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Global Diversity and the Living International Human Rights Law

Keynote lecture

Third Owada Chair Symposium

16 January 2024, Leiden

Universiteit Leiden

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"Human Rights have become … 'settled norms' of contemporary international society; that is, principles that are widely accepted as authoritative within the society of states. Both nationally and internationally, full political legitimacy is increasingly judged by and expressed in terms of human rights."

-Jack Donnelly[1]

"The anthropological study of human rights has documented cross-cultural variation and complexity in definitions of the person, the balance of individual and collective rights, the interrelationship between rights and duties, and humanity's responsibility for non-human life… The universality of human rights is therefore rooted, at least partly, in their contingency and contextual relativity. Moreover, these differences are productive for the continual redefinition of human rights at local, national, regional and global scales."

-American Anthropological Association 2020 Statement on Human Rights[2]

"…because *all nations and peoples come to human rights as equal strangers*, epistemic humility remains a basic postulate for intercultural communication at the service of the future of human rights."

-Upendra Baxi[3]

I. Introduction

It is my great honor and privilege to give this year's iteration of the Owada Chair keynote lecture. Most deservedly established by the University of Leiden and the University of Tokyo in honor of Judge Hisashi Owada (a former President of the International Court of Justice who has made a invaluable contribution to international (human rights) law),[4] the Owada Chair in International law and Geopolitics is a fitting testament to the promise of academic solidarity and cross-cultural cooperation, amidst increasing geopolitical transformations and fissures.[5]

In this paper, I examine global diversity's place and role in, and effect on, the living international human rights law. The key expressions that frame and undergird this enquiry are "global diversity" and "the living international human rights law." These require explanation at the outset, if only in brief. As used in this paper, the first expression, "global diversity" denotes the broad socio-economic and political differences that exist among societies/peoples across the globe in terms of their lived experiences, ideas, thought, epistemes, culture, and practices. As such, global diversity encompasses much more than cultural diversity. It should also be noted that, as no society is monolithic, at a certain level of abstraction, a multiplicity of lived experiences, ideas, thought, epistemes, culture, and practices can be found in each of them. And so, it is to the dominant versions of these societal features as they are expressed in different societies around the world, that reference is being made here. What is more, given the heightening of globalization in our time, local communities within many (though not all) states have now become "microcosms of global diversity".[6] As such, the incidence of global diversity is not necessarily as bounded by state borders today as they once were. This must complicate to some extent analyses of global diversity within any sphere, the human rights field included. It is no wonder that some – particularly in Japan – have spoken and written about the "*glocal*,"[7] i.e. the "simultaneous occurrence of both universalizing and particularizing tendencies in contemporary social, political, and economic systems."[8]

The second key expression, "the living international human rights law," refers to, and engages with, the discipline and field of international human rights law not merely as a set of hard and soft law texts, but as these texts are actually experienced in the living world. Both the inscription of human rights values in texts and their related praxis (i.e. interpretation, application, implementation, etc) are much more fully accounted for in this socio-legal and more realistic conception of international human rights law.

It should also be noted that the place of global diversity in international human rights law has, of course, long concerned and perplexed scholars and practitioners alike, producing a near-deluge of academic writing, and a significant amount of scholarly and practical tension and disagreement, including – as it ought to – a range of perspectives. These tensions, disagreements and perspectives about "universality" and "particularity" in international human rights law are so well established and known that they will not unduly detain us here.[9] Suffice it to note, however, that although much disagreement remains, and too many experts and non-experts alike still do not know nearly enough about the human rights ideas of the non-Western peoples and societies that form the vast majority of humanity, the "universality v. particularity" debate has basically been narrowed down to a field of play that is akin to the frame articulated in Jack Donnelly's more recent work on the question. According to Donnelly:

> "Universality and relativity [of human rights] are usually presented as opposites defined either dichotomously or as end points of a continuum. The primary sense of 'universal'[pertaining to a particular domain or sphere], however…is not merely compatible with but necessarily includes an essential element of relativity. The question, then, is not whether human rights are universal or relative but how human rights are (and are not) universal and how they are (and are not) relative...internationally recognized human rights are 'relatively universal in the contemporary world."[10]

With it in mind, the re-examination, through fresh lenses, of the longstanding debate about human rights' universality and particularity on global plane, that is undertaken in this paper, is chiefly conducted along five (interrelated) axes/dimensions of global diversity that have shaped, or have the potential to shape, the living international human rights law. They axes/dimensions are as follows: global diversity in the origin story of human rights; the place of global diversity of lived experience within the living international human rights law; the question of global diversity of thought and meaning within that corpus of texts and praxis; global diversity in the contemporary the sources and sites of of authoritative human rights knowledge production and dissemination; and the global diversity of international human rights practices. Along each one of these axes/dimensions of the global diversity of the living international human rights law, I examine the extent to which that kind of global diversity is present; the gaps, problems and eclipses that are associated with its insufficient expression; and the ways in which each one of axes is being affected, or might in future be affected, by what the very thoughtful conveners of this Owada Chair Symposium referred to in their invitation letter to me as "contemporary geopolitical transformations," that are being wrought in the main by China's great rise and the China/US competition and tensions that it has helped generate – what Ming Wan has quite creatively styled the new superpower "cold peace."[11] Following this discussion, I reflect on how the living international human rights law can optimize its global diversification amidst the current structural transformation of world politics.

II. Five Axes/Dimensions of Global Diversity in the Living International Human Rights Law[12]

Global Diversity (or Lack Thereof) in International Human Rights Law's Origin Story

The historiography of (international) human rights has been a site of intense and continuing contestation, including along a Global North/Global South and East/West axis. While all-too-many of the dominant accounts of the origins of (international) human rights locate its origins *exclusively* within the West,[13] many critical scholars have, over the years, warned against this tendency to erase the "Global South" from the story of the origins and development of human rights. For instance, Balakrishnan Rajagopal has quite understandably lamented the rather unfortunate fact that the Third World rarely figures in what he has referred to as the mainstream "tellings" of the extant story.[14] Tiyambe Zeleza has pointed to the conscious or unconscious failure to in part root the

international human rights movement and the legal regime it has spawned in the long and living histories of the struggles of the peoples of the Global South against slavery, colonial despotism, and postcolonial misrule.[15] And Paulin Houtondji has warned against the conflation (by those to whom the Global South's hands in the development of human rights appears invisible) of the question of the *origins of the idea* of human rights with that of the *origins of a particular conception* of human rights.[16]

Against the tendency in mainstream human rights historiography to skip the difficult but imperative prior ethnographic work that needed to be done before any viable conclusions can be drawn as to the historical presence or absence of the idea (as opposed to the specific Liberal Western conception) of human rights in at least some Global South societies, some scholars have now demonstrated, conclusively in my view, that at the very least functionally equivalent conceptions of human rights have existed for very long periods of time in many Global South societies.[17] Thankfully, there seems to be increasing recognition of this position among both historians and historiographers of the discipline.[18]

