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Localizing Human Rights

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Abstract

International human rights lawyers tend to focus on establishing the universality of human rights rather than on improving the usefulness of human rights in addressing local problems. This paper draws attention to the need to make human rights more locally relevant, particularly in a context of economic globalisation.

Human rights can be made more locally relevant by interpreting existing global norms in the light of needs identified by community organisations, and by developing human rights further, particularly at the local and regional levels in the light of these same needs.

If made more locally relevant, human rights can offer protection against adverse effects of economic globalisation at the local level. There are also consequences for the activities of international institutions: the field work of the UN High Commissioner for human rights, and current developments in the opening up of state-investor arbitration to the consideration of human rights impact are taken as examples.

Résumé

Les juristes internationaux des droits humains cherchent à focaliser l'attention sur l'établissement de l'universalité des droits humains plutôt que sur l'utilité des droits humains lorsqu'on aborde les problèmes locaux. Cet article attire l'attention sur la nécessité de rendre les droits humains plus pertinents de façon locale, en particulier dans le contexte de la globalisation économique.

Les droits humains peuvent être rendus pertinents de façon locale par l'interprétation des normes globales existantes à la lumière des besoins identifiés par les organisations de la communauté et par l'augmentation de la portée des droits humains, en particulier aux plans local et régional, à la lumière de ces mêmes besoins.

S'ils sont rendus localement pertinents, les droits humains peuvent offrir une protection contre les effets négatifs de la globalisation économique au niveau local. Il y a également des conséquences quant aux activités des institutions internationales : le champ d'action du Haut Commissaire des Nations Unies pour les droits humains, et les progrès actuels de la disposition qu'a l'arbitrage du capitalisme d'Etat à prendre en considération l'impact des droits humains, sont pris comme exemples.

1. Introduction[1]

Economic globalization – understood as a process of breaking down State barriers in order to allow the free flow of finance, trade, production and at least in theory, labor - affects human rights. It affects the role of the main duty holder in human rights, the State, in the world and domestic economy. Globalism, the ideology supporting economic globalization, favors the withdrawal of the State from the provision of many services essential to human rights, and its replacement by private actors. It also insists on opening up the economy to products, services and investments originating in countries that enjoy a competitive advantage, and on discipline in taking the advice of international trade and financial organizations.

From a human rights perspective, economic globalization raises questions about the human rights responsibilities of private actors, intergovernmental organizations and of third States when their actions have extraterritorial effects. There is also an urgent need to rethink human rights obligations of States. This is often a very technical issue, requiring knowledge of the law of international contracts and arbitration and of domestic administrative law.

Inevitably, a part of the human rights response to economic globalization needs to take place at the global level – hence the discussions on the human rights accountability of the World Bank, the role of human rights in the WTO dispute settlement system, or the efforts to codify the human rights responsibility of corporations. Maintaining the common language of global rights is also essential for the purposes of identifying common causes of violations in different countries. In the context of economic globalization, such causes are not purely domestic, but regional and global as well[2].

Nevertheless, whether and to what extent aspects of economic globalization have an adverse impact on human rights protection will differ from society to society. The human rights needs of slum dwellers that face a private company operating the water supply system are very different from the needs of industrial workers faced with the relocation of their industry to low-income economies. For human rights to be relevant to all, they will need to be situation-specific. They will need to be localized. Localization implies taking the human rights needs as formulated by local people (in response to the impact of economic globalization on their lives) as the starting point both for the further interpretation and elaboration of human rights norms, and for the development of human rights action, at all levels ranging from the domestic to the global. In order to provide efficient protection against the adverse impact of economic globalization – itself inevitably a top-down process -, human rights need to be as locally relevant as possible. Global human rights need an infusion from below.

[1] This paper was written for inclusion in the forthcoming BENEDEK, W., DE FEYTER, K., MARRELLA, F. (Eds.), Economic globalisation and human rights. Cambridge: Cambridge University Press, where its final version will appear.

[2] My own views on many of these issues are in De Feyter 2005.

Several authors point out that local relevance is essential for the legitimacy of human rights as global norms. Mutua argues that: Only by locating the basis for the cultural legitimacy of certain human rights and mobilizing social forces on that score can respect for universal standards be forged (Mutua 2002, 81).

Similarly, Baxi conceives of peoples and communities as the primary authors of human rights. Their resistance to (abusive) power:

> (...) at a second order level [is] translated into standards and norms adopted by a community of states. In the making of human rights it is the local that translates into global languages the reality of their aspiration for a just world (Baxi 2002, 101).

Both authors present the need to localize global human rights as a target, rather than as a description of current practice. The objective of this paper is to investigate how exactly the interplay between local experiences of human rights abuse and global human rights norms and institutions can be achieved, against the backdrop of economic globalization.

