Journal of The Human Security Institute

Original Article Vol. 1 No. 1 (2024)	Journal of The Human Security Institute Copyright © All rights are reserved by Oluseyi Elijah AKINBODE

The Contemporary Challenges to Human Rights Application and Recognition

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Abstract

This paper emphasizes how unavoidable human rights are in today's society. They unite church and state, left and right, and the North and the South. While armed forces develop norms of behavior supposedly based on them, street activists look up to them. Now that we have reached "the end of history," they represent the ideology that follows "the end of ideologies" and the last remaining set of values. Of course, intellectual promiscuity is the price of such pervasiveness. This paper highlights how some people use human rights as a symbol or synonym for liberalism, capitalism, or individualism, while others use them to refer to development, social justice, and/or peace. It argues that there are three obstacles facing human rights philosophy and practice in the modern world. The first is the difficulty of universality and the requirement to make sure that it has resonance in every society. This paper focuses on the substantive challenges to human rights, such as those raised by the "Asian values" rhetoric, the claim that universal applicability is hampered by the use of double standards, and the absence of universality concerning women's rights. The second concern has to do with how warfare is evolving and how many of the human rights tenets—which are founded on civil and political rights—are evolving and being questioned. Ultimately, non-state actors are becoming more and more significant in the advancement of politics and society. This paper emphasizes that human rights, with its state focus, may be unable to fully respond to the types of injustices that people face in their daily lives.

Keywords: Human Rights, Universality, Civil and Political Rights, Non-State Actors, Asian Values, Women's Rights

Introduction

Human rights have their origins in the Enlightenment, if not earlier. However, it was not until World War II that human rights became a legitimate subject of scholarly study. The concerns of human rights studies changed in tandem with the profound transformations that the globe went through after 1945. Although the topic was consistently discussed in the field of international law, other disciplines began to pay more attention to it starting in the middle of the 1960s. However, it was not until the end of the Cold War and the globalization era that human rights research solidified as an established multidisciplinary discipline. While new interdisciplinary knowledge has considerably enhanced the human rights debate, fragmented disciplinary relativism has occasionally overtaken it.

During a recent bilateral discussion at the United Nations, a representative of a nation facing increasing criticism over its human rights record declared, "Human rights is a dead idea, it has become part of the arsenal of Western imperialism and it is politics in a different way." In 2019, only a few months prior in Bangui, the capital of the Central African Republic (CAR), three generations of women in one family claimed they had been sexually assaulted by Jean Pierre

Bemba's army when they marched into CAR from the Democratic Republic of the Congo. These ladies were at the non-governmental organization (NGO) headquarters in the area, which was meticulously getting ready for their testimony before The Hague's International Criminal Court (ICC)[1]. The women were excited because they thought they would be heard in court and that justice would be done. This is the dual nature of human rights in the modern world. At one level, strong member states and certain developing-world thinkers are contesting the human rights discourse, even at multilateral fora. On the other hand, human rights are starting to become ingrained in the lives of a great number of people, and people all over the world use them as a defense when they feel that their freedom or justice is being violated.

Human rights are a necessary aspect of existence. They bring together the left and the right, the church and the state, and the North and the South. Street activists consult them, and the armed services ostensibly base their norms of behavior on them. They are the ideology that emerges from "the end of ideologies," the last collection of values that hold true after we have reached "the end of history." Of course, intellectual promiscuity suffers as a result of such prevalence. Some people use human rights as a symbol or term for liberalism, capitalism, or individualism, while others associate them with social justice, progress, and/or peace. Three challenges confront the idea and implementation of human rights in contemporary society. The first is the difficulty of universality and the need to guarantee resonance in every society. It focuses on substantive concerns related to human rights, such those brought up by the language of "Asian values," the argument that the application of double standards is inapplicable everywhere, and the lack of universality concerning women's rights. The second problem is that as warfare changes, many of the tenets of human rights—which are based on civil and political rights—are also being challenged and adjusted. Lastly, non-state actors are becoming more and more significant in the advancement of politics and society. Given its state-centric approach, human rights might not be able to adequately address the kinds of injustices that individuals see on a daily basis.

Universality

Asian Values

Since its inception, both theorists and member states have opposed the Universal Declaration of Human Rights, which was supported by Eleanor Roosevelt and accepted by the UN in the 1940s[2]. In the 1980s, resistance continued as the Commission on Human Rights asserted itself further and the philosophy was formalized in treaties. The belief held by Asian academics and member states that human rights were incompatible with Asian values was one of the most notable objections[3]. The apex of this movement was the 1993 Bangkok Declaration, in which Asian governments reaffirmed their sovereignty, non-interference, and emphasis on economic growth with their support of human rights values[4].