As importantly, critical third world approaches to International law (TWAIL) scholars have identified and situated the contrary position – that is, the partial eclipse of third world agency that is performed whenever its contributions to the origination and development of the (international) human rights idea is elided or denied – as part of a now familiar broader set of discursive techniques through which the Global South is objectified and treated almost exclusively as "a domain or terrain of deployment" of "universal imperatives" that have been constructed elsewhere.[19]

It should also be noted here that this situation may yet change in the coming years. One key reason for this is that the structural transformations of world order that are being wrought, in the main, by the China/US rivalry and tensions and the new superpower cold peace, has vastly increased China's influence in world affairs, and may yet augment its counter-mainstream institutional and discursive power,[20] including within the international human rights realm. This is already being experienced within the UN Human Rights Council where China has emerged as an important champion of specific human rights ideas, including one which has deep African roots, namely the right to development.[21] In the living international human rights law, "ideas do not float freely" in an atmosphere that is somehow free from the framing, shaping, generative and establishment effects of great power preferences.[22] Material power (socio-economic, political and military) matters to a great degree (though certainly not absolutely), even in the often over-idealized international human rights realm. As such, the closing of the power gap between China and the USA (the other superpower) that is occurring in our time will also matter significantly. This augmentation of Chinese influence on international human rights law-making and praxis, relative to the US (and the West), with also be likely to ease open appreciably more space than is currently available for the augmentation and (partial) reframing of the currently dominant international human rights narratives, texts and praxis. What is more, though they tend to feel caught in the middle between the two superpowers of our time,[23] middle powers such as India, Brazil, South Africa, Japan, Korea, Turkey, and Mexico (some of them from the Global South), will likely enjoy significantly more room to maneuver in global relations, including in the international human rights realm. These alterations will likely have the potential to boost efforts from the Global South and perhaps other geo-polities to recast international human rights law's origin story, leading in that event to increased attention to alternative, more globally inclusive, and thus more accurate, conceptions and narrations of that story. This could help facilitate the deepening of the popular legitimacy (at street level) of the human rights ethos within and beyond those societies. If this occurs, it will be mostly because more people in more places will be able to recognize their own living

histories of human rights praxis in mainstream accounts of the foundational story of international human rights law.

Global Diversity of Lived Experience

The place of global diversity of lived experience within the living international human rights law has also been as unsatisfactory. For one, it is clear from the foregoing discussion that the traditional accounts of the discipline have tended to excessively privilege the lived experiences of peoples from certain parts of the globe (almost entirely in the West) as exclusively generative and formative of the human rights idea. As Upendra Baxi has taught us, a great number of scholars have even gone as far as espousing what he styles the "impossibility thesis," claiming that non-Western societies (so-called "pre-capitalist social formations and socialist formations") could not have had any human rights ideas of their own because, unlike Western societies, they did not have the lived experience of the "rise and growth of capitalism" and "the capitalist state-form" that, to them, spurred human rights ideas.[24] The lived experiences of these peoples, these scholars contend, could not have led to any significant human rights ideas.

What is more, despite the important progress that has been made in that direction, the dominant renderings of the living international human rights law have not yet taken as much account as it could of the widest range of global diversity of lived experience in its texts and praxis. Even the more contemporary history of the rise of the human rights idea to the top of the moral plateau on which it currently sits,[25] has not optimally accounted for the global diversity of lived experience that has helped shape and uplift it to these lofty heights. And rarely has the story of the development of international human rights in our own time been rooted as sufficiently as it could in the experiential struggles and "politics for human rights"[26] of the subaltern peoples of the Global South. For example, Afro-Asian, Caribbean and Latin American anti-colonial struggles; the anti-apartheid struggle in South Africa and beyond; and the anti-toxic waste dumping movement, have tended to be positioned outside the core of the international human rights frame by mainstream its texts and praxis.

And, in general, non-recently colonized or otherwise subjugated peoples have not tended to be as sensitive as their more recently colonized fellow humans to the gross human rights violations represented and wrought by colonial subjugation in most of the Global South. They thus tend to be decidedly opposed to American scholar Samuel Moyn's rather perplexing and certainly wrong view that the Afro-Asian anti-colonial struggle was not a human rights movement.[27] One way to illustrate this is to show, as is the case, that the African Charter of Human and Peoples' Rights (made by the most recently de-colonized region of the world) gives the most pride of place of the three major *regional* human rights treaties to anti-colonialism as a human rights value and norm.

That treaty stands very firm in *explicitly* prohibiting colonialism and the oppression of sub-state (or ethnic) groups by their englobing states as gross human rights violations in its Articles 19 and 20(1) & (2). It also guarantees the human right of oppressed peoples to assistance in their liberation struggles against foreign subjugation in its Article 20(3). Though it is not one of the three major regional human rights treaties being referenced, the Arab Charter on Human Rights does at least declare in its Article 1 that "foreign domination pose[s] a challenge to human dignity and constitute[s] a fundamental obstacle to the realization of the basic rights of peoples." The European and American Conventions (and their respective Protocols) are basically silent on this key human rights issue. It is of course true that at the UN level, common Article 1 of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights does guarantee a right to self-determination, and thus prohibits colonialism, but remember that the Universal Declaration of Human Rights (UDH) does not even mention colonialism. In any case, my point is about global diversity among regional human rights treaties.

Overall, this tendency to shunt or punt) the lived and living human rights experiences of most of humanity from the center of the living international human rights law to (at best) its peripheries is problematic. This is, in part, because it de-enriches the international human rights law corpus and praxis and tends to denude its already tenuous popular legitimacy in most of the Global South. What is more, an avoidable and harmful divide is then forged between the core content and orientation of international human rights law and the actual human rights experiences of most peoples of the world.

More recently, though, this situation has come under scrutiny and questioning. Powerful rebuttals of this state of affairs have been offered by scholars such as Upendra Baxi, Balakrishnan Rajagopal, and Makau Mutua, as well as by the American Anthropological Association, urging a fuller accounting for, and internalization of, the lived experiences of Global South and other relatively marginalized peoples in mainstream international human rights law's texts and praxis.[28] Yet, the progress made thus far in this direction has been far from optimal.

Perhaps the reconfiguration of global power that underlies, and is being generated by, the current superpower cold peace will, for the reasons already offered in the last sub-section, facilitate the optimization of this process – at least to an appreciable degree. The augmentation of the power, influence and room to maneuver of relatively weaker societies that this alteration in global relations has produced, and will yet generate, will likely boost any effort to more centrally locate and more deeply integrate more of the lived experiences of Global South peoples in the core of international human rights law. Even much more powerful middle powers could benefit from this augmented room to maneuver, both in general and in the specific realm of the living international human rights law.