Inspiration is taken from the field of development studies, where bottom-up approaches enjoy a longer pedigree than in the field of human rights. In discussions on an earlier draft of this paper, Wolfgang Benedek pointed out that many of the ideas I was at pains to develop appeared in a text adopted fifteen years ago in Arusha. This was the African Charter for Popular Participation in Development and Transformation. The Charter does not deal directly with human rights, but stresses the need for popular participation in development. The Charter emphasizes:

> ...the basic fact that the role of the people and their popular organizations is central to the realization of popular participation. They have to be fully involved, committed and, indeed, seize the initiative. In this regard, it is essential that they establish independent people's organizations at various levels that are genuinely grass-root, voluntary, democratically administered and self-reliant and that are rooted in the tradition and culture of the society so as to ensure community empowerment and self-development. Consultative machinery at various levels should be established with governments on various aspects of democratic participation. It is crucial that the people and their popular organizations should develop links across national borders to promote co-operation and interrelationships on subregional, regional, South-South and South-North bases. This is necessary for sharing lessons of experience, developing people's solidarity and rising political consciousness on democratic participation.[3]

Along similar lines, this paper argues that there is a need for more popular participation in human rights, particularly at a time when decisions on economic globalization are taken at levels remote from the people affected by them.

[3] Paragraph 11, African Charter for popular participation in development and transformation, resolution 691(XXV) adopted at the 25th session of the Commission and 16th meeting of the ECA Conference of Ministers responsible for economic planning and development (19 May 1990). It would be of contemporary interest to examine to what extent the World Bank's commitment to involve civil society in the drawing up of poverty reduction strategies reflects a similar approach.

2. The Universal Declaration of Human Rights remains valid

By arguing in favor of the localization of human rights, I do *not* intend to query the validity of the Universal Declaration of Human Rights[4] (UDHR) or subsequent major human rights conventions as a catalogue of global human rights norms. The reasons are pragmatic, rather than profound. So much of value would stand to be lost if a clean slate approach would be advocated. The proposal is to build upon what exists, rather than to start from afresh.

[4] Universal Declaration of Human Rights, UN General Assembly resolution 217 A (III)(10 December 1948).

It is true that on 10 December 1948 the United Nations had a much more limited membership than today, and that eight States (the socialist States, Saudi Arabia and South Africa) abstained from endorsing the text. Nevertheless, many non-Western members of the UN Human Rights Commission impacted significantly on the drafting process (compare Waltz 2004). Subsequent Declarations adopted at the *world* conferences on human rights in Teheran (1968) and Vienna (1993) remedied the democratic deficit of the original drafting process, by confirming that the Universal Declaration represented the common understanding of *all* peoples, and constituted an obligation for the members of the international community[5]. Arguments have been made that the UDHR (as a whole or in part) has become part of customary international law (compare Eide, Alfredsson 1999, xxxi).

[5] Art. 2, Proclamation of Teheran (13 May 1968).

The Universal Declaration has had, in the words of Richard Falk, "an extraordinary cumulative impact on the role of human rights in international political life" (Falk 2000, 53). The adoption of the UDHR as such boosted the idea that human rights were of universal validity, and the text still enjoys wide support in both governmental and civil society circles. The Universal Declaration has acted as a "persuasive, liberating force for individuals and groups" (Lindgren Alves 2000, 500) in contexts perhaps unforeseen by the drafters of the text (such as decolonization), lending some credibility to the statement in the preamble that the UDHR represents the "highest aspiration of the common people" (compare Anderson-Gold 2001, 3). In addition, the Universal Declaration has set the direction for the standard setting and monitoring activities of the United Nations in the field of human rights. Preserving the Universal Declaration as the starting point for discussion on global human rights does justice to this impressive legacy.

Donnelly argues that the UDHR rights can easily be derived from a conception of human beings viewed as free, autonomous persons entitled to equal concern and respect. The list, so he argues, is a response to the major perceived threats to human dignity. Those threats are identified as a consequence of political struggle, and the emergence of an increasing number of groups as political actors. He concludes that the UDHR and subsequent key human rights treaties represent "a widely accepted consensus on the mini-

mum prerequisites for a life of dignity" (Donnelly 1989, 23-27). It follows from Donnelly's analysis that the UDHR rights remain a relevant, even necessary defense against threats to human dignity *today*. Nevertheless, the UDHR was a response to specific historical circumstances. Circumstances change, and so must human rights. The Universal Declaration is not the omega, but it remains the alpha of human rights.

In achieving the further development of human rights, Habermas' discourse principle may be of assistance. According to the principle, norms are valid when all possibly affected persons agree to them as participants in a rational discourse (Habermas 1996, 107). The discourse process itself will only be rational if all participants recognize each other's rights as equal contributors to the dialogue (Habermas 1996, 118-123). Habermas' discourse principle can be used as a quality control mechanism for the process through which human rights are further developed. If that process takes place at the global level, and the aim is to codify rights that are universally applicable, inevitably the process will have to be cross-cultural (compare Parekh 1999, 140).

3. Human rights allow for plurality

There is no contradiction between maintaining human rights as a global language and allowing for variations in content in order to make human rights protection as locally relevant as possible. On the contrary, global human rights stand to be enriched if they take into account input from varied societies.

Zeleza perceives of the universal human rights regime as a work in progress to which different societies have a role, indeed a right to contribute (Zeleza 2004, 15). He argues for "contextualization": universal principles have their genesis in local situations and traditions, and national insights and experiences will continue to improve and perfect international human rights standards and values (Zeleza 2004, 18). Ibhawoh makes a similar point:

> To enhance its legitimacy, the emerging universal human rights regime must draw upon the cultural peculiarities of each society. (...) [B]ecause different people in different parts of the world both assert and honor different human rights demands, the question of the nature of human rights, must to some extent, ultimately depend on the time, place, institutional setting and the other peculiar circumstances of each society (Ibhawoh 2004, 28)[6].

