The term *gender* was gradually introduced into nonbinding international documents on the topic of women in the early 1990s. A historical review of the development of human rights as they relate to women reveals three important points: (1) that *gender* has commonly been used to identify a person’s sex as either male or female; (2) that a radical re-definition of *gender* as a social construct to promote a sexually polymorphous view of the human person (cf. de Casco 1995, 16–17) has been consistently rejected by the international community; and (3) that the first definition of gender was included in the Statute of the International Criminal Court and binds state parties to this agreement.

In the period from 1945 to 1962, the main concern was “equality between women and men,” something reflected in the 1945 U.N. Charter (cf. Preamble, paragraph 2). The promotion of such equality became the major work of the Commission on the Status of Women (CSW), established in 1946 under the supervision of the U.N.’s Economic and Social Council (ECOSOC). The CSW played a role in the drafting of the 1948 Universal Declaration of Human Rights.

The period from 1945 to 1962 also saw international agencies assisting women in developing countries as these nations made the transition from colonial regimes to democracy. In the 1960s concerns about population growth began to emerge, along with efforts to promote contraceptive use and population control, which many counties of Catholic or Muslim heritage opposed. The period 1963 to 1975 focused more on socioeconomic growth, where the key concern was “Women in Development” (WID).

This latter issue was highlighted by the U.N. General Assembly, which declared 1975 the International Women’s Year, and 1976 to 1985 as the International Decade for Women. The year 1975 also saw the first World Conference on Women in Mexico as part of the 1975 International Women’s Year. Discrimination against women on the basis of sex was a major concern, and the Mexico Conference ordered the drafting of a Convention on the Elimination of Discrimination against Women (CEDAW).

The ten-year period mentioned above, 1976–1985, was designated the U.N. Decade for Women: Equality, Development, and Peace, and the idea of development itself came to be intimately related to women’s full and equal participation. Women’s development was said to be crucial for “the well-being of everyone.” In 1979, the U.N. General Assembly adopted CEDAW, which prohibited “sex” discrimination and set up a committee to monitor domestic implementation through nonbinding recommendations to state parties. During this period, subsequent global conferences on women were held in Copenhagen (1980) and Nairobi (1985). These meetings outlined guidelines for promoting women’s equality with respect to “gender” (Adams-Alwine 2009, 12). Although some feminists have credited the Nairobi conference with inaugurating “gender” as a “social construct,” the truth is that it used the term *gender* only sixteen times and did not define it.
In the next period, 1986–1995, the major concern was violence toward women. This led to the 1993 Declaration for the Elimination of Violence Against Women (DEVAW). In addition, a special rapporteur on violence against women was designated and the International Criminal Tribunal for the former Yugoslavia (ICTY) and for Rwanda (ICTR) were established. These tribunals have the power to prosecute persons responsible for crimes against humanity, which include the crime of rape (ICTY, art. 5; ICTR, art. 3; CF. art. 4). The United Nations also sponsored conferences with nonbinding outcome documents on various international issues in Rio de Janeiro (1992), Vienna (1993), Cairo (1994), Copenhagen (1995), Istanbul (1996), and Rome (1996). The outcome document of the World Human Rights Conference, in Vienna, used the term gender five times and clearly, in reference to girls or women (arts. 18, 38, 42). The document produced at the International Conference on Population and Development, in Cairo, devoted a section to “Gender Equality, Equity, and Empowerment of Women” (Chapter IV)—again, clearly in relation to women. Lastly, the World Food Summit, in Rome, produced a “Declaration” that uses “gender” once and a “Platform of Action” that includes the term eight times, and again in reference to women (see, for example, arts. 16, 34, 35 59). In sum, a major issue raised at some of the aforementioned conferences was woman's equality with man, expressed also as “gender equality.”

Only at the Fourth World Conference on Women at Beijing in 1995 did the term gender assume prominence—being Page 613 | Top of Article used 233 times in the final document, but, once again, it remained undefined (UN DPI, February 1997). During this conference attempts were made to redefine gender as a social construct in line with the thought of Judith Butler (1956–). In her 1990 book, Gender Trouble: Feminism and the Subversion of Identity, Butler describes “gender” as a “constructed status … radically independent from sex, … a free floating artifice, with the consequence that man and masculine might just as easily signify a female body as a male one, and a woman and feminine a male body as easily as a female one” (88; cf. de Casco 1995, 16). Both Martha Lorena de Casco and Dale O'Leary challenged Butler's view of “gender” as a social construct. They linked this position to the promotion of abortion as a legal right, as well as to a “sexless world in which lesbianism and homosexuality are on equal footing as marriage” (de Casco 1995, 16). To end the controversy, a working group composed of sixty state representatives gathered to consider the meaning of gender in the Beijing outcome documents. Their opinion is set out in Annex IV to the Report of the Fourth World Conference on Women, wherein it is stated that “gender” is “to be interpreted and understood as it was in ordinary, generally accepted usage.”