Global Diversity of Thought and Meaning

As many scholars have recognized, a significant degree of global diversity of human rights thought and meaning exists within societies across the globe. For instance Bonny Ibhawoh has correctly observed that every cultural tradition contains some norms and institutions that are supportive of human rights (as well as some that are antithetical to its enjoyment).[29] Others, such as Daniel Bell, Francis Deng, Pat Lauderdale, Kwesi Wiredu, and Kofi Quashigah, have now demonstrated, conclusively in my view, that – at the very least – functionally equivalent (if at times differing) conceptions of human rights have existed for very long periods of time in many non-Western societies.[30] And there seems to be increasing recognition of this position among both historians and historiographers of the discipline.[31]

Yet, the discipline still does not know enough about the human rights thought and ideas of societies outside the West. The tendency has been to skip the difficult anthropological task of studying and gaining in-depth understanding of these human rights traditions, in part because of the prevalence of the incorrect notion that human rights are entirely a Western idea and its equally unconvincing counterpart thesis that it is impossible for non-Western societies to have there own human rights ideas as they did not experience at the relevant times the capitalist state- form. Both claims have already been discussed. As sociologically inaccurate as these "origin stories" are, it is a bit perplexing that much more attention has not been devoted to mapping and understanding the multitude of globally diverse human rights ideas that exist outside the mainstream of the living international human rights law, which would contribute significantly to the crucial task of "finding the space that local contexts provide" for the advancement of international human rights law.[32]

And while the dominant texts and praxis of international human rights law have hardly done justice to the important task of capturing the full range of global diversity of thought and experience that exists, even a quick examination of the African Charter (as one key example), will demonstrate the

rich potential of doing so, as well as its immense potential utility as a way to better connect international human rights law to the quotidian epistemic worlds of diverse societies the world over. The *Preamble* of the African Charter (a treaty that was adopted in 1981) is deeply illustrative of these points. A discussion of a few of its features will suffice to convey this point. As early as its second paragraph, this Preamble notes how "essential" it is to pay "particular attention to the right to development." This important because the right to development, a distinctly African idea, remains heavily contested to this day in the West, though it has become mostly will accepted in almost all of Asia and the Americas.[33] What is more, in that same paragraph this Preamble declares that "civil and political rights cannot be disassociated from economic, social and cultural rights in their conception as well as universality." Notice that this idea, was adopted in the African Charter in 1981, but did not achieve formal global consensus until the 1993 Vienna World Conference on Human Rights.[34]

As importantly, the content and orientation of the operative portions of the African Charter also exemplify the richness and potential utility functions that global human rights diversity can bring to international human rights law. Inter alia, the African Charter guarantees a legally binding set of peoples' rights.[35] It also makes provision for the right of all peoples to development;[36] the right of all peoples to freely dispose of their wealth and natural resources;[37] the right to a generally satisfactory environment;[38] the right to peace;[39] and the right of all peoples to assistance in their liberation struggles.[40] Not every one of these rights can be found in the other two major regional human rights treaties. And while the UN human rights system does guarantee most of these rights in either hard or soft law forms, it should be noted that it was only in July 2022 that the UN adopted a legally non-binding resolution declaring the existence of the right to a healthy environment.[41] It should also be observed that the UN human rights system does not *explicitly* guarantee the right of all peoples to assistance in their liberation struggles. It should also be noted that Global North opposition to the adoption of the draft binding instrument on the right to development is still quite strong.[42] There have thus been long stretches of history when the production of thought and meaning in the African system was far ahead of the other regional systems and the UN system in important respects, or departed in significant way from the orientation of these systems, reflecting a significant, and healthy, degree of global diversity in the living international human rights law.

The main global diversity issue here then is not that alternative or other human rights thought and meaning has not always been produced or does not exist (although some have been fully or partially erased as part of colonial "epistemicides"). Indeed, as we have just seen, over the *longue durée*, many human rights ideas of non-Western provenance have been generated and disseminated and have eventually percolated upward to the global plane, i.e. to the UN system. The real problem is that all-too-many of the human rights ideas and articulations of subordinated or much less powerful peoples have tended to be displaced outward to the margins or eclipsed by the dominant tendencies in the living international human rights law; the entrenched conceptual and practical occupations of the global human rights realm that have made its diversification significantly more difficult than it would otherwise have been.

As "ideas do not float freely,"[43] this is a degree and depth of epistemic displacement and eclipse (full or partial) that has been possible in large measure because of the well-known asymmetries in the social, economic, political and military power that structure and orient global relations. As such, the marked (if still limited) re-calibration of global power and significant augmentation of room to maneuver (in favor of China, the BRICS, and some other middle powers) that is being wrought by the new superpower cold peace, will likely allow more of this diverse human rights thought and meaning to percolate into the core of global human rights texts and

institutions, and more frequently contribute to shaping more robustly the orientation of the living international human law.

For example, with the strong support of the Global South and a rapidly and robustly rising China, India and Brazil fully backing its adoption, the draft legally binding instrument on the right to development may yet see the light of day. Conversely, the adoption of a legally binding instrument on the right to a healthy environment, while not yet formally on the table, may not proceed with as much speed as it could because of the understandable push for much more significant global environmental justice by the Global South.

Global Diversity in the Contemporary Sources and Sites of Authoritative Knowledge Production and Dissemination

As might be expected by the tenor of the foregoing discussion, human rights knowledge production, and even its dissemination, is undertaken across the world. Yet, as the foregoing discussion implies, in the living international human rights law, the sources and sites of *authoritative* knowledge production and dissemination are not yet as globally diverse as they could be. The European system(s) sits far atop this informal hierarchy. One indicator of this is the fact that African human rights commissioners and judges tend to cite European human rights judges on an almost routine basis but the latter group don't tend to cite the former.[44] The direction of flow of authoritative knowledge is almost entirely a one-way traffic from Europe to Africa. For similar reasons, second to the European Court in this informal hierarchy is the Inter- American system. African human rights judges and commissioners are locked in a similar kind of relationship with the judges of the Inter-American Court. This may of course be because the European and Inter-American human rights systems are significantly older than their African counterpart. The European and Inter-American human rights courts are certainly older than the African Court of Human and Peoples' Rights. However, this cannot entirely justify this phenomenon.