Brems develops a theory of "inclusive universality", which requires efforts on two fronts: within societies, efforts must be undertaken towards cultural, ideological and political change, so as to make those societies more receptive to human rights. And within the international human rights system, flexibility and transformation have to be used so as to make international human rights more receptive to more different societies by accommodating some of their particularist human rights claims (Brems 2001, 338, 511). She argues, however, that there is no room for particularities in the context of gross human rights violations that attack the core of human rights. Marten Kjoerum agrees: universality presupposes a differentiation, but variations must not undermine the essence of the norms (Kjoerum 2001, 83-87). But clearly, there is no expectation in international human rights law of absolute uniformity.

At first sight the margin of appreciation technique developed for the purposes of judicial decision-making by the European Court of Human Rights (ECHR) appears appealing if the aim is to localize human rights. The margin of appreciation technique has been used in cases where values vary across the region, and where the Court accepts the government's argument that the government is better placed than the regional court to assess the scope of the right in its own society. Brems summarizes the Court's case law as follows:

> The scope of the margin of appreciation and, reversely, that of the control exercised by the Court, is a function of the respective weight of the two scales in the balance. The margin will be wider and the Court's control looser if

[6] The quote echoes paragraph I. 5 of the Vienna World Conference on Human Rights Declaration (25 June 1993): "All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms".

> the threat to the general interest is more urgent or more important and the threat to the individual right is smaller. The margin will be narrower and the Court's control stricter if the threat to the individual right is more serious and the threat to the general interest is smaller (Brems 2001, 366).

The application of the technique to specific cases has proven controversial, however (Brauch 2004). In practice, the technique functions as a defense instrument for governments, rather than as a device that allows the Court to interpret the Convention in the light of the specific needs of the claimants in a particular society. The technique allows for plurality, but not for the purposes of offering more locally relevant protection, but for limiting the scope of individual rights in order to safeguard the general interest as defined by the State.

Paolo Carozza suggests that subsidiarity has become a structural principle of international human rights law (Carozza 2003). He argues that subsidiarity pervades all aspects of human rights law and politics. In the human rights context, the principle requires:

> First, that local communities be left to protect and respect the human dignity and freedom represented by the idea of human rights whenever they are able to achieve those ends on their own (...). Second, subsidiarity supports the integration of local and supranational interpretation and implementation into a single community of discourse with respect to the common good that the idea of human rights represents. And third, to the extent that local bodies cannot accomplish the ends of human rights without assistance, the larger communities of international society have a responsibility to intervene. Insofar as possible, however, the subsidum of the larger community should be oriented toward helping the smaller one achieve its goal without supplanting or usurping the latter society's freedom to pursue its own legitimate purposes (Carozza, 2003, 57-58).

The idea that local communities have a primary duty to ensure human rights by their own means is in consonance with the idea of localization of human rights, but the passage remains ambivalent about the exact identity of the local community. A "local community" consists of many actors: certainly, both local government and civil society actors, and even in Carozza's view (if my reading of him is correct), national governments. The subsidiarity principle takes on different consequences according to the definition of local community that is used.

Plurality within human rights most clearly results from the coexistence of different regional human rights systems. The major regional human rights treaties have different lists of rights that purport to reflect different regional sensitivities. Richard Falk speculates that the further elaboration and implementation of human rights will take on a regional character (Falk 2000, 52). It has for instance been argued that domestic implementation of human rights in Muslim States would improve if the Organization of the Islamic Conference adopted a binding Islamic regional human rights covenant (Baderin 2004).

The existing American, African and European regional protection mechanisms have approached similar cases differently, while all using human rights language. The differences are not a threat to human rights, but a contribution to their effectiveness.

Consider for instance the decisions in the *Dogan*[7], *Awas Tingni*[8] and *Ogoni*[9] cases. While the circumstances of the cases differ, the cases all involve essentially collective claims by politically and economically marginalized communities living off their land challenging governmental decisions allowing their land (and its natural resources) to be used in ways they disagreed with. In the three cases, the regional body finds in favor of the applicants and insists that the relevant government ensures full human rights protection, but the courts opt for a different legal basis. The European Court of Human Rights found that the applicants, all members of a Kurdish family that were forcibly evicted from an area of political violence, suffered a violation of their individual entitlements to the peaceful enjoyment of their possessions, because an excessive burden was placed on them. The Inter-American Court found that the property rights of an indigenous community had been violated by a governmental decision to allow logging activities on indigenous land. The Court stated that property included communal property as defined in accordance with indigenous customary law. The African Commission found *inter alia* a violation of the collective right of the Ogoni people to freely dispose of its wealth and natural resources due the to the circumstances under which the Nigerian military authorities allowed oil exploitation in the Ogoni area.

[7] European Court of Human Rights, Dogan and others v. Turkey, judgment of 29 June 2004.

[8] Inter-American Court of Human Rights, Mayagna (Sumo) Awas Tingni Community v. Nicaragua, judgment of 31 August 2001.

[9] African Commission on Human and Peoples' Rights, Social and Economic Rights Action Center v. Nigeria, report of 27 May 2002.