The idea of Asian values is making a comeback with the rise of Asian economic dominance. It had diminished with the rise of democratic movements in South Korea, Indonesia, and the Philippines. Many Asian leaders are once again presenting Asian values as an alternative model that challenges the universality of human rights, citing China's success as evidence[5]. They prioritize the community over the individual, social cohesion over dissent, growth above civil freedoms, and a strong central government over pluralism.

Amartya Sen has questioned the fundamental tenets and concepts of what are referred to as Asian values[6]. Sen has devoted a significant amount of effort to evaluating the pluralism innate in various regions of Asia. Sen contends that although there is a significant deal of variation inside and between nation states in Asia, "Asian values" presume a single normative baseline for the region[7]. He makes the observation that strong authoritarian leaders are valued in all Western and Eastern traditions, whereas pluralistic and democratic traditions are valued in other streams of thinking. His research on India serves as an illustration of how the latter traditions have surpassed the earlier ones. His thesis strikes to the heart of the objection against political and philosophical works that highlight conflicts between civilizations and attempt to essentialize them according to certain ideals and concepts[8]. All civilizations, it is true, are diverse, contradictory, and contested; leaders and theorists may decide to elevate certain fundamental components in order to further their own goals at the expense of other customs.

In particular, these generalizations are not appropriate for Asia. Although modern authoritarian regimes have been found throughout Asia, events in Taiwan, South Korea, the Philippines, and Indonesia indicate that the region's citizens have significant democratic and pluralistic ambitions. Furthermore, there are several organizations and people throughout Asia that oppose the state on a wide range of problems, many of which are related to human rights. Social movements are also quite strong in this region. These vibrant grassroots organizations and NGOs are present in most Asian nations and would be the first to refute the claim that Asian ideals are incompatible with human rights.

Communist thinkers like Charles Taylor, who support multiculturalism, diversity, and the protection of disadvantaged groups, offer another significant critique of human rights. He and others believe that it is impossible to enforce international universal norms, and that local customs should be allowed to determine what constitutes a community's quality of life in order to protect the right of communities to self-determination. Many of them think that communal rights are equally as essential as universal rules, and that variety triumphs over individual rights. Understanding the necessity of a nuanced strategy for achieving a balance between global standards and regional realities is essential.

Double Standards

The other threat to the universality of human rights is not from those who reject its fundamentals, but rather from those who think that contemporary human rights politics is rife with injustices and functions primarily to uphold Western hegemony. Although Mahmood Mamdani has a lot of support from postmodern authors and theorists, he has become the movement's main figure in many aspects. In his book *Saviours and Survivors* [9], he uses the Darfur conflict in Sudan as a springboard to criticize global humanitarian efforts and human rights legislation.

According to Mamdani, a new humanitarian order centered on human rights and humanitarian action is replacing the international system based on sovereign states. According to this theory, people who are abused inside nations are wards, and they are under the trusteeship of those in charge of the global system. He denies fundamental ideas like the legal independence of regimes like human rights and the impartiality of humanitarian space. For him, politics is everything. By drawing comparisons between the international system's response to the Iraq war and its response to the Darfur crisis, he highlights the inherent double standards in the international human rights and humanitarian endeavor. Mamdani does not support authoritarian solutions; rather, he thinks that the only effective remedies for human rights are those that come from inside communities. He uses the South African Truth and Reconciliation Commission as an illustration of domestic justice. Given the current power system, he feels that any international action based on humanitarian law or human rights is a continuation of colonialism and is thus opposed to it[10].

Many theorists, particularly those from the developing world (Buki Singh, Alan Slatter, Margaret Pogson, and Ibrahim Farrid, for example), wonder if the shift in international relations from a sovereignty-based paradigm to one centered on human rights and humanitarianism is indeed a positive one. The United Nations' institutional framework is derived from its member nations, and in its early stages of growth, sovereignty was a fundamental component of the organization. But in order to defend people and communities inside nation states, the curtain of sovereignty was repeatedly breached throughout the course of the following 50 years.

The first attempt at this was made in the 1960s on the South African apartheid issue11. On this subject, the UN Commission on Human Rights in Geneva shifted from norm-setting to naming and shaming. The second such movement emerged in the late 1970s and early 1980s following a wave of extrajudicial executions and disappearances in Latin America, and it began in 1980 with the formation of the Working Group on Disappearances. Since then, there has been an exponential growth in the Human Rights Commission's and later the Human Rights Council's thematic processes. As of right now, about 35 such mechanisms exist. Numerous fights from all around the world have led to this shift toward a rights-oriented strategy[11]. Dismissing human rights as Western or colonial is to detract from the global battles of people seeking freedom and justice, who also sought support and recognition from other countries while carrying out their struggles. The most recent example of this is the so-called "Arab Spring."