For sure, increasing heed is now being paid to the African system, especially in terms of learning about what Baxi has referred to as "the development of the right to development" and its deepening of our jurisprudence on and understanding of peoples rights.[45] African human rights commissioners and judges even have fairly regular exchanges with UN human rights officials and European human rights judges.[46] Yet, the African System is still scarcely acknowledged in the global human rights discourse and praxis as being as key a site of authoritative knowledge production and dissemination player as it actually is or at least ought to be.[47] This has been so despite the African system originating and/or developing a host of important international human rights innovations (for e.g. peoples' rights, duties, the right to assistance in liberation struggles, the right to a generally satisfactory environment, and the right to development), many of whom have now made it into the established corpus of UN and non-African regional human rights texts.[48] This has also been the case despite the appreciable (though still limited) impact that African actors, often in coalition with other Global South states, have had on the human rights praxis of the United Nations.[49]

One of the main problems with this insufficiency of global diversity in the sources and sites authoritative production and dissemination of international human rights knowledge and the one- way street tendency of the direction of the flow of this kind of knowledge is that cross-societal human rights communication and learning has been significantly famished in the result. The global diversity of the human rights decisions/texts that are taken the most seriously is significantly reduced as a result. This has in turn diminished and delayed unduly the ability of the core international human rights discourse to optimize its own potential to reflect humanity's rich diversity of human rights thought. Without doing so its mass cultural appal around the world becomes unduly limited. Another problem with the kind of global diversity deficit being discussed here is that it also impacts negatively on the effort to deepen the legitimacy of international human rights law in the

Global South; the very portion of the globe where the peoples whose contributions to the corpus have been taken the least seriously than should have been the case are largely found.

As has been noted, the new world order that is being forged in part within the crucible of the new superpower cold peace has greatly augmented China's status and influence on the world stage, including in bilateral and multilateral international human rights institutions and praxis. As we have seen, this is already being experienced within the UN Human Rights Council. If this structural transformation also leads, as it is likely, to a significant increase in the room to maneuver of both Global South peoples and middle powers, the status of their sites and sources of human rights knowledge may rise in their level of authoritativeness, in their epistemic stature. If this becomes the case then more of their human rights epistemes, discourses and practices may emerge more fully from the full or partial eclipses to which they have been subjected for too long.[50]

Global Diversity of Practice[51]

The living international human rights law does allow for some degree of global diversity in the practices that seek to implement its guarantees, howsoever insufficient this might be. The very nature of interpretive legal praxis in the kind of world in which we live, and its consequences for the character of the living international human rights law that is applied to various states around the world, suggests that this is necessary (albeit only to some extent), in order for that corpus to optimize its ability to meet the specific (at often varying) demands of justice in each of the societies in which it is applied. The point that is being made here is that the process of interpreting and applying international human rights law in relation to particular states is significantly affected by the partial malleability of that body of standards,[52] thus allowing significant room for other factors to shape the preferred legal interpretations and outcomes in particular cases, many a time producing – in effect – a patchwork of different "living international human rights laws" for different states/peoples. The partial malleability and indeterminacy of (international human rights) legal texts and languages has been so well established by Critical Legal Studies and other schools of critical legal scholarship that it is not necessary to dwell on that fundamental point here.[53]

For e.g., how might one interpret the right to democratic participation that is guaranteed in Article 1, common to the two international human rights covenants?[54] Beyond the more facile questions of the right to vote periodically, the "one person-one vote" rule, and so on, how about the right of a political party to participate in an election even if it is viewed by the relevant government or most people in that country as extremist or undesirable? What exactly is the global human rights law on this question? As Steiner, Alston, and Goodman have noted, the banning by the Belgian High court in 2004 of *Vlaams Blok*, a Flemish independence party that focused on immigration and crime, for having a racist program; Spain's outlawry of the *Batusan* political party for being the political wing of the armed separatist group, ETA; the failed attempt by British Prime Minister Tony Blair to ban *Hizb-ut-Tahrir*, an Islamic political party; the so- called "Turkey cases" in which the European Court of Human Rights dealt with the permissibility under European human rights law of the bans imposed by Turkey on certain communist or Islamist political parties; and the freedom with which many racist or communist parties operate in many otherwise highly democratic European and Western countries, aptly illustrate both the complexity and context-dependency of this question, and the serious difficulty that can often attend the practical effort to establish coherently international, let alone consistently global, human rights law norms and regimes in relation to many important human rights questions.[55]

For, how might one read the apparently conflicting European evidence? Should European states be able to ban racist, communist, or Islamist parties? One might of course respond

that it depends on the exact nature of the political program of the impugned party. While this might be the case, what really distinguishes the apparently racist immigration program of the banned Vlaams Blok in Belguim from those of similar parties that operate elsewhere in Europe? Clearly, the critical distinguishing factor does not appear to be the language in which the right to political participation is couched in the European convention or in the ICCPR (because these treaties would apply across the board). Rather the critical issue appears to be the political, social, economic, and historical sense, experience and context of the particular society at issue (i.e. especially the dominant politics). Thus, the better view is that it appears that no universally European human rights law answer to the question at hand can be offered, one that can be applied uniformly to all the relevant countries.[56] And if there can be such interpretive difficulty with this question at this much less diverse European regional level, what more the far more diverse global level? How likely is it therefore that a coherent global human rights law position can ever exist in relation to this admittedly hard human rights question?

Similarly, the great global political, social and economic power asymmetries that exists among states has ensured that the living international human rights law has all-too-often in practice operated in a multi-tiered way, so that on too many important human rights questions, there is, in practice, one law for most of the weaker states and another for most of the strongest ones. The ways in which the USA has, for instance, all but insulated its citizens from the reach of the International Criminal Court while seeking to use the very same court to punish citizens of other countries who have allegedly committed war crimes, is illustrative of this point.[57] Recent events in the Middle East and the impunity which Israel seems to enjoy in committing war crimes in Gaza also suggest the same.[58] Also, despite the recent disciplines exacted on Russia in relation to its membership of the Human Rights Council over its invasion of Ukraine, witness the great difficulty that was experienced too often in the defunct UN Commission on Human Rights when it came to passing a condemnatory resolution against China.[59] Here, the difficulty is not so much with interpretive praxis, but with the practical execution of broadly agreed normative standards.

The question remains whether the structural transformations of global relations currently being brought about by China's great rise and the new superpower cold peace that has accompanied it will, in allowing more room to maneuver to middle powers, including some in Global South, alter the situation discussed in the foregoing paragraphs. As a consequence, will these middle powers (and even other states) likely enjoy more of a de facto "margin of appreciation" from the living international human rights law? I think so. Will our current global condition in which there is, far too often, one living law for the strongest and another for the weakest, alter appreciably?

The answer her is more complex. For sure, certain middle powers, such as South Africa (with strong historical roots in the Global South, and what I have referred to elsewhere as the Bandung ethic), might feel more empowered to challenge this troubling condition and try and augment the global diversity of practice in the living international human rights law. We already see a version of this occurring at the Hague with South Africa's very courageous and principled filing of a case against Israel at the International Court of Justice. However, what might mostly occur is a re-arrangement of the chairs in the room of global human rights relations, with more states joining the club of states that are mostly immune de facto from discipline and accountability – howsoever lesser their privileges in this regard might turn out.