These summaries do no justice to the wealth of the regional bodies' decisions (compare De Feyter 2005, 155-166), and it may be true that institutional differences among the regional systems in part explain the differences in the outcome (compare Murray, Wheatley 2003, 236), but the point remains that the courts achieve the same aim – offering a degree of human rights protection to affected communities - by using different means. Arguably the different approaches reflect the uniqueness of each regional system: a strong emphasis on individual property rights in Europe, a tribute to indigenous conceptions of rights in Latin America, and a reliance on peoples' rights in Africa. The plurality of the approaches reinforces, rather than diminishes the global relevance of human rights. From a global perspective, it is counterproductive to insist on more uniformity, when in reality the human rights responses to challenges on the ground differ in different societies. The human rights regime is well advised to accommodate plurality, in order to address local human rights challenges more effectively.

4. The view from below

Having established that the human rights regime allows for plurality, the stage is now set for a discussion on how this space can best be used in the interest of extending human rights protection to those most in need. It will be argued that this requires interpreting and further developing human rights in light of the human rights needs as defined by community based organizations.

Why is the contribution of local communities to the interpretation and further normative development of human rights so essential? Human rights crises emerge at the local level. It is at the local level that abuses occur, and where a first line of defense needs to be developed, first and foremost by those that are threatened. It is when people face abuse in their personal experience and in their immediate surroundings that they 'have' to engage in collective action for the defense of their rights (compare Lipschutz 1996, 39). It is at this time that the efficacy of mechanisms of protection is tested. It is at the local level that having human rights either proves vital or illusory.

The communities that go through a human rights crisis build up knowledge – a usage of human rights linked to concrete living conditions. The recording and transmission of this knowledge (regardless of whether the appeal to human rights was successful or not) is essential if human rights are ever to develop into a global protection tool. Human rights need to develop in light of the lessons learned from attempts to put them into practice at the local level. In a fascinating study of five case studies across the globe, based on extensive interviews, Bales shows that the practice of slavery today – defined in the book as the total control of one person by another for the purpose of economic exploitation – is completely different from the old slavery often associated with the American South before 1860 (Bales 2000). New forms of slavery avoid legal ownership, involve a short-term relationship, and are not based on racial differences. The implication must be that the human rights response to slavery - including the normative response - must change in order to offer effective protection. Without the knowledge of those living as slaves today, such a response can simply not be developed.

There is another argument going beyond efficacy to support an active role for communities facing abuse in the further development of human rights. Olesen criticizes the human rights movement for offering a form of solidarity that displays elements of inequality (Olesen 2004). The human rights movement is based on a one-way relationship between those who offer solidarity and those who benefit from it; the provider of solidarity is supposed to be stronger than the beneficiary. His analysis echoes Mutua's earlier reference to a savage-victim-savior metaphor that plagues the human rights movement, where only the savior is white. Olesen contrasts human rights solidarity with 'global solidarity' that involves a more reciprocal

model, "constructing the grievances of physically, socially and culturally distant people as deeply intertwined" (Olesen 2004, 259) The textbook example (see also Starr 2000, 103) is the transnational solidarity work surrounding the Zapatistas:

> The Zapatistas (...) serve as a source of inspiration and not mainly as an object of solidarity: 'When people come back from a delegation to Chiapas, or an extended stay there, typically they want to figure out ways to apply what they've learned in Chiapas to community organizing here. And when they go down to visit Chiapas in the first place, they aren't going as teachers, but as students (Olesen 2004, 260).

Grounding human rights in local experiences offers the human rights movement the opportunity to emphasize similarities between the challenges facing different communities, while at the same time respecting and acknowledging local differences.

If the experience of local communities is to inspire the further development of human rights, community-based organizations will have to be the starting point. The World Bank study *Voices of the poor* (Narajan 2000, 143) describes community based organizations as "grassroots organizations managed by members on behalf of members", and distinguishes them from other civil society organizations such as non-governmental organizations and networks of neighborhood or kin. Kaufman and Dilla Alfonso offer a more detailed description in their study (Kaufman, Dilla Alfonso 1997, 9-11). Community organizations are based at the level of a geographic community. They are based on common interests (not on political affiliation), and thus potentially unitary bodies able to express and articulate the felt needs of people in relation to a variety of interests. They are mass organizations open to anyone in the community, and represent an attempt to capture more power for the population at the grassroots level. The authors find that community organizations best allow ordinary people to articulate a *holistic* concept of their needs. The World Bank study adds that they are often the only organizations that poor people feel they own and trust, and on which they can rely. Not surprisingly, trust is high when the organization emanates from within the community, but less so if the organization is created from the outside, i.e. by government or foreign donors.

Not all community-based organizations will define their work in terms of human rights. *Voices of the poor* finds that community based organizations *acting alone* have generally not been a force for change in local power structures. The organizations may remain aloof from the political realm, or may simply not be granted the space by local authorities to engage in political action (compare Uvin 1998, 169-179), and work within the ideology of the dominant sector of society (which may not be human rights friendly at all). From a human rights perspective, community-based organizations are

of particular interest when they start using the language of rights as a defense against the threats they face. Of key importance is the perception of a community that a certain practice violates the human rights of the members of the group, even if at the time when the claim is formulated, it may not yet be possible to validate it under the domestic or international legal system. If the general findings of the *Voices of the poor* study are correct, the likelihood that a community organization will address an issue in terms of human rights is much higher if the organization is connected to other organizations like it (which facilitates the detection of common causes affecting the communities) and if it is connected to groups of a different nature (compare Narajan 2000, 150-151). Those "different groups" in our case are groups with a specific commitment to human rights, i.e. domestic human rights NGO's.

