convention and was present at all 9 meetings of the CAHVIO to explain concepts of international law and point out legal consequences of wording and concepts under discussion by the committee. The knowledge and expertise Ms Chinkin offered orally and in writing contributed to the drafting of the convention.”

3. Testimonial of former representative of the OHCHR and now Secretary General of the Women’s International League for Peace and Freedom. This source is confidential.

4. Projects Officer at the British Embassy in Buenos Aires, 12 June 2012 (: “[Chinkin] wrote an article that helped local experts better understand the international legal debates about gender violence and the chronological development of international legal frameworks. This article formed part of a manual for training judicial operators in Argentina.... Her participation in this project helped foster an informed debate on gender discrimination and violence in Argentina.”

5. General Defender’s Office, Ministerio Publico de la Defensa, Argentina, 21 June 2012 (: “[Chinkin] has significantly contributed to thinking about legal means and strategies of enhancing women’s access to justice. During her stay, she trained more than one hundred judicial operators throughout the country. Among them, there were government employees and magistrates from both local and federal systems.”.

6. Chinkin’s report for OHCHR on *Protection of Economic, Social & Cultural Rights Post-Conflict* (2009) http://www2.ohchr.org/english/issues/women/docs/Paper_Protection_ESCR.pdf.
<https://apps.lse.ac.uk/impact/download/file/1497>

7. Details of FCO meeting (at which Chinkin spoke) on prevention of sexual violence
<https://www.wiltonpark.org.uk/wp-content/uploads/wp1199-programme.pdf>
<https://apps.lse.ac.uk/impact/download/file/1501>

8. The UK Foreign Secretary’s remarks, at the close of G8 summit on 11 April 2013, together with the G8 declaration on preventing sexual violence in conflict:
<https://www.gov.uk/government/news/foreign-secretarys-remarks-on-constuctive-g8-foreign-ministers-meeting%20>
<https://apps.lse.ac.uk/impact/download/file/1500>