III. How Can the Living International Human Rights Law Optimize its Global Diversification?

If, as has been argued in the preceding section, the living international law is not yet as globally diverse as it could be, and its attainment of this goal is desirable and beneficial, it is important to consider how that body of texts and praxis

can do better in this regard. In this section, I discuss three of the many possible steps that the living international human rights law can take to help ensure the optimization of its global diversity.[60] The three steps that are discussed here are: the need for much greater epistemic openness in the conception and praxis of international human rights law; the imperative of moving beyond the longstanding tendency to only view Global South peoples and human rights ideas almost entirely in terms of what they lack and what they should become; and the need to de-eclipse and de-subordinate (to varying extents) a range of "other" human rights ideas. Following the discussion of these steps, I consider the likely effects that the ongoing structural transformation of world order occasioned by China's steep rise in global power, influence and stature, and the "cold peace" that now characterizes its relations with the US, is likely to have on the effort to deepen the global diversity of the living international human rights law.

Much Greater Epistemic Openness

The discussion in section II clearly suggests that the living international human rights law is not nearly as globally diverse as it could, and ought to, be. That discussion also suggests that part of the reason for this is the lack of an adequate degree of epistemic openness within mainstream international human rights law discourse and praxis; i.e. a deficit in openness to the human rights epistemes (and thus ideas) of the "other." There is therefore a significant need for greater epistemic openness in the living international human rights law if it is to optimize its potential to humanize and better order the world.

In making a case for this kind of openness, for a more welcoming reception for the human rights epistemes and ideas of "the other" (a group that is composed of those whose voices and hands have not nearly been as strong in the construction of the UN human rights corpus and praxis), Makau Mutua has convincingly argued in favor of the ineluctable limits imposed on our cognition (and therefore on our conceptions of human right-ness) by the various particularities we all labor under (as for e.g. our differing histories, political ideas, socio-economic contexts/factors, ethical belief- systems, and the like).[61] This reality, as Mutua has noted, requires a clearer and more widespread appreciation of the contingency and incompleteness of the dominant Liberal conception of human rights and the need to supplement it in various ways.[62] To illustrate the contingency and incompleteness of the dominant (largely Liberal) strain of human rights thought, Mutua has deployed the parable of a number of visually-impaired human beings touching different parts of an elephant at the same time and each offering a different account as to what that animal is composed of, when in fact all of their accounts paint a complete picture when they are stitched together.[63] Jürgen Habermas explains that the dominant human rights conception was developed in response to specific violations of human dignity in a particular region of the world; a point that appears to open up the conception of human right-ness significantly beyond its traditionally narrow confines.[64]

Thus, there is not, and ought not be, any completely *closed list* of international human rights that cannot be added to, especially by those peoples who were not at the table and whose voices were insufficiently heard in the room at the time the Universal Declaration of Human Rights (UDH) – the main source-text of the current UN human rights corpus – was negotiated and adopted. For, even as Jack Donnelly felt able to conclude that although the process that led to the adoption of the UDH did not benefit from optimal global input, but has still come to represent "a realistically utopian cross-cultural vision," he still recognized that the UDH may not be the only valid human rights framework and is incomplete in and of itself.[65] Even a cursory study of the history of the UDH's drafting will lay bare the contingency of what was included in it and what was left out of it, as it was negotiated and constructed.[66]

The recent adoption by the UN of a legally non-binding (soft law) version of the right to a healthy environment, about

thirty-one (31) years after the African Charter included a legally binding (hard law) version of that right,[67] illustrates the significant potential of the more widespread adoption of greater epistemic openness in the way in which we tend to think of international human rights law. If the African system could form and implement this idea in hard law form over three decades before the UN was able to formulate a non-binding version of it, then the kind of rich global diversity that the African Charter embodies and exemplifies ought to be taken much more seriously in mainstream international human rights law discourse and praxis. Clearly, when it comes to human rights ideation, no civilization or region of the world knows it all.

It should also be noted that, even internally within the European system, for example, there was no tablet from heaven that revealed the full richness of the human rights episteme and its entire breadth of meaning to the founders of the great system. For instance, on the day of its adoption in 1950, the European Convention on Human Rights almost totally prioritized civil and political rights and contained precious few (if any) economic and social rights.[68] The amelioration of this significant deficiency has been ongoing since then. While Optional Protocol No. 1 of 1952 soon added the rights to education and property to that treaty,[69] it was not until 1961 that a reasonably robust (though still weaker) economic and social rights component was introduced into the European human rights system's normative framework, mainly through the adoption of the European Social Charter (as revised in 1996) and its Protocols.[70] Similarly, in and of itself, the American Convention on Human Rights of 1969 contains only one very generally worded economic and social rights clause, a situation that the guardians of that system thought worthy of amelioration, in the main through the adoption of the Additional Protocol of San Salvador of 1988.[71] In contrast, the African Charter on Human and Peoples Rights, which was adopted in 1981 (much later than the first two major treaties), contained from the very moments of its conception and inception both civil/political rights and economic/social rights.[72] Thus, in each of these geo-political regions and eras, the prevailing human rights ideology, the entailed notion of human right-ness, and gradual shifts both globally and within that region in the dominant conceptions of human right-ness, were deeply reflected in the character of the body of norms that were agreed to at the relevant times and in their gradual transformation of the over time. And so, it is fair to say that were the European and American Conventions to be adopted today, they would look quite different from the way they looked in 1950 and 1969, respectively.

Yet, in spite of the contingencies attending the development of human rights texts and praxis, and despite the fact that, as scholars such as Susan Waltz have taught us,[73] even the UN human rights corpus is in fact the product of a certain measure of cross-cultural negotiation among a fairly (though far from sufficiently) diverse group of experts and diplomats, strong resistance remains at the UN (and beyond) to the effort to achieve the more robust inclusion of more of the human rights ideas of Global South peoples in the mainstream of the living international human rights law. Good examples include the great and longstanding resistance to the effort at the UN to adopt a legally binding treaty on the right to development,[74] as well as to the more recent push within that body to recognize a right of peoples and individuals to international solidarity.[75] For the living international human rights law to more readily resonate with, and much better serve, the human dignity needs of a fuller global diversity of humanity, such resistance needs to be greatly softened, in part through attitudinal orientation toward much greater epistemic openness.