It could be argued that a more natural starting point would be to turn to organizations of victims of human rights violations rather than to community based organizations. Generally, victim organizations mobilize to seek recognition and influence to promote victim-centered interests (Goodey 2005, 102). The organizations may take up a variety of tasks. They may offer practical assistance and emotional support to victims. They may assist victims in obtaining compensation by the State or restitution by the offender. They may engage in lobbying to secure an improved role for the victim in the criminal justice system, or may insist on tougher sentencing or a hard-line approach to law and order issues. No doubt, the experiences of victims (and of those who self-identify as victims) are important in order to improve and adjust systems of human rights protection, but there is a risk that their organizations focus narrowly on the defense of the personal interests of their membership, rather than on the need to improve human rights protection as such. It should not be assumed that victim organizations automatically have empathy with other victims of human rights violations that have very different convictions or backgrounds, or that they are committed to the need to extend human rights protection to all. The more inclusive membership of community organizations (that should be open to victims as well) should in principle offer greater chances of a less specific, and perhaps more balanced approach to human rights problems at the local level.

Community-based organizations are only the first link in the chain that is required to ensure that local human rights experiences of human rights impact on the further normative development of human rights. The second link in the chain are local human rights NGOs – private organizations that are independent from the government and the market, and have chosen as their primary aim the promotion and protection of human rights. 'Local' in this context means that they are based in the same country as the relevant community based organizations. They may well be in the capital, however (and thus physically far away from the community organizations) and be based on expertise, rather than grassroots membership. Local human rights NGOs are important in assisting community organizations in identifying the

human rights angle to the situation they face, and in offering them support in the human rights strategy the community may wish to develop, particularly at the national level. It is worth recalling that the level of municipal law is by far the most important level for the purposes of human rights protection. This is true generally, and in particular if one seeks to address the human rights impact of private actors (such as corporations). Appiagyei-Atua thus describes the 'ideal' (as distinct from the actual) role of human rights NGOs in Africa as follows:

> [A]s an organization that forms a vital component of civil society and which devotes its resources to helping marginalized entities on the dependence structure to be politically-conscious so as to be in a position to articulate, organize and assert claims and protect their rights from further abuse (Appiagyei-Atua 2002, 289).

It is of equal importance, however, that local human rights NGOs learn from community organizations about the reality of human rights related struggles on the ground, and that they transmit lessons learned to the international level. Very often community organizations will not have contacts with the international human rights regime, and will need to rely on specialized human rights NGOs to establish the connection.

International non-governmental human rights organizations are the third link in the chain. organizations with an international membership that act across national borders in defense of the human rights of a wide variety of individuals and groups. The involvement of INGOs is essential when the domestic political space is very limited, and in particular when restrictive domestic legislation curtails the actions of local human rights NGOs (compare He 2004). But even when political space is available, Mary Kaldor argues that international involvement is necessary:

> [T]hose who are trying to exert a constructive influence over local life in a globalised world, can only succeed if they have outside support and access to those international organizations that can influence governments and global regulatory processes (Kaldor 1999, 209).

In a globalized world, the causes of human rights violations are increasingly not exclusively domestic. Powerful States take decisions that have extraterritorial effects. Intergovernmental organizations affect standards of living. Companies organize across borders. Domestic actors face constraints in their response because their range is limited geographically. Not only is there a need for global rules, there is also a need for globally concerted action.

Nevertheless, the relationship should not only be top-down – INGOs coming in to assist domestic actors in a human rights struggle whenever such an action fits within the INGO's mission or strategic plan - but also bottom-up. Missions and strategic decisions of international hu-

man rights NGOs, including policies on the normative development of human rights, should reflect the perceptions of human rights needs at the local level, where the purported beneficiaries of their actions live. It is not at all sure that this is current practice – accountability to beneficiaries is generally not a great strength of international human rights NGOs. *Voices of the poor* for example reports that organizations "known worldwide for their excellent work" are mentioned only infrequently by the poor (Narajan 2000, 131). Amnesty International has been essential in providing information and lobbying global institutions on human rights violations, but has little tradition in working closely with domestic human rights NGOs, let alone community organizations, in assisting them to campaign domestically or involving them in Amnesty's own priority setting. Accounts of Amnesty's work at the United Nations provide little evidence of any commitment to support the human rights concerns of local organizations (compare Cook 1996, Martens 2004). Amnesty chose the alternative route of trying to set *itself* up as a grassroots organization in as many (strategically important) countries as possible, but has perennially struggled to flourish in non-Western societies.

Paul Gready sums up our discussion of the role of civil society organizations as follows:

> Civil society is the engine behind a normative agenda seeking to establish and enforce contracts from below. Ordinary people can, and should, make and monitor laws. (Gready 2004, 8).

Civil society organizations cannot, however, make law directly. As Rajagopal points out, in international law, their "texts of resistance" are not a source of law (Rajagopal 2003, 233), nor do they have any law-making authority in domestic law. They are able to monitor compliance with laws, but civil society monitoring mechanisms have no powers of enforcement. Nor should they have any – they lack the democratic legitimacy necessary to exact discipline. In the fields of law-making and enforcement civil society organizations are dependent on alliances with others who do enjoy such competencies, *i.e.* governments and inter-governmental organizations.

This takes us to the fourth link in the chain. Keck and Sikkink's well-known work on transnational advocacy networks (Keck, Sikkink 1998) is particularly relevant in this context. Transnational advocacy networks include:

> Those relevant actors working internationally on an issue, who are bound together by shared values, a common discourse, and dense exchanges of information and services (Keck, Sikkink 1998, 2).