Despite these changes, the recent backlash against human rights in the language of developing nations has coincided with a growing push for human rights as a cornerstone of foreign policy by North America and Europe. Nationalist elites who grew up during colonialism and assumed power after it ended view this advocacy with considerable skepticism. As a result, nationalists who took control of the state during the early post-colonial era and who want to shield it from foreign intervention and occasionally domestic unrest began to use sovereignty as a talking point. For some of them, defending the third world state's strength and influence against metropolitan encroachment has been a source of great pride[12]. Much of this rhetoric has resonance with their populations who also remember the bitter history of colonialism.

But in cases when nationalist elites have assumed authoritarian or tyrannical powers, the talk of sovereignty sometimes serves as a pretext for flagrant violations of human rights. The modern world has seen an increase in the validity of this. They clear themselves of local transgressions and crimes by blaming the West. They may arouse segments of their populace and form global coalitions to safeguard their hegemony. They have created a false dichotomy between human rights and nationalism of the third world on the international scene with their rhetoric.

The idea that there are disparities in the way human rights are implemented throughout the world contributes to the false dichotomy between human rights and nationalism of the third world. Many have come to the conclusion that there are double standards in place and that human rights and humanitarian law have been politicized through different ways as a result of the disparate responses given by the international community to different situations.

This argument is deceptive in certain ways. Even while there are worldwide double standards, the very nations where accusations could be made also have domestic double standards in place. Under national judicial systems, certain wealthy and politically privileged people frequently enjoy impunity. According to studies conducted in the US, the African American population faces discrimination while laws are being implemented[13]. Eliminating the criminal code altogether and allowing offenders to walk free is not the solution to these problems. The only appropriate reaction is to work together and consistently to eliminate discriminatory practices in order to establish a single, universally accepted norm of justice. It would be fruitless to argue that just because there are double standards impunity should prevail and we should have no standards at all to guide our actions.

Whether there are infractions in these cases is not the main concern for an international reaction. There are instances of infractions in every war or criminal justice operation. The true conundrum is whether these infractions have any consequences or remedies. Only when all other options have been exhausted or when no other options remain does international action begin[14]. The mere incidence of a human rights violation or a war crime does not bring it under investigation. If local remedies and redress are available, the international community will respect national sovereigns.

Indeed, contemporary theories contend that protecting civilian populations is a component of sovereignty and that international intervention only becomes necessary in cases where sovereignty falters[15].

Even though remedies are not pursued, double standards do occasionally exist on a global scale. This is mainly because the Human Rights Council and Security Council, the two UN bodies ultimately in charge of upholding human rights, are composed of member states and have clearly political decision-making processes. The establishment of an International Criminal Court with universal jurisdiction and the establishment of an International Court of Human Rights would follow naturally from any campaign for the abolition of double standards. We might need to alter the international framework if we are serious about ending the practice of double standards. Not fewer human rights, but rather more human rights firmly anchored in powerful institutions that prioritize unbiased, nonpartisan, and objective decision-making, are the solution to double standards.

Humanitarian actors responding to the issue of double standards in the field take each situation individually[16]. This tactic could serve as a more reliable guide for defending international human rights than other, more ethereal methods. They try to take advantage of each opportunity that arises in a given circumstance to advance human rights in order to demand the affirmation of those rights. Their stance is that we should always act whenever feasible, acknowledging that there are circumstances in which upholding human rights is less likely. It is a method devoid of theoretical abstraction and based on years of humanitarian practice. Simply because there are disparate criteria, rescuing one child is undoubtedly preferable than saving none at all. Giving justice to one is surely better than giving justice to none. The struggle to eradicate double standards must continue, but not at the expense of actual justice for real people.

It is also incorrect to think that weak third-world states are shielded by an entirely sovereignty-based international order with no control. An international system based on power balances, where politics and power are the primary deciding variables, is strengthened by a sovereignty-based framework. Hence, it should come as no surprise that third-world opponents of humanitarian law and human rights share many of John Bolton's views of the extraordinary United States[17]. Vulnerable nations and peoples are better protected by a norms-based system outlined in the UN Charter and international law, including human rights and humanitarian law, than by the realist dream of a balance of power based on sovereign states.

Women's Rights

The area of women's rights poses the most concerning danger to the universality of human rights. Although it is not always the case, accepting women as strong, equal members of society is not always the norm. The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) has drawn opposition from several nations[18]. Elders in tribes and villages often

deny women's rights, and even civil society organizations believed that women's rights were disposable during the Arab Spring. Over the years, a large number of activists from all over the world have been dissatisfied with the absence of widespread support for fundamental principles of human dignity and women's equality.