Beyond "Lack and Becoming"

The tenor of the discussion in section II suggests that mainstream international human rights law discourse and praxis also tends to view, and relate to, the human rights epistemes of Global South societies and peoples in terms of what they lack and what they should, become.[76] This attitude

and approach has long roots in the relationship among many European states and almost all of what is now categorized as the Global South. For example, Antony Anghie has ably mapped and theorized the ways in which Spanish notions of what the natives of the Americas lacked and ought to become functioned to justify the stripping of much of their humanity and Spain's self-referential construction of an "international legal framework" that justified its subjugation of these native Americans.[77]

As is also suggested by the discussion in section II, the conception and deployment of the "lack and becoming" framework and approach in the living international human rights law has been, and remains, problematic. This is, in part, because this elides, eclipses (fully or partially), and many a time erases, the human rights epistemes and ideas of Global South peoples. Another reason why it is problematic is because, many a time, these "other" ideas, which tend to thus become subordinated, already possess the very kind of popular legitimacy that international human rights law seeks. The opportunity is then missed, to a significant extent, to ride on these grounded human rights epistemes and ideas to more rapidly and robustly deepen international human rights law's mass popular legitimacy in diverse societies around the world.[78]

The living international human rights law can move beyond this kind of problematic approach by taking Global South human rights agency more seriously than it has to date. This will require a greater recognition that Global South (and other) peoples are repositories of important human rights thought and praxis and that these peoples can articulate, and have – many a time – articulated, human rights ideas that suit their own specific circumstances. For not all non- Western value systems are incompatible with human rights.[79] Moving beyond the problematic approach being discussed here will also require a recognition that these societies – not necessarily the matrices of power that operate within them – are often in a better position to calibrate for themselves – in the detail – the specific lines that separate human rights from human wrongs. This is not to claim that these societies are all knowing or ought to be immune from human rights scrutiny, but to claim for them some measure of the kind of margin of appreciation that Western societies tend to enjoy without significant interference from either the Global South or even the living international human rights law.

De-Eclipsing and De-Subordinating the Human Rights Ideas of the "Other"

The discussion in section II also suggests that mainstream discourse and praxis of the living international human rights law has tended to eclipse (fully or partially), and subordinate, all-too- many of the human rights epistemes, ideas and practices of Global South (and some other) societies and peoples. Yet, as scholars such as Jack Donnelly have noted, specific human rights ideas have developed to tackle specific human dignity challenges in specific milieus (a space- time contingency). As Donnelly has put it (drawing upon Henry Shue's work) "a list of human rights reflects a contingent response to historically specific conditions…a list of rights reflects a society's understanding of the principal 'standard threats' to human dignity "[80] And as different as they are, the three "Statements Human Rights" that have been put out over time by the American Anthropological Society (the AAA) in 1947, 1999 and 2020 all tend to support this position.[81] The AAA's 1999 statement correctly declares that:

> "…human rights is not a static concept. Our understanding of human rights is constantly evolving as we come to know more about the human condition. It is therefore incumbent on anthropologists to be involved in the debate on enlarging our understanding of human rights on the basis of anthropological knowledge and research."[82]

The AAA's latest statement in 2020 "further acknowledges" that "human rights are dynamically negotiated across time periods and social and political contexts."[83] What is being strongly and

convincingly suggested in both Donnelly's claim and these AAA statements is that variation across space and time (i.e. the global diversity) of human rights epistemes, ideas and praxis is near-immanent.

The evidence clearly supports their claims. As was shown in section II, a rich repertoire of globally diverse human rights epistemes, ideas and praxis does exist across the globe. Many of these globally diverse human rights ideas and praxis are, as one might imagine, bespoke in character. They are specific responses to specific human dignity challenges in specific milieus which perform functionally similar services as more mainstream human rights ideas. Take the language of "duties" in the African Charter, for example. As Mahmood Mamdani has correctly observed:

> "The language of protest…bears a relationship to the language of power. To understand why protest employs the language of rights in Paris [France], dignity in Khartoum [Sudan], and Custom in Kwazulu-Natal [South Africa], it is worth recalling that power claims to uphold rights in Paris, dignity in Khartoum and custom in Kwazulu-Natal. Is not the starting point of protest to take power at face value, and to question its claim and thus legitimacy?"[84]

What is more, as Makau Mutua has effectively argued, the language (or is it dialect) of duties remains an effective way of conceptualizing a rights regime that could achieve widespread popular legitimacy in African societies.[85] This is because it is much more easily understood by, and resonates more deeply among, ordinary Africans, especially Africa's mass rural majority. It is also deeply relevant to their lived experiences as this is the dialect of human rights that they already speak on a quotidian basis.[86] For example, if I explained to my grandmother that she had a right to be taken care of by me in her old age, she would not easily understand this concept. However, she would much more easily and fully understand what I mean were I to tell her that I have a duty to take care of her. As importantly, as Mutua has argued, the language of duties is also capable of strengthening social solidarity in African societies in the face of the absence of a welfare state in almost all of them.[87] In any case, most African countries cannot presently afford a welfare state.[88] Thus, duties such as the duty to care the needy are absolutely essential for much more humane and far more just societies to exist in most of that continent, in a way that is not necessarily the case in the welfare states of the West or the G7.

There is therefore a need to do significantly more than has been done so far to de-eclipse and de- subordinate the language of duties and such other Global South human rights ideas and praxis.

Many of these ideas have existed – many of them well preserved in texts such as the African Charter – despite being fully or partially eclipsed and subordinated for decades, at the global level, by the living international human rights discourse and praxis. The push at the UN to adopt a legally binding instrument on the right to development and a right of peoples and individuals to international solidarity are but a couple of examples of existing efforts to fully or partialy de- eclipse and de-subordinate, to one degree or the other, many diverse human rights ideas.

The New Cold Peace and the Greater Global Diversification of the Living International Human Rights Law[89]

As has been argued in section II, the significant transformation of global order and relations that is being principally wrought by China's great rise and the new superpower cold peace is very likely to augment the power, influence and room to maneuver in international politics and economy of many states, especially (though not limited to) middle powers, some of whom self- identify as part of the Global South. As has also been suggested, this relational alteration will likely be played out as well within the international human rights realm and have important consequences in that field. Such consequences will include the intensification of the counter- mainstream institutional and discursive power of China and certain middle

powers, such as India, Brazil and South Africa. As these specific points have been discussed at some length in multiple portions of section II, there is no need to detail them here.