Such networks may include the following actors: international and domestic nongovernmental research and advocacy organizations; local social movements; foundations; the media; churches, trade unions, consumer organizations and intellectuals; parts of regional and international intergov-

ernmental organizations; and parts of the executive and/or parliamentary branches of governments (Keck, Sikkink 1998, 9). The authors suggest that such networks are most prevalent in issue areas characterized by high value content and informational uncertainty.

Human rights are one of these issue areas. In his analysis of recent major international human rights campaigns, Gready confirms that most were based on "mixed actor coalitions", NGO-led but involving a broad range of other parties including business, governments, IGOs, and parts of and personnel within these actors (Gready 2004, 18). Alliances with governments proved to be challenging, but the trend is that NGOs increasingly work with sympathetic States, or with sympathetic individuals within States. In the context of international alliances, 'government' primarily means the executive branch – ministers, diplomats and civil servants that engage in diplomatic negotiations. At the domestic level, however, it is equally important to be able to rely on judges that are willing to give domestic effect to human rights, and on members of parliament that are willing to take legislative initiatives in the field of human rights.

Transnational advocacy networks as perceived above do not necessarily imply institutionalized alliances. They are based primarily on voluntary communication and exchange that may be public, but could just as well be unofficial and based on shared convictions between individuals placed in different parts of the network. Individuals have been found to change places in the human rights network as well – moving with ease from governmental to non-governmental organizations or vice versa. In the relationship between non-governmental and governmental actors, informal types of collaboration on human rights are popular, because both actors may worry about the effects on their image of more public cooperation.

In summary, a bottom-up approach to human rights is dependent on the existence of a network consisting of four partners: community based organizations, local human rights NGOs, international human rights NGOs and allies in governmental and intergovernmental institutions. Although some such networks may exist, or have functioned in the context of specific campaigns (compare Risse, Ropp, Sikkink 1999), it is not contended that this type of networking is current general practice. There are plentiful examples of community based organizations without human rights awareness, of local human rights NGOs disconnected from grassroots organizations, of international human rights NGOs that self-define their priorities without any reference to local partners, and of governmental and intergovernmental actors that persevere in perceiving of international relations and international law as the reserved domain of governments. For many actors at the different levels – whether governmental or non-governmental -, opening up to bottom-up networking, will pose a challenge and require a change in their working methods.

Nor does the creation of a network in itself suffice to ensure that human rights will be built from below. A bottom-up approach requires that the human rights experiences of communities set the agenda for the entire network. Whether this will happen, depends on the relationships between the actors in the network. Ideally, the relationships within a network are based on an egalitarian "Habermas like" discourse resulting in a common understanding of human rights and of the strategy to be pursued. In reality, resources may be divided unequally among the actors, and top-down hierarchy may set in, unless power balances are negotiated very carefully (compare Henry et al. 2004). Discussions about what it means in practice to give local content to global human rights rules are bound to take place. Writing about environmental networks, Lipschutz warns:

> There is also an inherent tension between these global networks and the local organizations linked into them. By their very nature, the networks of global civil society tend to be cosmopolitan, in the sense that they are driven by Ecology, a shared, global worldview. But, as noted above, the world is characterized by ecological diversity, both physical and social. As a result, there is a continual struggle between the global and the local, as the former tries to impose some part of its vision on the latter, and the latter resists yielding up its particular identity to the former. The local does have leverage, however, since those actors whose reach is "global" cannot succeed unless they have access to the knowledge, legitimacy, and social capital possessed by the local (...) (Lipschutz 1996, 74-75).

It is to be expected that similar discussions will emerge within human rights networks about the tension between the shared global view of human rights and the vision of local organizations on the reality of human rights struggles of the ground. On the other hand, such discussions are exactly what is required in order to improve the universal relevance of human rights.

The question of whether network actors are able in practice to manage the model in such a way as to achieve the grounding of human rights in the experiences of local communities goes beyond the reach of the conceptual desk study that I am attempting here. That question can only be answered through interdisciplinary field research on the operation of a specific network over a sufficiently long period of time. Similarly, it is tempting to speculate what the outcome of localization would be for the future interpretation and further development of human rights norms (particularly on current contentious issues within the human rights movement itself), but again the model proposed in the paper is that such issues should be decided through the process described above rather than through abstract reasoning.

5. A RETURN TO THE GLOBAL

Richard Falk's argument that regional organizations are well-placed to ensure sufficient plurality within the human rights regime can easily be extended to their superior ability to take into account local human rights experiences. Nevertheless, a need for the involvement of a global institution (the United Nations) in the further elaboration of human rights remains. Sufficiently wide global relevance can prima facie be assumed whenever the new human rights norm seeks to address the adverse effects of State, corporate or organizational strategies that affect countries in different parts of the world or have a global impact. The challenge is, however, to ensure that these global norms build on local human rights experiences.