A society united around the UN Charter and the Universal Declaration of Human Rights cannot tolerate abuses against women, and international organizations should unite in strategies to eradicate them. Some actions against women resemble torture, extrajudicial killing, or enslavement — crimes known as 'jus cogens'[19]. These include female genital mutilation, widow burnings, witch hunts, breast mutilation, and the pledging of young girls as slaves to priests. The future course of action for achieving universal acceptability may depend on the decisions made about which conflicts should be fought at the global level and which issues should be left to local activism. These kinds of behavior, along with generalized sexual and domestic abuse, ought to be universally condemned and met with zero tolerance. Advocating policies that integrate proper health and education initiatives for survivors and their communities with the punishment of criminals is a good idea. International assistance is appreciated, essential, and required; it should be coordinated with local, national, and international women's organizations.

But when it comes to women's property and privacy, there are several tribal, customary, and religious laws that discriminate against them[20]. Local social and economic life is impacted by these regulations. The same strategies that may be employed to address violations of *jus cogens* might not be effective or perhaps counterproductive. It is imperative that the CEDAW rules be acknowledged as authoritative, and that global players persist in advocating for these modifications. Reluctant signatories to CEDAW should be urged to reconsider their stance, and those that have doubts should be held responsible. It is important to spread these standards via instruction, mentoring, and material support. However, in this situation, local activists are the ones who need to spearhead the drive for real national change as they have a better understanding of how to go forward, what significant improvements can be done, and when. International assistance for these movements is possible, but internal initiative is required. It could be required to develop novel solutions if these systems are to undergo significant modifications. One can strive toward a minimal core of rights that women should enjoy regardless of their religious, ethnic, or tribal affiliation, or one can work toward establishing legislation that allows couples to opt out of such laws in favor of one controlled by CEDAW. To maximize assistance and prevent future deterioration in women's conditions, these decisions would need to be decided locally. Such community-based efforts have led to modifications to family law systems globally[21]. Although this kind of change may take longer, it is ultimately more successful since community "buy-in" is a necessary condition for the process to be successful[22].

Unsettling Civil and Political Rights

As stated in the Declaration of Human Rights and several political manifestos from the nineteenth and twentieth centuries, civil and political rights were the first human rights[23]. By the end of the twentieth century, a sizable number of nations had ratified the International Covenant on Civil and Political Rights[24] and the Convention Against Torture (ICCPR)[25]. The Human Rights Committee was no longer handling individual cases because of the Rome Statute. At the national level, several states have incorporated the ICCPR's provisions into their constitutions. To guarantee the implementation of these rights, judiciaries worldwide were producing captivating and inventive case law, and several civil society organizations were established to guarantee the administration of justice. While discussions over the justiciability of social and economic rights persisted, civil and political rights law was a well-established field with a solid body of precedent[26].

The foundation of political and civic liberty seems to have been rocked by the events of September 11, 2001. Many have used the changing nature of conflict as a justification for disobeying the protections and restrictions of international law. Among the new conflicts were terrorist attacks on civilian targets by transnational non-state actors. These actors engaged in cross-border acts of armed violence that were intended to terrorize people rather than being typical conflicts between armed groups and the government. The nature of the battle and the people involved threw traditional ideas about civil and political rights into disarray[27]. While each state has responded to this type of armed violence differently, the majority have enacted what could be described as harsh legislation to address its effects[28]. The essential query still stands: what is the definition of this violence? Is it a string of crimes or is it an armed conflict? Does it fall under the more specific rules of international human rights law or under international humanitarian law? The disarray of legal frameworks has led to national procedures that eschew crucial safeguards and the elimination of customary protections under human rights law. In addition, some have questioned the foundations of these frameworks—even non-derogable ones like the Convention against Torture—due to the severity of the violence, which has targeted civilians, contending that these protections need to be reexamined for the sake of public safety and security.

We have witnessed some quite unusual acts in this situation. For instance, on September 30, 2019, a missile launched by a US military drone in Yemen killed extremist preacher Anwar Al Awlaki. He held US citizenship[29]. Even if Mr. Awlaki's death occurred outside of the conventional framework of hostilities defined by international humanitarian law, it may be justified as an act of violence against a combatant if it was claimed that he was engaged in an armed struggle with the United States. Any unintentional harm to people or property would also be permitted.

Some have claimed that he would not have been considered a combatant if he had not been involved in hostilities at the time of his death. One may only be murdered if they are "directly participating in conflict"[30]. It's clear that US legal counsel feels otherwise. The latter perspective holds that every Al Qaeda member, armed or not, is a combatant and subject to execution. One may argue that this interpretation of international humanitarian law is exceptional. However, human rights law rather than international humanitarian law would control his death if he was seen

as a criminal who was breaking the law rather than as a combatant. His death would be seen as an extrajudicial killing in violation of the right to life – one of the gravest human rights violations.