Nevertheless, a number of points, related to those already discussed, still require articulation. First, it should be added that, for reasons that are related to, but don't entirely rest on, China's rise, the traditional centers of global power (howsoever stable, morphed or transformed) are today not nearly as free as they once were to write international human rights texts or author its praxis. Though their influence is still heavily felt around the world, the traditionally dominant matrices of global power must now contend with a number of new Global South power centers, as well as with the emergence into formal international life of a massive number of Global South states with a tendency to dominate the membership of many (though clearly not all) of the bodies that write the relevant global texts and author the related international praxis, including in the human rights field.[90] This situation has helped alter the configuration and character of the global power matrices within which international human rights texts and praxis must circulate and operate, and re-orient those texts and praxis themselves (however modestly) toward greater alignment with global diversity. The traditional centers of global power must now also contend with the existence and activities of peoples' movements in the Global South and the transnational networks they have sometimes formed to leverage forms of Western civil society influence in the service of global goals (for e.g. the anti-land mines and anti-damn movements).[91]

Another way in which the global power matrices which help shape the content and orientation of the living international human rights law and against which that body of texts and praxis often operates, have altered significantly in our time, is through a socio-economic and political development that is largely internal to the Global South itself.[92] This is the rise to a measure of global socio-economic and political influence of the so-called "BRICS" (i.e. Brazil, Russia, India, China, and South Africa),[93] and the more recent and less robust emergence of the "MINTs" (i.e. Mexico, Indonesia, Nigeria, and Turkey).[94] This has led to the concretization of newer global human rights battle fronts, newer axes of power, along which both familiar and unfamiliar human rights axes will increasingly be ground. When the Chinese build factories or mine crude oil in parts of Africa,[95] or Nigerian banks dominate much of the West African and East African markets,[96] labor rights and other human rights issues are triggered across a power divide that, though not quite as acutely asymmetrical as the North-South one, is still significantly so. While these kinds of relationships have always existed within the Global South, they have never been as acute as they are today or are likely to become in future. So, there is a sense in which the China's great rise and the albeit limited success of the project of South-South socio-economic cooperation has produced its own pathology, has created new global fronts in the struggle for human rights, and has triggered the shift of some human rights struggles from a predominantly North-South, to certain South-South, axes. International human rights scholars and practitioners will do well to pay greater attention to these developments.

IV. Conclusion

The preceding discussion examined global diversity's place and role in, and effect on, the living international human rights law. After defining the two key terms that frame the enquiry, it analyzed in some detail the extent to which various dimensions and axes of global diversity are reflected in that body of texts and praxis. The axes and dimensions of global diversity that were discussed include global diversity in the origin story of human rights; the place of global diversity of lived experience in the living international human rights law; the question of global diversity of thought and meaning within that body of texts and praxis; global diversity in the contemporary sources and sites of authoritative knowledge production and dissemination; and global diversity of international human rights practice. The analytical consideration of each of these axes of global diversity was followed by a reflection on the

ways in which each one of them is being affected, or might in future be affected, by the structural transformations of global relations that is largely being generated by China's great rise. Following these discussions, three of the ways in which the living international human rights law can optimize its global diversity were considered. This was followed by an analysis of how the current alterations in the structure of global order will likely affect that corpus' ability to achieve greater global diversification.

It was argued that the living international human rights law is not yet as globally diverse as it could be, due partly to a significant failure to take adequate account of the human rights histories, experiences, thought/meanings, stature, and practices within the mainstream of that body of texts and praxis. In the end, it was suggested that the desirable goal of optimizing the global diversity of the living international human rights law could be advanced by: ensuring much greater epistemic openness in the living international human rights law (largely through much greater receptivity to the Global South's human rights idea); Moving beyond the tendency to look at the Global South's human rights ideas and praxis only for what it lacks and what it should become; and de-eclipsing and de-subordinating the human rights ideas of the "other," in the main, the Global South. Lastly, it was also argued that the ongoing structural transformation of global relations being wrought largely by China's great rise and the emergence of the BRICs, and to a lesser degree the MINTS, has augmented, and is likely to further augment, the power, influence and room to maneuver of China and certain middle powers (including those that identify as Global South states) within the crucibles in which the living international human rights law is forged.

It should be noted in addition that, given the well-established fact that global diversity itself, and its effects on the texts and praxis of international human rights law, are inescapable realities of the world in which we live, the real question today is *no longer* whether or not there is some list of the human rights that we all have and must enjoy simply by virtue of being human. The pertinent questions in our own time are rather the following: (a) what gets to be included in or excluded from that list; and (b) who do we actually imagine as human (or as fully human), i.e. which lives are "grievable" and which are "ungrievable"?[97] Without due attention to, and much more fully accounting for, global diversity, none of these questions can be answered in well enough a way as to significantly advance humanity's incessant (though sometime fraught) quest for the holy grail of human rights and the good life.

If this be the case, is the living international human rights law more likely in the near to mid- term future to embrace global diversity more rapidly or robustly than has previously been the case, in the service of more fully humanizing our world? If history is our guide, although significant difficulty lies in its way, but advances in human rights have always come our way, have always been for us the gift of time,[98] however slow and measured their paces have been. And so, hope – as they say – must spring eternal.

Notes

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47. O.C. Okafor and G.K. Dzah, supra note 45. See also J. Gathii, "The Promise of International Law: A Third World View" (2020) 114 American Society of International Law Proceedings 165.
48. O.C. Okafor and G.K. Dzah, supra note 45.
49. O.C. Okafor, "The Bandung Ethic," supra note 12.
50. Regarding the language of duties, see M. Mutua, "The Banjul Charter and the African Cultural Fingerprint: An Evaluation of the Language of Duties (1995) 35 Virginia Journal of International Law 339. Regarding atrocities, see South Africa's recent filing of a case at the International Court of Justice against Israel alleging serious violations by the latter of the Genocide Convention. See Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel), online: https://www.icj-cij.org/case/192.
51. This sub-section is based on O.C. Okafor, "On the Patchiness, Promise and Perils of 'Global' Human Rights Law," Diaspora Scholars Lecture, Nigerian Institute of Advanced Legal Studies, 2011 (on file with the author).
52. R.P. Churchill, *Human Rights and Global Diversity* (Upper Saddle River, N.J: Pearson Education, 2006) at 89-90, at 91.
53. See D. Kennedy, *A Critique of Adjudication: Fin de Siecle* (Cambridge, Mass.: Harvard University Press, 1997); and J.

Oloka-Onyango and S. Tamale, "'The Personal is Political,' or Why Women's Rights are Indeed Human Rights: An African Perspective on International Feminism" (1995) 17 Human Rights Quarterly 691, at 722.