Twenty years ago, Philip Alston argued that "the application of a formal list of substantive requirements" to the normative development of human rights was unworkable, because decision-making at the preferred body for proclaiming new human rights, the UN General Assembly, was not sufficiently rational and objective (Alston 1984, 618). Instead, Alston proposed procedural requirements the General Assembly would need to meet whenever it engaged in drafting new human rights law, including a comprehensive study by the UN Secretary-General incorporating comments from "governments, relevant international and regional organizations and non-governmental organizations" (Alston 1984, 620). Alston's proposal was not adopted – perhaps it was too rational as well. Of course, one could still try to think of procedural devices that would increase the opportunities for hearing the voices of those suffering abuse in the context of the UN human rights machinery, but in the end it is the effectiveness of the networking described above that will determine whether the global system becomes more open to a bottom-up approach.

More sensitivity of UN human rights bodies to local experiences could perhaps also result from an increased UN human rights presence in the field. Presence in the field exposes UN officials to local human rights experiences. At least in theory, lessons learned from working with local communities could be used to detect gaps in the global protection system or to redirect global human rights action.

Thematic special rapporteurs of the UN Commission on Human Rights perhaps come closest to using (usually short term) visits for such a purpose. The missions allow direct access to community-based organizations, local non-governmental organizations and benevolent government officials. Country visits may be used for comparative purposes, and thus lead to the identification of a global trend that needs to be tackled from a human rights perspective (compare De Feyter 2005, 106-107). However,there is no systematic commitment to learning from below in the missions. Even if a

special rapporteur takes the initiative to report on the human rights needs of local communities, there is no guarantee (and in fact little evidence) of follow-up at the level of the UN Commission on Human Rights, let alone at the UN General Assembly.

Louise Arbour, the current UN High Commissioner for Human Rights, has made increased in-country and regional presence of her officers a high priority. As she sees it, her office pursues two overarching goals: protection and empowerment. Empowerment

> [I]s a broad concept, but I use it in two distinct senses. Experience from many countries teaches us that human rights are most readily respected, protected and fulfilled when people are empowered to assert and claim their rights. Our work, therefore, should empower rights holders.
>
> Additionally, successful strategies to protect human rights depend on a favorable government response to claims that are advanced. Empowerment is also about equipping those with a responsibility to implement human rights with the means to do so[10].

[10] Paragraphs 36-37, UN High Commissioner for Human Rights (2005), The OHCHR plan of action: protection and empowerment.

[11] Paragraph 111.

The OHCHR Plan of action recognizes that the Office can "benefit from the support, analysis and expertise of civil society"[11] – it is also prepared to offer direct protection for civil society groups facing threats. Clearly, the Plan of action creates an opening for the UN to act as a global actor that could support the localization of human rights.

A word of caution is in order though. Long-term UN human rights field presences often take place in the context of peacekeeping operations – with the initiative coming from New York rather than from Geneva. The need for UN field action may be based on the lack of capacity of the State, and perhaps also of non-State actors to ensure human rights protection. The State may have 'collapsed'. Civil society may not exist. Often this lack of domestic capacity is precisely what triggers UN involvement on the ground: the lack of internalization of human rights justifies the intervention of the external actor (Risse, Sikkink 1999, 11). In its most extreme form, the UN itself takes over the administration of a territory (as in Kosovo), and sets itself up for charges that it is violating human rights (Mégret, Hoffman 2003). A bottom-up approach to human rights may not be self-evident in those circumstances. And as is the case for the Special Rapporteurs, international support (of member States of higher echelons of the UN bureaucracy) for the findings of local UN staff on human rights may be less than overwhelming (compare Majekodunmi 2002).

But in any case, except in extreme circumstances when local human rights resources are inexistent, at least on the ground UN Human rights field officers should be able to play the role of a temporary catalytic actor:

> The human rights officers work to augment the state's capacity to respect human rights (supply) and increase the citizens' proaction to ensure their rights are respected (demand) (Howland 2004, 14).

Or in the High Commissioner's words:

> ... the United Nations has a unique bridge-building ability to bring together civil society and Governments, creating opportunities for building trust[12].

[12] Idem

In a context of economic globalization, the need to take into account local human rights needs is not limited to global human rights institutions. Human rights bodies do not settle disputes on economic globalization – they are decided in the context of intergovernmental organizations such as the World Trade Organization, or through international arbitration. Such institutions are far removed from the communities where the human rights impact of economic decisions is felt, and tend to perceive of international trade and investment rules as self-contained systems, allowing little consideration of human rights. The traditional view of international arbitration for instance is that it is by essence confidential, and that arbitrators should not be under public scrutiny, because this would prevent them from giving proper weight to the contractual rights of private investors. In his comment on the Washington Convention on the Settlement of Investment Disputes (ICSID), Muchlinski explicitly perceives the treaty as an instrument of *delocalisation*, because the treaty severly curtails both the role of domestic courts and the applicability of domestic law (Muchlinski 1999, 547-551). So is there really any hope that human rights consequences at the local level will ever be considered in ICSID decision-making? Certainly not if the human rights argument is not made, and it is unlikely that this will happen unless access to the procedure is provided to the network actors described in the previous section.

Some cracks in the armor appear. One ICSID arbitration tribunal recently allowed a petition as amicus curiae by a group of non-governmental organizations in the *Aguas Argentinas e.a. v. Argentina*[13] case. It was the first time an ICSID tribunal took such a decision against the wishes of the private companies who act as requesters in the dispute. The ICSID Convention and arbitration rules are silent on whether nonparties can contribute to proceedings as friends of the court. Interestingly the ICSID Secretariat has now proposed to change the rules to explicitly enable tribunals to allow submissions by non-disputing parties and allow for public hearings[14]. In the context of NAFTA arbitration, open proceedings are already quite common.