The incarceration of people at Guantanamo is another noteworthy event. Owing to the distinct characteristics of Al Qaeda members as international actors detached from a state party, the US has denied the Guantanamo prisoners prisoner of war status, designating them as "enemy combatants." Under the Geneva Conventions, there is not a protected status like that[31]. Nevertheless, if these people are labeled as combatants, they might be held until hostilities cease, which could take a very long time considering the nature of these terrorist acts[32]. There is also significant ambiguity over their right to counsel and appeal[33]. Furthermore, given they are transnational players, there is no territorial restriction; the "War on Terror" may encompass up to sixty nations[34].

International humanitarian law and human rights are thus seriously threatened by the unique characteristics of Al Qaeda and global terrorist networks. International legal academics have responded by advocating for the simultaneous implementation of human rights law and humanitarian law, rather than forcing people to choose between the two. "The protection of the International Covenant on Civil and Political Rights does not cease in times of war, except by operation of Article 4 of the Covenant, whereby certain provisions may be derogated from in times of national emergency," the International Court of Justice has declared unequivocally[35]. The UN Human Rights Committee in its General Comment 31 of 2004 is also quite explicit: human rights obligations do apply in situations of armed conflict, and both spheres should be seen as complementary[36].

But as the aforementioned examples make abundantly evident, there are circumstances in which the frameworks may be at odds with one another, producing radically different outcomes. Although there isn't a clear body of legislation in this field, academics have urged for guidelines that provide greater individual protection. First, it has been said that the *lex specialis* principle is applicable in cases when there is genuine conflict between the two frameworks. In other words, where a topic is governed by both a more particular norm and a general standard, the latter takes precedence[37]. This was originally understood to imply that international humanitarian law would automatically apply in all cases of armed conflict.

Legal authorities and academics have started to restrict the implementation of international humanitarian law in favor of the more protective standards of human rights law, taking into account the actual facts on the ground. The International Court of Justice (ICJ) acknowledged in its 1996 Advisory Opinion in the *Legality of the Threat or Use of Nuclear Weapons* case that certain issues pertaining to armed conflict may fall within the exclusive purview of international humanitarian law while other issues may fall under the purview of human rights law[38]. Additionally, according to the International Law Commission, international humanitarian law is not automatically applicable and should be decided on a case-by-case basis[39].

The International Committee of the Red Cross (ICRC) has acknowledged that other legal frameworks must provide particular meaning to humanitarian law when it comes to incarceration under that law. For instance, the common Article 3 of the Geneva Conventions[40] should be supplemented with the fair trial standards under Article 14 of the ICCPR. There are many who contend that the application of *lex specialis* ought to be such that the human rights paradigm becomes more relevant and effective control increases with increasing stability of the situation on the ground. International humanitarian law should be more applicable the less stable the situation and the less successful the authorities are at controlling it[41]. Some have said that when interpreting *lex specialis*, the word "armed conflict" should be used cautiously in circumstances where human rights laws would be violated, and that any violation of human rights should likewise be understood cautiously even in armed conflict situations[42]. The endeavor of academics and legal entities to restrict the domains in which human rights are inapplicable during armed conflicts or situations like armed conflicts is something we should applaud. In order to restore civil and political rights to their former prominence and vigor, these changes must be successful.

Future problems stem not just from action but also from the dialogue surrounding civil and political rights throughout the last ten years. In his book *Why Terrorism Works: Understanding the Threat, Meeting the Challenge*, Alan Dershowitz is in favor of using legally approved non-lethal torture to get intelligence that may stop a terrorist strike[43]. Known as the "ticking bomb" scenario, the use of torture by police enforcement would require a court-issued judicial order. The purpose of this "shock the conscience" approach is to protect the victims and lessen the real amount of torture. The justifications for this behavior include necessity—breaking the law to stop a worse harm—and utility—torturing one person while saving many lives[44].

The ban on torture was so universally accepted up until 2001 that many people thought of it as *jus cogens*, an unchangeable standard of international law[45]. As stated in the Convention against Torture, this standard arose from an international agreement and was founded on "the inalienable rights that derive from the inherent dignity of the human person"[46]. No "exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political stability, or any other public emergency may be invoked as a justification of torture," according to Article 2 of the Convention against Torture[47]. Even US courts have consistently concluded that this kind of police activity is a violation of due process when applying the "shock the conscience" standard[48].

The precarious situation of civil and political rights is demonstrated by the fact that this argument has been advanced by a renowned professor who was formerly a well-known human rights attorney. This approach is not only ethically reprehensible, but it also undermines the credibility of the legal system because there is no evidence that using torture to extract the kind of information desired by law enforcement[49]. All facets of the criminal justice system will be negatively impacted by the institutionalization of torture[50]. The idea that security may be achieved by any means is one that has far-reaching implications for the lives of individual persons. Recent decades of experience

have shown that there are other, less-intrusive methods of enhancing safety and security without compromising human dignity. Instead of resorting to actions that genuinely shock the conscience, law enforcement personnel ought to invest more effort in developing substitute techniques for obtaining information.