The Holy See entered several reservations and an interpretative declaration on the meaning of the term gender. In this latter regard, it stated:

In accepting that the word “gender” in this document is to be understood according to ordinary usage in the United Nations context, the Holy See associates itself with the common meaning of that word, in languages where it exists. The term “gender” is understood by the Holy See as grounded in biological sexual identity, male or female. Furthermore, the Platform for Action itself (cf. N. 193, c) clearly uses the term “both genders.”

The Holy See thus excludes dubious interpretations based on world views that assert that sexual identity can be adapted indefinitely to suit new and different purposes. It also dissociates itself from the biological determinist notion that all the roles and relations of the two sexes are fixed in a single, static pattern. Pope JOHN PAUL II (1920–2005) insists on the distinctiveness and complementarity of women and men. At the same time, he has applauded the assumption of new roles by women, stressed the degree to which cultural conditioning has been an obstacle to women's progress, and exhorted men to assist in the “great process of women's liberation” (“Letter to Women,” n. 6). In his 1995 “Letter to Women” the Pope explained the Church's nuanced view in the following way: “One can also appreciate that the presence of a certain diversity of roles is in no
way prejudicial to women, provided that this diversity is not the result of an arbitrary imposition, but is rather an expression of what is specific to being male and female” (n. 11).

Drawing upon the insights of John Paul II and others, the Holy See, in various international interventions, has upheld the aforementioned view of gender that is rooted in the biological, sexual differences between males and females. While not all male and female roles are fixed in a definite pattern, the Holy See believes that the differences between men and women are important for roles such as motherhood and fatherhood. Moreover, the biological differences between men and women are expressions of the male-female complementarity willed by God, especially with regard to the unitive and procreative ends of marriage (cf. Congregation for the Doctrine of the Faith, Letter, May 31, 2004). On the international level, the Holy See's understanding of gender, therefore, stands in opposition, on the one hand, to those views that promote biological determinism, and, on the other hand, to those that minimize the biological differences of the sexes and reduce “gender” to a changeable cultural element or social construct.

Five major international agencies were eventually developed for the advancement of women: DAW (Division for the Advancement of Women); INSTRAW (International Research and Training Institute for the Advancement of Women); UNIFEM (United Nations Development Fund for Women); IANWGE (Inter-Agency Network on Women and Gender Equality); and OSAGI (Office of the Special Advisor on Gender Issues). Although the description of gender as a social construct can be found in the non-binding publications of these agencies, this is not the case in documents negotiated by state parties, in which the term gender is employed. The word gender is also used in the context of statistics on male-female ratios (cf. Charlesworth 2005, 6–18). Indeed, although many U.N. agencies describe “gender” as a “social construct,” this understanding has not been definitely incorporated into international law.

In the period 1996 to 2006, the term gender equality began to be used more frequently by the CSW and other U.N. agencies. However, the 1998 Rome Statute of the International Criminal Court, which took effect in 2002, presents the only legally binding definition of gender, namely that of both sexes, male and female, within the framework of society. In 2006, the General Assembly of the United Nations created the Human Rights Council to replace the Commission of Human Rights, and this Council must take note of efforts to fully integrate a gender perspective and achieve gender balance. The aforementioned bodies devoted to women (DAW, INSTRAW, OSAGI, and UNIFEM) were combined to form one entity in 2010 when the U.N. General Assembly established the United Nations Entity for Gender Equality and the Empowerment of Women, also known as U.N. Women. As regards U.N. women and the CSW, the former agency provides substantive support to the body and facilitates participation of nongovernmental organizations in CSW’s annual session. U.N. Women chairs IANWGE and serves as Secretariat to this network of over 40 U.N. offices, departments, commissions, programmes, and specialized agencies.

Today, the only binding definition of gender in international treaty law remains the one provided by the 1998 Rome Statute of the International Criminal Court (ICC Statute), which was put into effect in 2002. This definition reads: “For the purposes of this Statute, it is understood that the term ‘gender’ refers to the two sexes, male and female, within the context of society. The term ‘gender’ does not indicate any meaning different from the above” (Article 7, 3). Efforts, though, continue to have “gender” be understood as a “social construct” rather than a reality rooted in human biology and the natural law.

SEE ALSO GENDER, PHILOSOPHY OF.

BIBLIOGRAPHY


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