[13] ICSID Tribunal, Aguas Argentinas, Suez, Sociedad General de Aguas de Barcelona and Vivendi Universal v. Argentine Republic, order in response to a petition for transparency and participation as amicus curiae of 19 May 2005.

[14] Working paper of the ICSID Secretariat, Suggested changes to the ICSID rules and regulations, paper of 12 May 2005.

Aguas Argentina, a consortium of which Suez is the largest shareholder, took over the water and sewerage system of Buenos Aires in 1993 from a badly run state-owned water company. The take-over was part of a huge privatization/deregulation/decentralization policy adopted by the Carlos Menem administration that was under pressure from the international financial institutions in order to obtain relief for Argentina's huge external debt. The relationship between the consortium and official institutions has gone through many ups and downs (Sjölander Holland 2005, 46-61), and the details of the dispute are not known, but there is little doubt that the consor-

tium argues that it has not received a fair return on investment, due to the national government's combined decision in December 2001 to devaluate the peso, and to convert its debts from US dollars to pesos, and its refusal to approve tariff increases.

The five non-governmental organizations[15] asserted that the case involved matters of basic public interest and the fundamental rights of people living in the area. They filed for access to the hearings of the case, the opportunity to present legal arguments as amicus curiae, and access to all of the documents.

[15] Asociacion Civil por la Igualdad y la Justicia, Centro de Estudios Legales y Sociales, Center for International Environmental Law, Consumidores Libres Cooperativa Ltda de Provision de Servicios de Accion Communitaria, Union de Usarios y Consumidores.

The Tribunal accepted that there was a justification for the acceptance of amicus curiae briefs in "ostensibly" private litigation when cases involved issues of public interest and because decisions in those cases have the potential, directly or indirectly, to affect persons beyond those immediately involved as parties in the case:

> The factor that gives this case particular public interest is that the investment dispute centers around the water distribution and sewage systems of a large metropolitan area, the city of Buenos Aires and surrounding municipalities. Those systems provide basic public services to millions of people and as a result my raise a variety of complex public and international law questions, including human rights considerations. Any decision rendered in this case, whether in favor of the Claimants or the Respondent, has the potential to affect the operation of those systems and thereby the public they serve[16].

[16] Paragraph 19, ICSID Tribunal, Aguas Argentinas, Suez, Sociedad General de Aguas de Barcelona and Vivendi Universal v. Argentine Republic, order in response to a petition for transparency and participation as amicus curiae of 19 May 2005.

The petitioners were instructed to file a subsequent petition giving details about their identity, their interest and specific expertise to act as friends of the court. The issue of access to documents would be dealt with subsequently. The request for open hearings was denied, as current ICSID rules provide that this is only possible with the consent of the parties of the dispute. The element of consent was missing, given the consortium's objection.

The importance of the Order should obviously not be exaggerated. We are a galaxy away from an ICSID decision that would give precedence to the human rights of the users of a public service in a case where the investor argues that its profitability has been harmed by post-investment government measures. Concerns remain about ICSID as a forum, since the Institute is part of the World Bank Group, and another part of the same group, the International Finance Corporation is a creditor of 20% of Aguas Argentinas international debt and of 5% of its equity shares[17]. After all, the proceedings do not only need as be fair, they also need to be seen to fair. On the other hand, it is unlikely that any progress in acknowledging local human rights needs in economic international relations will occur unless community organizations are able to take an active role. In that sense developments at the World Trade Organization, NAFTA and ICSID on allowing community organizations to intervene in proceedings as nonparties matter[18].

[17] In December 2001.

[18] The work of World Bank Inspection Panel is also relevant in this context. For some of my own work on this procedure, see my contribution on 'Self-regulation' in Van Genugten, W., Hunt, P., Mathews, S. (2003), 79-137.

6. Conclusion

This paper has argued that if the world economy is globalizing, there is a need to localize human rights. Localization was defined as a process whereby local human rights needs inspire the further interpretation and elaboration of human rights norms at levels ranging from the domestic to the global, and serve as a point of departure for human rights action. It was argued that taking inspiration from the local does not require abandoning the Universal Declaration of Human Rights and subsequent international law, but that it will contribute to the universal legitimacy of human rights. Localization inevitably implies that a degree of plurality is accepted within the human rights discourse, but this is a welcome development. In any case, there are no legal obstacles against doing so.

The localization of human rights depends on cooperation between actors at different levels. Four links in a chain were identified. Community-based organizations are essential in identifying local human rights needs – their experience should provide the direction for the localization effort. The role of local human rights NGOs is to assist community-based organizations in familiarizing themselves with rights approaches, and subsequently to support them in taking their human rights agenda to the domestic level and beyond. Local NGOs also serve as the anchor for connections with international civil society. The involvement of international non-governmental organizations is important, because in a context of economic globalization, the causes of human rights violations are no longer exclusively domestic. In addition, in countries where the space for political action is very limited, intervention by external actors is vital. Finally, alliances need to be forged with actors enjoying law-making and law enforcement authority, i.e. those committed in governmental and inter-governmental circles to a vision of human rights that responds to local needs.

For all actors referred to above, opening up to a strategy of localizing human rights poses a challenge. The final section focused in particular on global actors, and reviewed a number of obstacles, but also of opportunities in the current practice of UN human rights institutions and of international economic organizations.

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