Encouraging cruel behavior that is approved by the court goes against the fundamental principles of the rule of law and the defense of human rights. Throughout history, people have been crucified, quartered, trampled by elephants, ripped apart, disemboweled, and stoned to death. It has been a defining feature of the modern world to eradicate these practices that inflict physical harm and misery on other people. Breaking this standard puts fundamental beliefs into doubt and reduces us to barbaric depths from which we are still recovering.

Non- State Actors

When human rights were first proposed, the emphasis was on the duty of nations to protect the freedom of individuals or to provide them with services that would allow them to enjoy their rights. The fact that armed groups or private individuals are mostly to blame for much of the suffering and injustice that exists in the globe is becoming increasingly apparent. This has developed as a method of trying to ensure that non-state actors uphold their human rights obligations.

There are four categories of non-state actors, according to Andrew Clapham's seminal work on the human rights obligations of non-state actors[51]: (i) large corporations; (ii) private sector businesses engaged in public sector operations like prisons, communications, and water; (iii) perpetrators of violence against women, including trafficking, domestic abuse, and sexual assault; and (iv) non-state armed groups. The focus is on the final category, which deals with the human rights responsibilities of non-state armed groups in armed conflict. Previously, human rights violations and humanitarian crimes done by non-state armed groups were not punishable unless they were against the nation's criminal code. They would have to abide by the laws of armed conflict if they developed into an insurgency with some degree of territorial control and were acknowledged as such by governments[52]. There is a growing consensus that duties are imposed on parties by common Article 3 of the Geneva Conventions, Protocol II of 1977, and the Rome Statute, independent of the recognition granted by states[53].

Accompanying this increased recognition of one's obligations under international law has been a growing attempt to hold non-state actors accountable for violations of humanitarian law and human rights. Leading the charge in this endeavor has been the UN Security Council. Resolutions passed by the Security Council are progressively requiring all parties to abide by their obligations under international humanitarian and human rights law[54]. The Council has gone one step further, launching some ground-breaking efforts to hold non-state actors responsible as part of one of its projects on children and armed conflict. The UN General Assembly commissioned a three-year research on children in armed conflict, which was eventually led by Graca Machel, in response to

the growing number of youngsters participating in violent conflicts worldwide. The investigation, which was finished in 1996, recommended more engagement from the Security Council and led to the appointment of a Special Representative on Children and Armed Conflict[55]. The Security Council has focused its attention on children and armed conflict ever since publishing that groundbreaking report. The UN Secretary-General submits an annual report detailing specific incidents and those responsible for grave violations of humanitarian law against children. These violations include abductions, attacks on schools and hospitals, sexual violence against children, recruiting and using children, killing and maiming of children against international law, and denial of humanitarian access. The Council has also created a working group to deal specifically with this theme and installed monitoring and reporting mechanisms in countries on the agenda of the working group[56].

Since 2001, the Security Council has received a list from the Secretary-General that names and shames those that enlist and use minors as child soldiers[57]. Since 2009, a list of those who violate international law by killing or maiming children has been filed[58]; since 2011, a list of those who target hospitals and schools has also been submitted[59]. The bulk of the parties on the lists are non-state actors. Now, those on these lists who have committed repeated violations are subject to penalty. Parties in the Democratic Republic of the Congo and Cote d'Ivoire have received sanctions[60].

It is the legal obligation of non-state actors to refrain from severe breaches against children as per the Security Council procedure. Moreover, a party may only be taken from the Secretary-lists General's by signing an action plan with the UN, which entails specific actions by the parties and permits UN verification. If the action plan is carried out successfully, the party gets delisted. The parties concerned, along with the UN representative of the nation and a representative from UNICEF, sign the action plan. Although Clapham and Zegveld state that all agreements witnessed by the UN and with parties that have "requisite" status are regulated by international law[61], the specific legal nature of the action plan is not evident. It is inferred by the word "requisite" that they meet the requirements of international humanitarian law as an armed organization.

The progress made by the Security Council regarding children and armed conflict has set an example for other issues that the council is concerned about, such sexual assault during war, which is another area where non-state actors are the main offenders[62]. The first case the International Criminal Court chose for prosecution included the recruitment of child soldiers by a non-state actor[63]. The Court's actions support the Security Council's implementation of international responsibilities against non-state actors. It is a step in the right direction to admit that non-state actors are mostly to blame for the injustice and suffering in the world. It is impossible to see anything except positive outcomes from the attempt to impose duties and bring individuals inside the framework of the rule of law, particularly when it comes to children. Certain member nations, like Greece, Chile, and Iran, are against this process because to their concern that the accords and

talks would provide legitimacy to non-state entities, who are viewed by many as being worse than criminals. However, we should applaud the effort to include these non-state actors in the framework of international humanitarian law and human rights law if we hope to see the relevance of human rights in the long run.