54. See Articles 1 of both the ICCPR and the ICESCR, supra note 11.
55. See H. Steiner, P. Alston, and R. Goodman, *International Human Rights in Context: Law, Politics and Morals* (New York: Oxford University Press, 2007) at 980-992.
56. To be clear, the struggles that the European system has had with this question is used as an example here precisely because it is the system that is often portrayed as the standard to which all other international human rights systems should aspire. See H. Steiner, P. Alston and R. Goodman, ibid, at 933-1014.
57. See Michael P. Scharf, "The ICC's Jurisdiction over the Nationals of Non-party States: A Critique of the U.S. Position" (2001) 64 Law and Contemporary Problems 67; Human Rights Watch's record of US activities in this regard, reproduced at http://www.hrw.org/legacy/campaigns/icc/us.htm (visited 22 February 2011); ICC Observers, "Two Different Sides Opposed to Joining the ICC," 26 March 2010, reproduced at http://icc- observers.org/2010/03/26/two-different-sides-opposed-to-joining-the-icc/ (visited 22 February 2011); and US State Department, "ICC Arrest Warrant Issued for Sudanese President Bashir," 4 March 2009, reproduced at http://www.state.gov/r/pa/prs/ps/2009/03/119992.htm (visited 22 February 2011).
58. For example, see South Africa's case against Israel at the International Court of Justice making highly credible allegations that Israel has committed war crimes against the inhabitants of the Gaza Strip. See??????????????
59. H. Steiner, P. Alston and R. Goodman, supra note 27, at 791.
60. For some of the other steps that can be taken that (for want of space) are not discussed in this paper, see A.A. An- Naim, ed., *Human Rights in Cross-Cultural Perspectives: A Quest for Consensus* (Philadelphia: University of Pennsylvania Press, 2010); R.P. Churchill, *Human Rights and Global Diversity* (Upper Saddle River, N.J: Pearson Education, 2006) at 89-90; S. Caney and P. Jones, eds., *Human Rights and Global Diversity* (London: Frank Cass, 2001); and E.E. Kleist, "Review of Robert Paul Churchill, Human Rights and Global Diversity" (2007) 8 Human Rights Review 427.
61. M. Mutua, supra note 50, at 344-346.
62. Ibid.
63. Ibid 346.
64. J. Habermas, 'The Concept of Human Dignity and the Realistic Utopia of Human Rights' (2010) 41 Metaphilosophy 464; F. Megret and F. Hoffmann, 'Dignity: A Special Focus on Vulnerable Groups' [2009] Swiss Initiative to Commemorate the 60th Anniversary of the UDHR – Protecting Dignity: An Agenda for Human Rights < https://ssrn.com/abstract=3691920> accessed 15 January 2022
65. J. Donnelly, supra note 9, at 60.
66. S. Waltz, "Universal Human Rights: The Contribution of Muslim States" (2004) 26 Human Rights Quarterly 799.
67. O.C. Okafor and G.K. Dzah, supra note 45.
68. See the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (ECHR). The original text of this treaty contained perhaps one social right, i.e., Article 12 on the right to marry and found a family.
69. See the Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms (as amended) [1952] OJ A009/1.
70. See the European Social Charter [1996] OJ L163/1.
71. See the American Convention on Human Rights (entered into force 22 November 1969), OAS Treaty Series No 36 OEA/Ser.K/XVI/1/1. See also the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador) (entered into force 16 November 1999) OAS Treaty Series No 69 (1988) reprinted in Basic Documents Pertaining to Human Rights in the InterAmerican System OEA/Ser L V/II.82 Doc 6 Rev 1 at 67 (1992).
72. African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986) (1982) 21 ILM 58 (African Charter).
73. S. Waltz, supra note 66.

74. https://www.ohchr.org/en/essential-elements-legally-binding-instrument-right-development.
75. https://www.ohchr.org/en/special-procedures/ie-international-solidarity.
76. P.T. Zeleza, "The Struggle for Human Rights in Africa" in P.T. Zeleza, and P.J. McConnaughay, eds., *Human Rights, The Rule of Law, and Development in Africa* (Philadelphia: University of Pennsylvania Press, 2004).
77. See A. Anghie, Francisco de Vitoria and the Colonial Origins of International Law
78. For example, see U. Baxi, supra note 3, at 39; and M. Mutua, "The Banjul Charter," supra note 50.
79. S. Caney, "Human Rights, Compatibility and Diverse Cultures" (2000) 3 Critical Review of International Social and Political Philosophy 51, at 52.
80. J. Donnelly, supra note9, at 98-99.
81. For copies of these three statements, see https://humanrights.americananthro.org/1947-statement-on-human- rights/; https://humanrights.americananthro.org/1999-statement-on-human-rights/; and https://americananthro.org/news-advocacy/2020-statement-on-anthropology-and-human-rights/.
82. Ibid.
83. Ibid.
84. See M. Mamdani, "Introduction" in M. Mamdani, ed., *Beyond Rights Talk and Culture Talk: Comparative Essays on the Politics of Rights and Culture* (New York: St. Martin's Press, 2000) at 1.
85. See M. Mutua, "Banjul Charter" supra note 50.
86. Ibid.
87. Ibid.
88. Ibid.
89. This section benefits immensely from my earlier work. See O.C. Okafor, "A Pathway to World Law?," supra note 5; and O.C. Okafor, "The Bandung Ethic," supra note 12, at 527-528.
90. For example, although sponsored by Russia, the study conducted by the Human Rights Council Advisory Committee (HRCAC) on the highly controversial issue of "Promoting Human Rights and Fundamental Freedoms through a Better Understanding of Traditional Values of Humankind", pursuant to Human Rights Council Resolution A/HRC/RES/16/3 of 8 April 2011, was largely pushed through by the large third world majority on the UN Human Rights Council. While the necessity for this study appeared to make a lot of sense to almost all Third World States and some others, it was opposed to varying degrees by most Western countries and most Western NGOs. The HRCAC's Report on this study is documented as UN Doc. A/HRC/22/71, of 6 December 2012.
91. For e.g., see B. Rajagopal, *International Law from Below* (Cambridge: Cambridge University Press, 2003); and M. Cameron, *To Walk Without Fear: The Global Movement to Ban Landmines* (Don Mills: Oxford University Press, 1998).
92. This is an internal third world development for the most part because, aside from Russia, all the countries that are exerting significant power and all the countries against which power is being exerted continue to identify with the third world (either as part of the non-aligned movement, and/or the G-77).
93. See W. Dan, 'Common Development Strategies for Asian and Latin American Developing Countries: From the Perspective of Foreign Trade' (2009) 4 *Journal of International Commercial Law and Technology* 143.
94. See 'The Mint Countries: Next Economic Giants?', BBC News, 5 January 2014, http://www.bbc.com/news/magazine-25548060 (accessed 4 July 2014).
95. See C. Alessi and S. Hanson, 'Expanding China-Africa Oil Tie', Council of Foreign Relations Backgrounder, 8 February 2012, http://www.cfr.org/china/expanding-china-africa-oil-ties/p9557 (accessed 4 July 2014).
96. See D. O`Neil, 'Nigerian Banks battle for Pan-African Dominance', Euromoney, April 2013, http://www.euromoney.com/Article/3181918/Nigerian-banks-battle-for-pan-African-dominance.htm (accessed 4 July 2014).
97. J. Butler, "Precariousness and Grievability: When is Life Grievable?", 16 November 2015, online: https://www.versobooks.com/en-ca/blogs/news/2339-judith-butler-precariousness-and-grievability.
98. This is adapted from a similar turn of phrase used by Upendra Baxi in U. Baxi, "Operation Enduring Freedom: Toward A New

International Law and Order?" in A. Anghie, et al, eds., *The Third World and International Order: Law, Politics and Globalization* (Leiden: Martinus Nijhoff, 2003) at 31.

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