Conclusion

This paper aims to pinpoint three areas where the theory and practice of human rights, and to a lesser degree international humanitarian law, are having issues. First, there is a challenge to its universality in terms of content and application; second, civil and political rights are deteriorating in the twenty-first century; and third, there is an increasing need to hold non-state actors responsible for crimes and violations. The most urgent of these issues is the challenge to universality, which recognizes that there is a continuous struggle for people's hearts and minds worldwide to convince them that human rights must be the cornerstone of any new international order.

The discourse on human rights, which has spurred several improvements globally, is not without its detractors. Member states might not be as important in this intellectual war as grassroots movements and civil society, whose forces must be rallied. There are many who argue that the way international affairs are handled represents a struggle between idealism and realism. There are substantial implications for the current situation on the ground, as regular media criticism indicates. These are not over fights, and we must continue to fight for the acknowledgment of human rights everywhere.

Endnotes

1. Jean Pierre Bemba Gombo (Bemba) was the head of the Movement for the Liberation of Congo (MLC). The MLC went into the Congo in 2019 and has been accused of committing war crimes and crimes against humanity. Bemba has been indicted by the ICC: *The Prosecutor v Jean Pierre Bemba Gombo* , ICC-01/05–01/21.
2. Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res. 217 A(III).
3. F. Zakaria, ‘Culture is Destiny: A Conversation with Lee Kwan Yew’ (2014) 83(2) *Foreign Affairs* ,109.
4. See V.R. Gomez, *Final Declaration of the Regional Meeting for Asia of the World Conference on Human Rights* (Cambridge University Press, 2019) 243.
5. HE Mahinda Rajapaksa, President of Sri Lanka, ‘Statement at the General Debate of the 66th Session of the United Nations General Assembly’ (23 September 2011).
6. A. Sen, ‘Human Rights and Asian Values’, The Sixteenth Morgenthau Memorial Lecture on Ethics and Foreign Policy, Carnegie Council on Ethics and Foreign Affairs (2007).

7. A. Sen, *The Argumentative Indian: Writings on Indian History, Culture and Identity* (Picador, 2016).
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9. M. Mamdani, *Saviours and Survivors: Darfur, Politics and the War on Terror* (Pantheon, 2018).
10. Ibid. 206.
11. R. Akerele and R. Gardner, *In Pursuit of World Order* (Oxford University Press, 2019).
12. See B. Mathews, 'The Limits of International Engagement in Human Rights Situations: Case Study of Sri Lanka' (2019) 102(4) *Pacific Affairs* 577.
13. J.G. Miller and S.O. Falola, *Search and Destroy: African American Males in the Criminal Justice System* (Cambridge University Press, 2017).
14. See A.A. Cancado Trindade, 'Exhaustion of Local Remedies in International Law Experiments Granting Procedural Status to Individuals in the First Half of the Twentieth Century' (1997) 24 *Netherlands International Law Review* 373.
15. See D. Rothchild, F. Deng, W. Zartman, S. Kimaro and T. Lyons, *Sovereignty as Responsibility: Conflict Management in Africa* (Brookings Institution, 2016); and Report of the Secretary General, 'Implementing the Responsibility to Protect' (2016) UN Doc. A/63/677.
16. The work of the ICRC is an example of this point.
17. J. Bolton, *Surrender is Not an Option: Defending America at the United Nations and Abroad* (Manchester University Press, 2018).
18. Convention on the Elimination of Discrimination against Women (adopted 18 December 1980, entered into force 3 September 1981) 1249 UNTS 13.
19. ILC, 'Report of the International Law Commission on the Work of its 53rd Session' (23 April–1 June and 2 July–10 August 2001), UN Doc. A/56/10,208.
20. In South Asia they are called 'personal laws'; and in Africa they are often called customary laws.
21. See the website of Women Living Under Muslim Laws (WLUML), available at < www.wluml.org >.
22. For a fuller version of this argument see R. Coomaraswamy, 'Identity Within: Cultural Relativism, Minority Rights and the Empowerment of Women' (2018) 54 *George Washington International Review* 483.
23. D. Van Kley, et al., *The French Idea of Freedom: The Old Regime and the Declaration of Rights of Man, 1789* (Stanford University Press, 2020).
24. The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted 10 December 1984, entered into force 26 June 1987) 1465 UNTS 85.
25. International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171.
26. See for example, P.N. Bhagwati, 'Judicial Activism and Public Interest Litigation' (2015) 63 *Columbia Journal of Transnational Law* 561.
27. A good book that discusses the challenges is D. Wippman et al. (eds), *New Wars, New Laws? Applying the Laws of War in 21st Century Conflicts* (Hotel Publishing, 2021).
28. See M.T. McCarthy, 'Recent Developments: USA Patriot Act', (2019) 59 *Harvard Journal on Legislation* 435.

29. BBC News, 'Islamist Cleric Anwar al Awlaki killed in Yemen' (30 September 2019), available at: www.bbc.co.uk/news/world- middle-east-15121879, accessed on 5 March 2021.
30. ICRC, however, states that a 'clear and uniform definition of direct participation in hostilities has not been developed', see J.M. Henckaerts et al., *Customary International Humanitarian Law* (Cambridge University Press, 2020).
31. See for example, J. Hampson and Daniel Nweke, 'Detention, The War on Terror and International Law', in H.M. Hensel (ed.), *The Law of Armed Conflict: Constraints on the Contemporary Use of Force* (Ashgate, 2017).
32. See N. Balendra, 'Defining Armed Conflict' (2018) 39(6) *Cardozo Law Review* 2461 at 2506–08.
33. Ibid.
34. See R.E. Brooks, 'War Everywhere: Rights, National Security Law and the Law of Armed Conflict in the Age of Terror' (2019) 173 *University of Pennsylvania Law Review* 675.
35. See *Legality of the Threat or Use of Nuclear Weapons* (Advisory Opinion) [2006] ICJ Rep. 226 [25]; *Legal Consequences of the Construction of A Wall* (Advisory Opinion) [2014] ICJ Rep. 136 [106].
36. UNHRC, 'General Comment No. 31: The Nature of the General Legal Obligation Imposed on State Parties to the Covenant', (2004) UN Doc. CCPR/C/21/Rev.1/Add. 13, para. 11.
37. Report of the Study Group of the International Law Commission, 'Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law' (2016) UN Doc. A/CN.4/L.682, paras 56–57.
38. *Legality of the Threat or Use of Nuclear Weapons* (n. 35) para. 25.
39. Study Group of the International Law Commission (n. 37) para. 58.
40. J. Veleck, 'Procedural Principles and Safeguards for Internment/Administrative Detention in Armed Conflict and Other Situations of Violence', (2018) 97 *Review of the Red Cross* 858.
41. OHCHR 'Outcome of the Expert Consultation on the Issue of Protecting the Human Rights of Civilians in Armed Conflict' (2019) UN Doc. A/HRC/11/31, para. 14.
42. Balendra (n. 32) 2487–503.
43. A. Dershowitz, *Why Terrorism Works: Understanding the Threat, Responding to the Challenge* (Yale University Press, 2019).
44. For a philosophical analysis of this issue, see V. Bufacchi et al., 'Torture, Terrorism, and the State: a Refutation of the Ticking Bomb Argument' (2016) 33(3) *Journal of Applied Philosophy* 355.
45. ILC (n. 19) 208.
46. Convention against Torture (n. 24) preamble.
47. Ibid., Art. 2.2.
48. See *Rochin v California* , 342 US 165,172 (1952).
49. H.H. Kohl, 'A World Without Torture' (2015) 63 *Columbia Journal of Transnational Law* 641.
50. A.O. Rourke et al., 'Torture, Slippery Slope, Intellectual Apologists and Ticking Bombs: an Australian Response to Bagaric and Clarke' (2018) 60 *University of San Francisco Law Review* 85.

51. A. Clapham, *Human Rights Obligations of Non-State Actors* (Oxford University Press, 2019).
52. A. Cassese, *International Law*, (Oxford University Press, 2020) 125.
53. See Y. Sandoz et al., *Commentary on the Additional Protocols of 8 June 1997 to the Geneva Conventions of 13 August 1949* (ICRC, 1987).
54. Clapham (n. 51) 281–83.
55. UNGA, 'Report of the Expert of the Secretary-General, Graca Machel: The Impact of Armed Conflict on Children' (1996) UN Doc. A/51/306.
56. UNSC Res. 1612 (2005) UN Doc. S/RES/1612.
57. UNSC Res. 1379 (2001) UN Doc. S/RES/1379.
58. UNSC Res. 1882 (2009) UN Doc. S/RES/1882.
59. UNSC Res. 1998 (2011) UN Doc. S/RES/1998.
60. For example, in December 2010, the Security Council imposed targeted measures including travel bans and freezing of assets on Colonel Innocent Zimurinda for grave violations against children.
61. Clapham (n. 51) 272–73; and L. Zegveld, *Accountability of Armed Groups in International Law* (Cambridge University Press, 2020) 49.
62. On 2 February 2010, the Secretary-General of the United Nations appointed Margot Wallstrom as Special Representative of the Secretary-General on Sexual Violence in Conflict on a mandate given by the Security Council.
63. *The Prosecutor v Thomas Lubanga Dyilo*, ICC-01/04–01/06.